

WATER PERMIT NO. 5957-3

Name of Applicant: Eugene Bartz

Address: RR 1, Box 99, Browns Valley MN 56219

Phone: 605 694-2737

Amount of Water Claimed: 1.46 cfs

Total Acres: 102.3

Source of Water Supply: slough

Water to be used for: irrigation

County: Roberts

Type of Waste Disposal System: NA

Location: approximately 10 miles northeast of Sisseton

PRIORITY

Date Received: 9-25-96

Fee: \$225

Corrected Application Received:

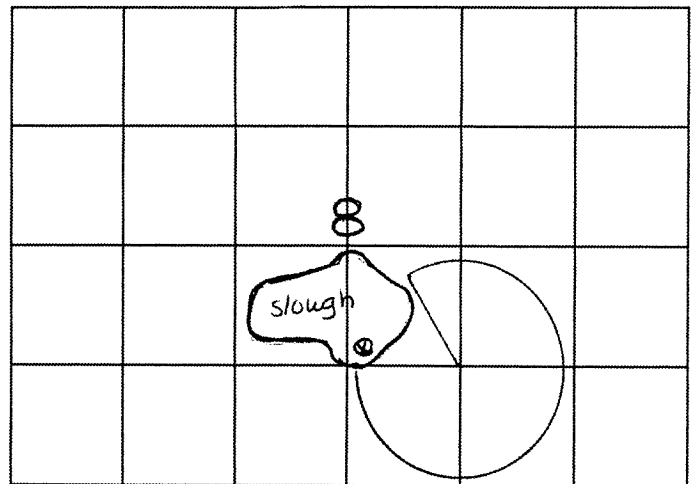
Period of Annual Use: June 1 - August 31

Remarks:

Diversion Point: NW 1/4 SE 1/4 Sec 8-T126N-R49W

Water Impounded: NE 1/4 SW 1/4, NW 1/4 SE 1/4 Sec 8-T126N-R49W

Land to be Irrigated: SE 1/4 Sec 8-T126N-R49W



Depth of Well: NA

Well Driller: NA

Remarks:

Type of Map: aerial

Prepared by: Larry Holton, P.E.

Reviewed and the Number Assigned on: 9-25-96

By: Karen Schlaak

Notice of Hearing - date to intervene: _____

FORM 2: Application for irrigation in South Dakota

(type or print)



Mail to:
Water Rights Program
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181
(605) 773-3352

No. 5957-3 Hydrologic Unit 09020101
Basin Red Rainy
Newspaper Sisseton Courier, Sisseton, SD
(office use only)

Application For Permit To Appropriate Water For Irrigation

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

Description of amendment/correction: (i.e. acreage change, change diversion point(s), add diversion point(s), etc.)

- Name of Applicant Eugene Bartz Phone 605-694-2737
(check one) Owner Tenant/lessee
Mailing Address RR 1 Box 99 Browns Valley State ND 56219
(Street, RR, or Box) (Zip Code)
- Amount of water claimed 1.46 *CFS or 51 **GPM ***AF Total Acreage 102.3
(*Cubic Feet per Second) (**Gallons per Minute) (***) Acre Feet - storage capacity of dam/dugout if applicable)
- Source of water supply Large Slough
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) North West Corner of NW 1/4 of SE 1/4 of Section 8, T126N, R49W; see attached Drawing water impounded: NE 1/4 SW 1/4, NW 1/4 SE 1/4 sec 8 County Roberts
- County or counties where water will be used Roberts
- Annual period during which water is to be used June, July, Aug June 1 - Aug 31
- 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)

All in T126N-R49W

Land Description	Acres	Land Description	Acres
<u>SW 1/4 of SE 1/4 Sec 8</u>	<u>30.7</u>	<u>NW 1/4 of SE 1/4 Sec 8</u>	<u>10.2</u>
<u>SE 1/4 of SE 1/4 Sec 8</u>	<u>30.7</u>		
<u>NE 1/4 of SE 1/4 Sec 8</u>	<u>30.7</u>		
		<u>Total Acres</u>	<u>102.3</u>

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

see attached Drawing

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 Roberts ss

I, Eugene Bartz, 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 Eugene Bartz
Subscribed and sworn to before me this 10th day of Sept. 19 94
[Signature]
Notary Public

SOUTH DAKOTA
WATER PERMIT NO. 5957-3 FOR IRRIGATION

Date of first receipt of application September 25, 1996.

The Water Management Board approved Water Permit Application No. 5957-3 on April 29, 1997 for Eugene Bartz, RR 1 Box 99, Browns Valley MN 56219 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. 5957-3 appropriates 1.46 cubic feet of water per second from a slough at a point located in the NW 1/4 SE 1/4 Section 8 with water impounded in the NE 1/4 SW 1/4, NW 1/4 SE 1/4 Section 8; to irrigate 102.3 acres located in the SE 1/4 Section 8; all in T126N-R49W.
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: June 1 - August 31.
3. The date from which applicant may claim right is September 25, 1996.
4. One-fifth of the construction is to be completed on or before October 29, 1999.
5. All construction is to be completed on or before April 29, 2002.
6. Water is to be put to beneficial use on or before April 29, 2006.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATION

This permit is approved subject to the irrigation water use questionnaire being submitted each year.

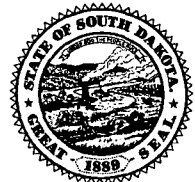
WATER MANAGEMENT BOARD

By: _____

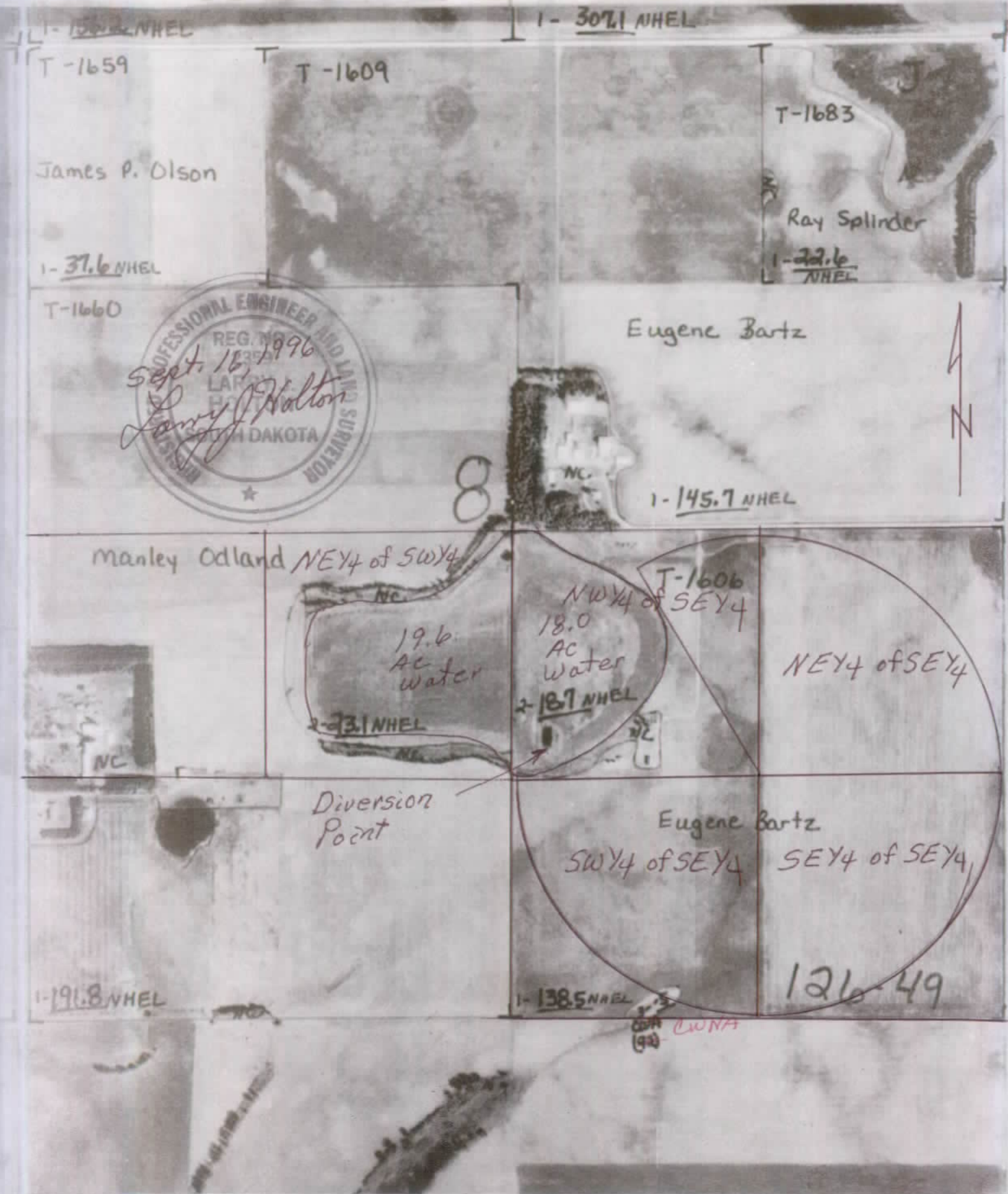
John Hatch
John Hatch, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

JUN 10 1997

date



NOT TO SCALE



5957-3

PARTIES OF RECORD

WATER PERMIT APPLICATION NOS. 5957-3 and 5958-3

APPLICANT

Eugene Bartz
RR 1, Box 99
Browns Valley, MN 56219

PETITIONER

Marvin & Connie Piotter
RR 1, Box 102
Sisseton, SD 57262

represented by:

Jason A. Campbell
Spiry & Frohling
Box 919
Britton, SD 57430-0919

Piotter & E.

Larson Engineering

DONALD R. LARSON

REGISTERED PROFESSIONAL ENGINEER AND LAND SURVEYOR

PHONE 605 432-4069

102 S. DAKOTA STREET

MILBANK, SOUTH DAKOTA 57252

August 2, 1993

Mr. Marvin Piotter
RR 1, Box 102
Sisseton, SD 57262

RE: Drainage, Bryant Township
Northeast Quarter 17-126-49

Dear Marvin,

I have completed a survey and drawing showing the conditions for the quarter. I have ordered from the U.S. Government aerial photos that I think will show the drainage history of the area for the past 40 - 50 years or more. These photos will be used to document the changes in ditching and water flows that have occurred and affect your land. These photos have been on order for 2 months, but I still don't expect them for another 2 months.

My findings for the two areas of concern to this point are as follows:

DRAINAGE NORTH SIDE OF QUARTER

The drawing shows the drainage ditch with the elevations as they existed on May 5, 1993. As you recall, the maximum elevation was to be 92.0 and as you can see, the ditch meets the requirements of the agreement. The drawing does show where the road grade has been partially removed. This appears to be an attempt to remove the restriction of the road grade and culvert to try to force more water across your property. The aerial photos may show if additional water is being diverted to your land.

DRAINAGE EAST SIDE OF QUARTER

The drawing shows the land contours in the area of the former buildings, low land to the west and the road ditches. The drawing does not show any ditch drainage on the south side of the buildings, but does show a possible drainage north of the building site, along the trees.

The Bartz land in Section 16 appears to be dominate land (higher). All of the present drainage from the Bartz land is collected in the east ditch and drained to the culvert under the road south of the building site, and flows in the west ditch to the south, where it stands in the ditch.

The existing road is now an obstruction to the flow of water to the west. Removing the road would allow the flow of water to flow generally east to west over the land without any channels. The road has now created a change in the drainage pattern to concentrate the flow at the culvert which is lower than the surrounding ground. I expect aerial photos to show the changes in ditching and flow coming on to your property.

A report will be prepared after I have studied the aerial photos.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Donald R. Larson', written in a cursive style.

Donald R. Larson, P.E.
LARSON ENGINEERING

cc: Spiry & Frohling

FOR: EUGENE BARTZ

Application for Irrigation in Section 8, T126N, R49W in
Roberts County, South Dakota

SUPPLEMENTAL INFORMATION

Sept. 16, 1996

Refer to the attached drawing of Section 8, T126N, R49W.

WATER STORAGE: Is in Large Natural slough.

DEPTH OF WATER IN SLOUGH:

1. As determined through the Ice in February, 1996 was found to be 4.1 feet.
2. The Maximum Depth of Slough would be +9 feet before it would have a outlet.

LOCATION OF SLOUGH IS AS FOLLOWS:

1. NW1/4 of SE1/4 in Section 8, which is owned by Eugene Bartz had a surface area of 18 Acres.
2. NE1/4 of SW1/4 in Section 8, which is owned by Manley Odland has a surface area of 19.6 Acres.

STORAGE OF SLOUGH:

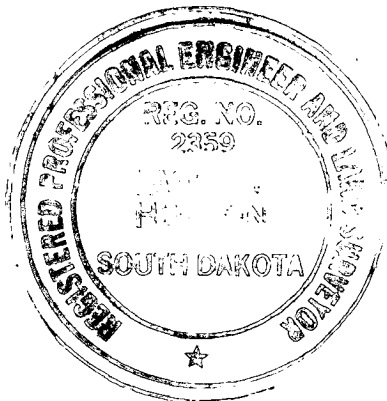
Storage = $\frac{(\text{Surface Area of Water} + \text{Area of bottom})}{2}$ X Ave. Depth

$$= \frac{(37.6 \text{ Acres} + 28.2 \text{ Acres})}{2} \times 4.1 \text{ Feet}$$

Storage = 134.89 Acre Feet

Prepared by:

Larry J. Holton





Department of E & NR:

If you have any questions please contact me (Eugene Bartz) at 605-694-2737 or Larry Holton at his office as listed below on his business card. — Larry will be out of the office until October 7th.

Office
605-698-3850

Licensed
SD, ND & MN

HOLTON ENGINEERING, INC.

112 East Oak :: Rm 200
Sisseton, South Dakota 57262
CONSULTING ENGINEERING and
LAND SURVEYING

LARRY J. HOLTON, President
(Licensed) Professional Engineer
and Land Surveyor

RECEIPT

Division of Water Rights

South Dakota Department of Environment and Natural Resources

415118

Pierre, _____ September 25, 19 96

RECEIVED OF Eugene Bartz, Rt 1, Box 99, Browns Valley, MN 56219-9740

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

Fee for Application for Permit No. <u>5957-3</u> to Appropriate Water, to construct and to put water to beneficial use _____	225	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	225 00

By John Hatch
Chief Engineer

Conversation or File Documentation

NAME OF PERSON OR FILE: EUGENE BARTZADDRESS: RR 1 Box 99 Browns Valley, MN COUNTY ROBERTDATE: 9/26/96 TELEPHONE _____RE: Water Permit applications

COMMENTS:

I TELEPHONED MR BARTZ ABOUT HIS water permit applications

I told him THAT I had some questions and concerns.

FIRST I ASKED HIM ABOUT the odd shaped land he was proposing to irrigate in Section 5 he said he planned to use a center pivot with a corner system.

SECOND I ASKED HIM If he had obtained easements from his neighbors concerning the portions of the sloughs he was proposing to pump from. He said he had gotten verbal approval from them, but would get written easements at the time he were to get the water permit.

THIRD I told him that I was concerned that he may not have a dependable water supply from the sloughs. HE said He realized that and that he ~~would~~ was only planning to irrigate for short periods in late summer to finish out his crop.

FOURTH I Told him that NRCS did not look favorable about pumping out of sloughs, and that it may jeopardize and farm program benefits. He said he had got NRCS approval because those sloughs were considered prior converted wetlands.

He Asked me about the water rights process. I explained the procedure and requirements.

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

NAME: Phil Keith



10/31/96

Enclosed are the easements
needed to complete my application
for irrigation permits in Roberts
County, South Dakota.

Eugene Bant



I Mankly Odland agree to give Eugene Bartz an easement to use the water in the slough that is located in the NE1/4 of SW1/4 in Section 8, T126N, R49W which is owned by me and adjoins Eugene's land in the NW1/4 of SE1/4 in Section 8, T126N, R49W in Roberts County, South Dakota.

Mankly Odland

Ray Spinkler
Witness

October 31, 1996
Date

REPORT ON WATER PERMIT APPLICATION NO. 5957-3

EUGENE BARTZ

November 7, 1996

Application No. 5957-3, Eugene Bartz, proposes to appropriate 1.46 cubic feet of water per second (cfs) from a slough to irrigate 102.3 acres. The proposed diversion point is to be located in the NW1/4 SE1/4 of Section 8 at a slough impounding water in the NE1/4 SW1/4 and NW1/4 SE1/4 of Section 8 to irrigate 102.3 acres located in the SE1/4 of section 8 all in T126N-R49W. The proposed project is located in Roberts County approximately 11 miles northeast of the town of Sisseton, SD.

Review of Existing Water Rights and the Water Source

The water source for this project is a slough. The slough catches runoff from precipitation events and spring snow melt. Information developed by an engineer and submitted with the application indicates that the slough impounds approximately 135 acre feet of water. A slough is not a reliable source of water particularly during periods of drier climatic conditions.

During a September 26, 1996, telephone conversation with the applicant, I told him that a reliable water supply for irrigation from a slough would be questionable. Mr. Bartz indicated that he was aware of a potential water supply problem, but said the primary intent of the irrigation system was for finishing out his crop in late summer, and not to provide full season irrigation.

During another telephone conversation, we discussed the need for obtaining an easement from the other landowner who owns part of the slough. Mr. Bartz said that he would submit a copy of the easement, which he has since done. We also discussed the issue of pumping from the wetland in regard to a wetland violation from the Natural Resources Conservation Service (NRCS). He said he has been in contact with NRCS concerning this issue.

There are no other existing water rights located within several miles of this proposed project. There would be no adverse effects from this project on other water rights.

Conclusions

1. Application No. 5957-3 proposes to appropriate 1.46 cfs from a slough to irrigate 102.3 acres.
2. The water source for this project is from a slough that catches local runoff from precipitation events. A slough is not a reliable source of water, particularly during periods of drier climatic conditions.
3. An easement has been obtained from an adjacent land owner to pump from the slough.
4. If Water Permit No. 5957-3 is approved it should contain the following qualification:

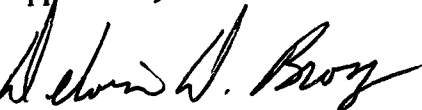
This permit is approved subject to the irrigation water use questionnaire being submitted each year.



Mark D. Rath

Natural Resources Engineer III

Approved by:



Delvin D. Brosz, P.E.

Natural Resources Engineer IV

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 5957-3, Eugene Bartz**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 5958-3, Eugene Bartz, RR 1, Box 99, Browns Valley, MN 56219

The Chief Engineer is recommending APPROVAL of Application No. 5958-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 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 qualification:

This permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

A handwritten signature in black ink, appearing to read "John Hatch", with a stylized, cursive script.

JOHN HATCH, Chief Engineer
November 8, 1996



**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.

November 13, 1996

Eugene Bartz
RR 1, Box 99
Browns Valley, MN 56219

Dear Mr. Bartz:

Water Permit Application Nos. 5957-3 and 5958-3 for irrigation use have 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 Sisseton Courier printed at Sisseton, SD (Ph # (605) 698-7642). For your information, a copy of the notice, the recommendations of the Chief Engineer and a report on the applications 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 applications.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendations, 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 applications.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

November 13, 1996

Sisseton Courier
Box 169
Sisseton, SD 57262-0169

ATTENTION: Legal Department

Enclosed is a Notice of Hearing on Application Nos. 5957-3 and 5958-3 to be published twice. Please publish the first notice on November 20, 1996, 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 Eugene Bartz, RR 1, Box 99, Browns Valley, MN 56219 (Ph # (605) 694-2737).

A copy of BOTH publications must be SENT to the WATER RIGHTS PROGRAM. 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
Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

FIRST TRANSMITTAL NOTICE

TO: Eric Gronlund
Water Rights Program
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 November 20, 1996, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NOS. 5957-3 and 5958-3 to Appropriate Water

Notice is given that Eugene Bartz, RR 1, Box 99, Browns Valley, MN 56219 has filed the following water permit applications:

Application No. 5957-3 appropriates 1.46 cubic feet of water per second (cfs) from a slough at a point located in the NW 1/4 SE 1/4 Section 8 with water impounded in the NE 1/4 SW 1/4, NW 1/4 SE 1/4 Section 8; to irrigate 102.3 acres located in the SE 1/4 Section 8; all in T126N-R49W.

Application No. 5958-3 appropriates 2.35 cfs from a slough at a point located in the NW 1/4 NE 1/4 Section 5 with water impounded in the SE 1/4 SW 1/4, S 1/2 SE 1/4, Section 32, NE 1/4 NW 1/4, N 1/2 NE 1/4 Section 5; to irrigate 164.8 acres located in the NE 1/4, SE 1/4 Section 5; all in T126N-R49W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 5957-3 and 5958-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversions can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use, and 4) in the public interest. In accordance with SDCL 46-2A-23, the chief engineer will act on the applications, as recommended, unless a petition is filed opposing the applications 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 applications. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting these applications or recommendations must file a written petition with BOTH the applicant and chief engineer. The applicant must file a petition if contesting the chief engineer's recommendations. The Chief Engineer's address is "Water Rights Program, 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 December 9, 1996.

The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, 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 Program address to request copies of information pertaining to these applications. Nettie H. Myers, Secretary, Department of Environment and Natural Resources.

Affidavit of Publication

STATE OF SOUTH DAKOTA,
County of Roberts

ss.



Harley E. Deutsch of said county, being first duly sworn, on oath says, that he is Publisher of THE SISSETON COURIER, a weekly newspaper printed and published in Sisseton, in said county of Roberts, and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bonafide circulation of at least two hundreds copies weekly, and has been published with in said county for 52 successive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the Notice of Notice Of Application Nos 5957-3 & 5958-3, a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this affidavit, was published in said newspaper at least once in each week for _____ successive weeks, on the day of each week on which said newspaper was regularly published, to-wit:

11-20, 1996; _____, 19____;
11-27, 1996; _____, 19____;
_____, 19____; _____, 19____;
_____, 19____; _____, 19____;
_____, 19____; _____, 19____;

that the full amount of the fee is charged for publication of said Notice insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division there has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever and that the fees charged for the publication thereof are \$ 45.31

Harley E Deutsch

Subscribed and sworn to before me this 27th day of November, A. D., 19 96

[Signature]

Notary Public, Roberts County, South Dakota

My commission expires February 3, 19 98

NOTICE OF APPLICATION

NOS. 5957-3 AND 5958-3 TO APPROPRIATE WATER

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Any person interested in opposing or supporting these applications or recommendations must file a written petition with BOTH the applicant and chief engineer. The applicant must file a petition if contesting the chief engineer's recommendations. The Chief Engineer's address is "Water Rights Program, 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 December 9, 1996.

The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for

Call the Admistr

without quitting your
could be graduating v
business, in as time



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

November 21, 1996

Connie Piotter
Rte. 1 Box 102
Sisseton, SD 57262

Dear Ms. Piotter:

Please find enclosed a copy of the reports and recommendations for Water Permit Application Nos. 5957-3 and 5958-3, filed by Eugene Bartz. I have also enclosed a copy of the water permit applications that were filed by Mr. Bartz.

You have until December 9, 1996 to file a petition to intervene in the hearing process on these applications. Your petition will cause a formal hearing before the Water Management Board at which time you will be able to provide testimony.

If you have any questions, please feel free to contact Mark Rath or myself at (605) 773-3352.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures

November 22, 1996

Eric Gronlund
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501



Mr. Gronlund:

Regarding Water Permit applications #5957-3 and #5958-3 filed by Eugene Bartz.

We are formally objecting to these applications.

We are enclosing copies of some of the correspondence regarding numerous lawsuits and drainage schemes of Mr. Bartz. He applied for these permits under the guise of irrigation, when in fact, his sole purpose is to drain excess water off his land onto our land and others. He has been ditching and draining water onto our land every year, as the enclosed documents will show you.

Mr. Bartz' attorney, Richard Glynn, is now serving a sentence at the South Dakota Penitentiary in Sioux Falls for defrauding elderly people. Mr. Glynn removed the court agreement dated October 28, 1983, from the Register of Deeds in Roberts County; making the Bartz' side of the agreement blank. We have added a Post-It note on this page for your information.

We do not have all of Mr. Tollefsrud's correspondence regarding this. Please check with him about other files he has on this incident.

We are also enclosing some photographs. Could you please return them to us when you are done viewing them. We have many different pictures.

If you would take some time to study these documents, you will see that this is a ploy. Mr. Bartz has also filed for many more vested drainage claims which have not been resolved as yet because he does not keep his word.

Sincerely,

Marvin & Connie Piottter

Marvin & Connie Piottter

RR1 Box 102

Sisseton, SD 57262

(605) 694-2738

Enc.

DATE: October 22, 1987

MEMO TO: Jim Winterton

FROM: Tim Tollefsrud 

SUBJECT: Drainage complaint in Bryant Township, Roberts County

I received a call from Cyril Westby, Chairman Roberts County Commissioners, regarding a complaint on drainage in Bryant Township, Roberts County. He indicated the Commissioners were going to discuss the matter and inspect the area during their last meeting. Mrs. Piottier, the person complaining, told the Commissioners they didn't have to inspect the area because someone from the "State Water Board" was going to inspect the area. Mr. Westby was curious to find out if our office was involved and if we were involved had we looked at the area yet. I told Mr. Westby I was not familiar with the complaint and knew of no request from Mrs. Piottier for an on-site inspection but I would check with my supervisor. I told him the Division of Water Rights did not get involved with drainage matters until the County Commissioners requested our assistance. Mr. Westby stated that he would like someone from the Department to look at the area to see if we have any suggestions. He would like to have the area inspected within the next 10 days if it was at all possible. I said I would check with my supervisor and let the Commissioners know if we are involved and when, if possible, we can look at the area.



Department of Water & Natural Resources

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

November 4, 1987

Cyril Westby
Chairman, Roberts County Commission
411 2nd Ave. East
Sisseton, SD 57262

Dear Mr. Westby:

Enclosed is the Brookings County, SD Ordinance 86-01 and the Davison County Drainage Plan. Brookings and Davison County have both adopted a permitting procedure for drainage.

The drainage planning statutes were modeled after the county planning and zoning statutes which enable the county to pattern their drainage ordinance, order, etc. after the building codes or zoning ordinances. A permitting procedure will allow a county to regulate future drainage to eliminate future individual disputes. SDCL 46A-10A-36 allows a county to gradually eliminate nonconforming drainage. A new drainage ordinance adopted by a county would not affect existing drainage but the county could adopt regulations which would require a drainage permit for any improvements or changes to existing nonconforming drainage. This would help in eliminating nonconforming drainage schemes.

Pursuant to SDCL 46A-10A-31.1 each county must provide notice on or before July 1, 1988 of the vested right recording requirements set forth in SDCL 46A-10A-31, by publishing a notice once a week for two consecutive weeks in at least one official county newspaper. Any drainage begun prior to July 1, 1988 and challenged by an affected landowner may not become vested until and unless a final decision has been reached in favor of such drainage. This will also help in eliminating nonconforming drainage schemes. If a vested right recording is challenged, the commission will have to resolve these matters in accordance to SDCL 46A-10A-20 to determine if the drainage may continue. Any ordinance adopted by the commission will not apply to drainage already in existence.

There are certain procedures the county must follow in adopting a drainage plan in which the States Attorney should be able to assist you. The procedures are also outlined in "A Review of South Dakota Drainage Law" written by Harold Deering, Assistant Attorney General. Each county was provided a copy of this report.

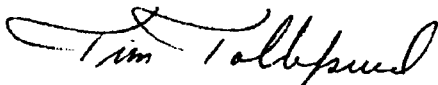
Cyril Westby
November 4, 1987
Page 2

Topographic maps published by USGS would be very helpful in solving drainage disputes and would aid the county in a permitting procedure. You can get more information on topographic maps by writing; Distribution Branch
U.S. Geological Survey
Box 25286, Federal Center, Bldg 41
Denver, Colorado 80225
or by calling (303)236-7477.

I understand Roberts County Commission is acting as a Board of Resolution. There are a few steps the Commission needs to follow to function properly as a Board of Resolution. An ordinance should be adopted to make sure due process requirements are met. This would include developing a system of notice requirements and a hearing procedure. The best procedure would be to hear evidence presented by both sides of the dispute, record the hearing in some manner, and make a written decision to be served on all parties. The decision should be reached based on evidence presented at the hearing. Your States Attorney should be able to assist the Commission in developing this procedure.

If I may answer any further questions, please contact this office.

Sincerely,



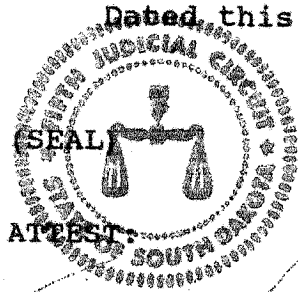
Tim Tollefsrud
Natural Resources Engineer
(605)773-3352

Enclosures

6

upon Plaintiff's counsel at least five days prior to said Hearing any responsive affidavits or pleadings, and Plaintiffs shall be allowed to respond to the same on or before the day of Hearing.

Dated this 19 day of February, 1992.



BY THE COURT:

/s/ David Gilbertson
Circuit Judge

ATTEST:
Kenneth Davis
Clerk of Courts by _____

Deputy

State of South Dakota } ss. In Robertson County
County of Roberts }
I, the undersigned, Clerk of the above named Court, do hereby certify, that the within and foregoing is a full, true and complete copy of the Original Instrument, as the same appears on file in this office.
IN WITNESS WHEREOF, I have hereunto set my hand and seal of Saiden, S. Dak. this 20 day of Feb, 1992.

Kenneth Davis
Clerk of Robertson County
By _____ Deputy

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF ROBERTS)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

ARVIN BARTZ and RUTH BARTZ,
Plaintiffs,

vs.

MARVIN PIOTTER AND COLLEEN
PIOTTER,
Defendant.

MOTION FOR ORDER
TO
SHOW CAUSE



Comes now Richard A. Glynn, attorney for the Plaintiffs, Arvin Bartz and Ruth Bartz, and moves the Court to enter its ORDER requiring the Defendant's Marvin Piotter and Colleen Piotter, to appear before this Court and to SHOW CAUSE, if any they have, why this Court should not ORDER the following:

1). The Plaintiff's, or agents or employees, not be allowed to enter upon the Defendant's land, which land is described as the Northeast Quarter (NE1/4) of Section 17, Township 126, North of Range 49 West of the Fifth Principal Meridian in Roberts County, South Dakota, in order to clean out a drainage ditch, or waterway, located thereon, for the drainage of the Plaintiff's land over and across the Defendant's land; and further

2). Why the Defendant's in this action not be required to pay the Plaintiff's costs of this action, including reasonable attorney's fees.

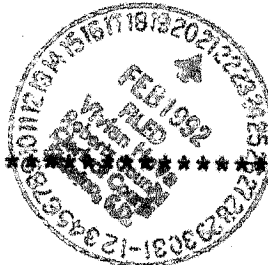
That this Motion is based upon the Affidavit of Arvin Bartz, which is attached hereto and incorporated herein by reference as if setforth in full herein by reference, and upon the Affidavit of Larry J. Holton, which is attached hereto and incorporated herein by reference as if setforth in full, and all pleadings now on file with this Court and testimony to be introduced at time of Hearing.

Dated this 2 day of February, 1992.

Richard A. Glynn

Richard A. Glynn - Attorney for Plaintiffs
516 2nd Avenue East
Sisseton, South Dakota 57262

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT



STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

: SS

COUNTY OF ROBERTS)

FIFTH JUDICIAL CIRCUIT

ARVIN BARTZ and RUTH BARTZ,

Plaintiffs,

vs.

AFFIDAVIT OF ARVIN BARTZ

MARVIN PIOTTER AND COLLEEN
PIOTTER,

Defendants.



Comes now Arvin Bartz and being first duly sworn, deposes and says:

- 1). That he is one of the Plaintiff's in above entitled action.
- 2). That he is a resident of Roberts County, South Dakota, and one of the owners of the Southeast Quarter (SE1/4) of Section 8, in Township 126, North of Range 49, West of the Fifth Principal Meridian, in Roberts County, South Dakota.
- 3). That based upon the best information and belief of your affiant, the Defendants are now the owners of the Northeast Quarter (NE1/4) of Section 17, Township 126, North of Range 49, West of the Fifth Principal Meridian, in Roberts County, South Dakota.
- 4). That in 1983 the owner of the Northeast Quarter (NE1/4) of Section 17, Township 126, North of Range 49, West of the Fifth Principal Meridian, in Roberts County, South Dakota, was Albert Nickolauson.
- 5). That in 1983 your affiant was engaged in a lawsuit with Mr. Nickolauson in order to establish your affiants right to drain water over and across Mr. Nickolauson's land and off of your affiants land in an existing waterway located upon Mr. Nickolauson's land.
- 6). That there was entered into by said Albert Nickolauson and your affiant a Joint Stipulation, which is on file with this Court in the case of ARVIN BARTZ and RUTH BARTZ vs. ALBERT NICKOLAUSON, whereby the Defendant, and then owner of the above described land, did acknowledged that your affiant did have a

limited prescriptive right to drain water from your affiant's land over and across the Defendant's land, all according to an engineering report prepared by Larson Engineering of Milbank, South Dakota, and Larry Holton of Holton Engineering of Sisseton, South Dakota, a copy of said JOINT STIPULATION OF PLAINTIFFS AND DEFENDANT, with SUPPLEMENTAL STIPULATION and JOINT ENGINEERING REPORT being attached thereto, being attached hereto, and incorporated herein by reference as if setforth in full.

7). That since that time said waterway over and across Defendant's land has been silted in and is in need of cleaning out back to the original elevations agreed to in 1983.

8). That your affiant has requested that he be allowed to go upon the Defendant's land to clean out said waterway but has been denied access to the same.

9). That it is the responsibility of the Defendant's to keep said waterway clear and free from obstruction but they fail and refuse to do the same.

10). That your affiant would request that the Court to allow your affiant, his agents and employees, to enter upon the Defendant's land to clean out said waterway to the elevations as setforth in the joint engineers report and that the Defendant's be required to pay the cost of the same, and, further, that the Defendant's be required to pay the costs of this action, including reasonable attorney's fees.

Dated this 7 day of February, 1992.

Arvin Bartz
Arvin Bartz

Subscribed and sworn to before me, the undersigned officer, this 7 day of February, 1992.

(SEAL)

James L. Laramore
Notary Public
Harrison County, Alabama
My Commission Expires: 8-3-1993

FURTHER YOUR AFFIANT SAYETH NOTHING

18/ Larry J. Holton
Larry J. Holton

Subscribed and sworn to before me the undersigned officer
this 18 day of February, 1992.

Richard A. [Signature]
Notary Public
County, South Dakota
My Commission Expires: 2-2-97

(SEAL)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

ARVIN BARTZ and RUTH BARTZ,
Plaintiffs,
-vs-
ALBERT NICKOLAUSON,
Defendant.

JOINT STIPULATION OF
PLAINTIFFS AND DEFENDANT

It is hereby stipulated by and between the parties as follows:

1. Plaintiffs have a limited prescriptive right to drain water from their land (insert legal description) onto Defendant's land through a concrete culvert located under a township road, said township road located along the section line between the property of the Plaintiff and Defendant.

2. It is further stipulated that said water flowing through said concrete culvert shall flow into an existing waterway located on Defendant's land that shall be modified by Defendant at his expense according to the elevations to be established by Donald Larson of Larson Engineering, of Milbank, South Dakota, and Larry Holton of Holton Engineering, of Sisseton, South Dakota, so that no more water than would cover one-half acre would be retained on Plaintiffs' land.

3. It is further stipulated that a joint engineering report shall be filed with the Court and kept as a permanent record here in and shall be used to determine the extent of Plaintiffs' limited prescriptive right for flowage of water over and across Defendant's land.

4. It is further stipulated that the modification of the waterway or channel upon Defendant's land shall be in accordance with the engineers' report as filed with the Court and after said modifications are completed the engineers shall verify to the Court in writing that all modifications to the existing waterway have been completed according to their specifications as set forth in the engineers' report which will be herein on file.

2.

5. It is further stipulated that two permanent reference bench marks shall be established, one upon Plaintiffs' land and one upon Defendant's land, to facilitate compliance by the parties with this stipulation and to provide permanent reference points to determine compliance.

6. Both parties agree to exercise due diligence to keep their end of the culvert free from any obstructions that would violate the terms of this stipulation.

7. It is further stipulated that Defendant shall forthwith make said modifications pursuant to the engineers' report.

8. It is further stipulated that both parties shall seek professional engineering advise, at their own expense, to determine compliance or non-compliance with the engineers' report and this stipulation before entering upon the other party's land to perform any maintenance thereon.

Dated this 30th day of September, 1983.

Arvin Bartz

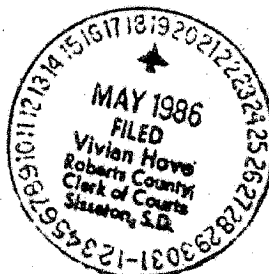
Ruth Bartz
Plaintiffs

Albert Nickolauson
Defendant

HOLLAND, BRANTSEG & GLYNN

By Richard A. Glynn
Richard A. Glynn
Attorney for Plaintiffs

Max Gruenwald
Attorney for Defendant



SUPPLEMENTAL STIPULATION

It is further stipulated that the attached Exhibit, entitled "Joint Engineering Report by Holton Engineering and Larson Engineering" is a true and correct copy of the original filed March 22, 1984 in the office of the Clerk of Courts, Roberts County, South Dakota, and is in fulfillment of the provisions of paragraph three of the above Stipulation; and,

It is further stipulated that the Court may enter an order and judgment approving both of these stipulations without further notice to either of the parties; and,

It is further stipulated that a certified copy of this stipulation and such order and judgment may be recorded in the Register of Deeds' office, Roberts County, South Dakota, indexed to the Plaintiffs' and Defendant's parcels of land described in said Joint Engineering Report.

Dated this 22 day of April, 1986.

Arvin Bartz
Arvin Bartz

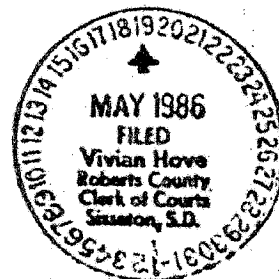
Ruth Bartz
Ruth Bartz
Plaintiffs

Albert Nickolauson
Albert Nickolauson
Defendant

HOLLAND, BRANTSEZ & GLYNN

By Richard A. Glynn
Richard A. Glynn
Attorney for Plaintiffs

Max Gruenwald
Max Gruenwald
Attorney for Defendant



ORDER AND JUDGMENT

Upon reading and filing the foregoing Stipulations and upon all of the files and records herein, good cause appearing, it is

ORDERED, ADJUDGED AND DECREED that the Stipulations set forth above are approved and confirmed and all agreements contained in such Stipulations are directed to be carried out, including specifically the recording in the Roberts County Register of Deeds' office of a certified copy of this Order and Judgment and Stipulations with attached Exhibit.

Dated this 19 day of May, 1986.

BY THE COURT:

ATTEST:

Vivian Howe
Clerk
By Carl Pederson
deputy

David S. [Signature]
Circuit Court Judge

STATE OF SOUTH DAKOTA }
COUNTY OF ROBERTS } ss

Filed and Recorded at 11:00 A.M.

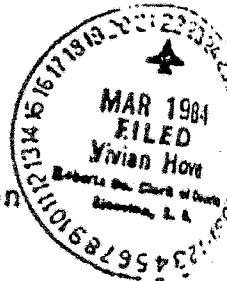
MAY 19 1986

In Vol. A of July Page 540-543
Vivian Howe
Clerk of Court
BY Carl Pederson
Deputy

RE: Bartz vs Nickolauson

JOINT ENGINEERING REPORT BY
HOLTON ENGINEERING AND LARSON ENGINEERING

On October 28, 1983, Larry J. Holton and Donald R. Larson representing their respective firms met at the concrete culvert referred to in the stipulated agreement dated September 30, 1983 before Mildred T. Ramynke, Judge of the Circuit Court at Sisseton, South Dakota.



Attached is a drawing which shows a horizontal view of the area referred to in the above matter, showing distances, location of the waterway, reference bench marks, and reinforced concrete pipe culvert.

The engineers determined that an assumed elevation of 92.9 would retain one-half acre ($\frac{1}{2}$ acre) of water on Mr. Bartz's land in the SE $\frac{1}{4}$ of Section 8, T126N, R49W of the 5th P.M.

Mr. Nickolauson's renter then excavated the water way to the elevation of 92.9.

The excavation of the waterway was checked to verify it had been excavated to an elevation of at least 92.9.

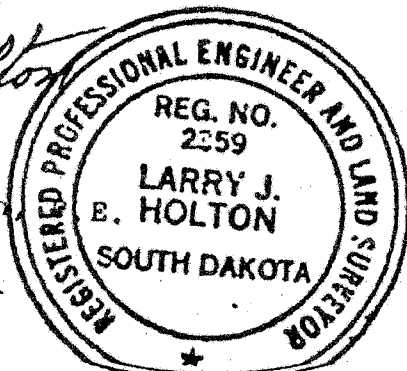
The brass discs were set in concrete to be used as reference bench marks. The elevations of the two bench marks were established in reference to the elevation of the flow line at the south end of the reinforced concrete pipe culvert between the two parcels. The elevations were determined to be 101.89 for the bench mark on the Bartz property and 101.10 for the bench mark on the Nickolauson property. The brass discs are stamped as indicated on the attached drawing.

HOLTON ENGINEERING

LARSON ENGINEERING

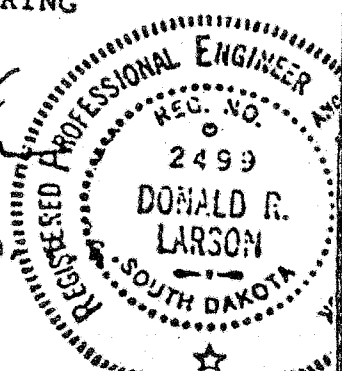
Larry J. Holton

Larry J. Holton



Donald R. Larson

Donald R. Larson



BARTZ

SE 1/4 SECTION 8
T 126 N, R 49 W

SCALE 1" = 100'
▲ BRASS DISC IN CONCRETE

OCTOBER 28, 1983

18" INCH REINFORCED
CONCRETE PIPE
CULVERT

CORNER

622.3'

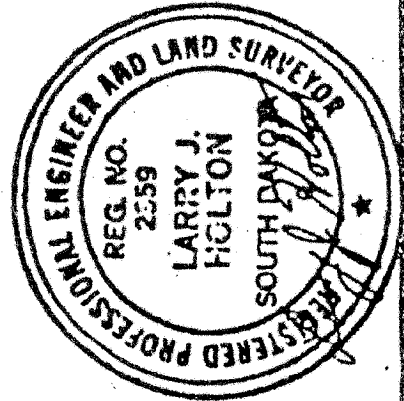
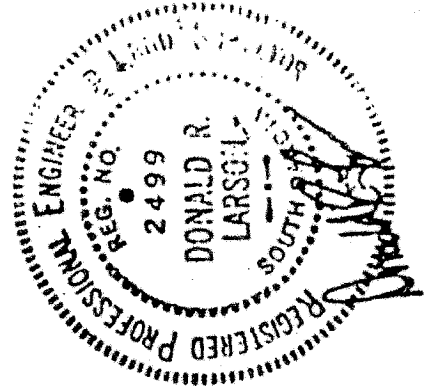
ASSUMED SECTION LINE

ELEVATION SOUTH END OF
PIPE AT FLOW LINE = 92.0'

WATERWAY

NICKOLAUSON

NE 1/4 SECTION 17
T 126 N, R 49 W



STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

: ss

COUNTY OF ROBERTS)

FIFTH JUDICIAL CIRCUIT

ARVIN BARTZ and RUTH BARTZ,

Plaintiffs,

-VS-

ALBERT NICKOLAUSON,

Defendant.

JOINT STIPULATION OF

PLAINTIFFS AND DEFENDANT

It is hereby stipulated by and between the parties as follows:

1. Plaintiffs have a limited prescriptive right to drain water from their land (insert legal description) onto Defendant's land through a concrete culvert located under a township road, said township road located along the section line between the property of the Plaintiff and Defendant.

2. It is further stipulated that said water flowing through said concrete culvert shall flow into an existing waterway located on Defendant's land that shall be modified by Defendant at his expense according to the elevations to be established by Donald Larson of Larson Engineering, of Milbank, South Dakota, and Larry Holton of Holton Engineering, of Sisseton, South Dakota, so that no more water than would cover one-half acre would be retained on Plaintiffs' land.

3. It is further stipulated that a joint engineering report shall be filed with the Court and kept as a permanent record here in and shall be used to determine the extent of Plaintiffs' limited prescriptive right for flowage of water over and across Defendant's land.

4. It is further stipulated that the modification of the waterway or channel upon Defendant's land shall be in accordance with the engineers' report as filed with the Court and after said modifications are completed the engineers shall verify to the Court in writing that all modifications to the existing waterway have been completed according to their specifications as set forth in the engineers' report which will be herein on file.

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It is further stipulated that the Court may enter an order and judgment approving both of these stipulations without further notice to either of the parties; and,

It is further stipulated that a certified copy of this stipulation and such order and judgment may be recorded in the Register of Deeds' office, Roberts County, South Dakota, indexed to the Plaintiffs' and Defendant's parcels of land described in said Joint Engineering Report.

Dated this 22 day of April, 1986.

Arvin Bartz
Arvin Bartz

Ruth Bartz
Ruth Bartz
Plaintiffs

Albert Nielsen
Albert Nielsen
Defendant

HOLLAND, BRANTSEZ & GLYNN

BY Richard A. Glynn
Richard A. Glynn
Attorney for Plaintiffs

Max Gruenwald
Max Gruenwald
Attorney for Defendant



5. It is further stipulated that two permanent reference bench marks shall be established, one upon Plaintiffs' land and one upon Defendant's land, to facilitate compliance by the parties with this stipulation and to provide permanent reference points to determine compliance.

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7. It is further stipulated that Defendant shall forthwith make said modifications pursuant to the engineers' report.

8. It is further stipulated that both parties shall seek professional engineering advice, at their own expense, to determine compliance or non-compliance with the engineers' report and this stipulation before entering upon the other party's land to perform any maintenance thereon.

Dated this 30th day of September, 1983.

Arvin Bartz
Arvin Bartz

Ruth Bartz
Ruth Bartz
Plaintiffs

Robert Nikolausson
Robert Nikolausson
Defendant

HOLLAND, BRANTSEG & GLYNN

By Richard A. Glynn
Richard A. Glynn
Attorney for Plaintiffs

Max Gruenwald
Max Gruenwald
Attorney for Defendant



RE: Bartz vs Nickolauson

JOINT ENGINEERING REPORT BY
HOLTON ENGINEERING AND LARSON ENGINEERING



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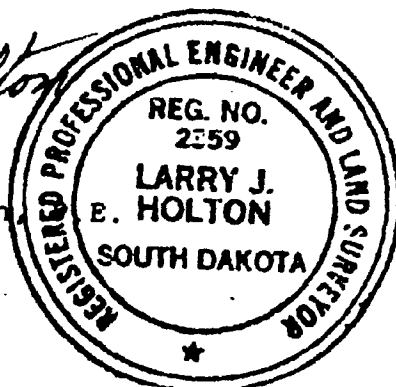
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HOLTON ENGINEERING

LARSON ENGINEERING

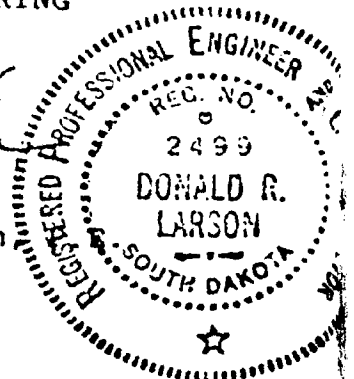
Larry J. Holton

Larry J. Holton



Donald R. Larson

Donald R. Larson



ORDER AND JUDGMENT

Upon reading and filing the foregoing Stipulations and upon all of the files and records herein, good cause appearing, it is

ORDERED, ADJUDGED AND DECREED that the Stipulations set forth above are approved and confirmed and all agreements contained in such Stipulations are directed to be carried out, including specifically the recording in the Roberts County Register of Deeds' office of a certified copy of this Order and Judgment and Stipulations with attached Exhibit.

Dated this 19 day of May, 1986.

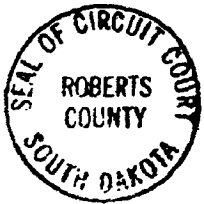
BY THE COURT:

ATTEST:

Vivian H. Hoon
Clerk

By Carol K. Anderson
deputy

David D. Sullivan
Circuit Court Judge



STATE OF SOUTH DAKOTA } ss
COUNTY OF ROBERTS
Filed and Recorded at 11:00 A.M.

MAY 19 1986

In Voi _____ of _____ Page _____
Clerk of Court
BY Carol K. Anderson

STATE OF SOUTH DAKOTA } ss. 68686
ROBERTS COUNTY

Filed for record on the 19 day of May
1986 at 11:00 o'clock A.M. and recorded in Book
11:51 page 589 of 126 vol. 115
Carol K. Anderson Mona D. Dusek
Deputy Register of Deeds.
Fees \$ 7.00

State of South Dakota } ss. In Circuit Court
County of Roberts }
I, the undersigned, Clerk of the above named Court,
do hereby certify that the within and foregoing is
a full, true and complete copy of the Original In-
strument, as the same appears on file in this office.
IN WITNESS WHEREOF, I have hereunto set my
hand and seal at Sisseton, S. Dak. this 19th
day of May, 1986.

Clerk of Circuit Court
Carol K. Anderson Deputy

BARTZ

SE 1/4 SECTION 8
T 126 N, R 49 W

CT. 83
RAGE
WEY
ELEV.
19

ED IN DISC

SCALE 1" = 100'
▲ BRASS DISC IN CONCRETE
OCTOBER 28, 1983

18" INCH REINFORCED
CONCRETE PIPE
CULVERT

1/4 CORNER

622.3'

ASSUMED SECTION LINE

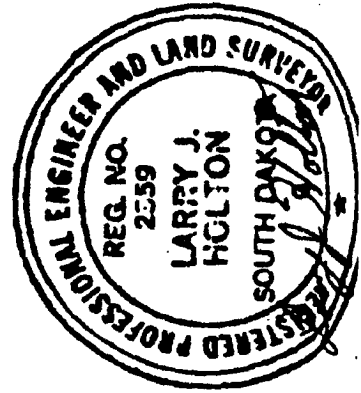
ELEVATION SOUTH END OF
PIPE AT FLOW

1 OCT. 83
MANAGE
URVEY
F. ELEV.
101.10

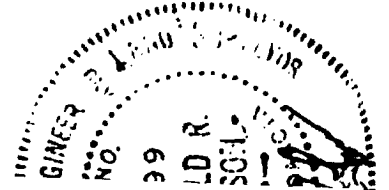
YED IN DISC

WATERWAY

NICH
NE 1/
T 126



As you can see,
Bartz' side is
blank of any
measurements.
These were removed
from the court
records.



STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF ROBERTS

FIFTH JUDICIAL CIRCUIT

ARVIN BARTZ and RUTH BARTZ, *
Plaintiffs, *

Civ. 92-21

VS. *

PIOTTERS'
RESPONSIVE BRIEF

MARVIN PIOTTER and COLLEEN *
PIOTTER, *

Defendants. *

Procedural Background

Marvin and Colleen Piotter (hereinafter "Piotters"), Defendants herein, submit this Brief in response to the Brief filed by Arvin and Ruth Bartz (hereinafter "Bartzs"). A hearing on the Court's Order to Show Cause was held on March 27, 1992. Bartz's counsel filed a Brief with the Court and the Court gave Piotters two weeks to file a Responsive Brief and Bartzs an additional two weeks to file a Reply Brief.

Case History

In 1982, Bartzs initiated an action against Albert Nickolauson (hereafter "Nickolauson") alleging that Bartzs had acquired a drainage easement over Nickolauson's land by prescription. Bartzs argued that they had used the culvert and drainage ditch on Nickolauson's land openly, notoriously, adversely, and continuously for a period in excess of the twenty (20) years required for prescription pursuant to SDCL 15-3-1. Nickolauson defended the action. The parties eventually settled the action by entering into a Stipulation, the enforcement and construction of which is the subject of the Order to Show Cause. Pursuant to the Stipulation, it was agreed that Bartzs had the right to drain water over the Nickolauson land, but the extent of that right was limited. The limitations involved determinations of the depth of the drainage channels in relation to the amount of water which would be retained on Bartzs' land.

Bartzs now seek to enforce a portion of the prescriptive easement against Piotters, who purchased the Nickolauson property. They seek permission to enter upon the Piotters' land to clean out the drainage ditch. Piotters have resisted this because of changes made by Bartzs to their land which have increased the flow of water onto Piotters' land. Piotters want all issues concerning the prescriptive easement determined in one proceeding. Therefore, they oppose the granting of relief to Bartzs at this time. Instead, they request that a hearing or trial be scheduled at which time both parties may present evidence in support of their respective and competing claims.

South Dakota Water Law

South Dakota follows the "civil law" rule. Thompson v. Andrews, 165 N.W.2d 9 (SD 1917). Such rule recognizes that the lower agricultural property is burdened with an easement under which the owner of the upper property may discharge surface waters over the lower property through such channels as nature has provided. SDCL 46A-10A-70 codifies this rule and provides as follows:

Subject to any official controls pursuant to this Chapter and Chapter 46A-11, owners of land may drain the land in the general course of natural drainage by constructing open or covered drains and discharging the water into any natural water course, into any established water course, or into any natural depression whereby the water will be carried into a natural water course, into an established water course, or into a drain on a public highway, conditioned on consent of the Board having supervision of the highway. If such drainage is wholly upon the owner's land, he is not liable in damages to any person. Nothing in this section affects the rights or liabilities of land owners in respect to running waters or streams.

Later South Dakota cases have modified Thompson, supra. The upper or dominant landowner may not collect surface waters and then cast them upon the lower estate in "unusual or unnatural quantities". Winterton v. Elverson, 389 N.W.2d 633, 635 (SD 1986). Further, such drainage must be accomplished without unreasonable injury to the lower estate. Id. In addition, an upper owner may not transfer the burdens imposed by nature upon his land to that of the lower owner by artificially draining a land-locked basin on the upper estate to a like basin on the lower estate. To do so would be to relieve the upper estate of a burden at the expense of the lower estate. LaFleur v. Kolda, 22 N.W.2d 741 (SD 1946).

Argument

Bartzs' Brief poses the issue in this case as whether or not the ditching and filling which Bartzs have done on their land and which have increased the burden on Plotters' land extinguishes the prescriptive easement. Although there is some authority for the proposition that an easement may be forfeited if the easement is misused, willfully and substantially, 25 Am.Jur.2d Easements and Licenses § 107, Plotters do not claim that the existing prescriptive easement is lost by the ditching and filling. Although not cited by Bartzs in their brief, SDCL 43-13-13 clearly provides that a prescriptive easement may only be extinguished by disuse for the period of adverse possession. SDCL 43-13-13 reads as follows:

A servitude acquired by enjoyment is extinguished by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

That statute has been so interpreted. Shippy v. Hollopeter, 304 N.W.2d 118 (SD 1981).

It is clear that the prescriptive easement obtained by Bartzs in the earlier litigation was simply a clarification of the common law and statutory drainage rules embodied in the "civil rule" principles adopted in the State of South Dakota. However, Piotters raise issues concerning Bartzs misuse and expansion of that limited prescriptive easement and such misuse is governed by water law, not the statutory law of easements. Thus, the majority of Bartzs' arguments by Brief are inapposite to this case.

Rather than argue that Bartzs have lost the existing prescriptive easement, Piotters argue that the show cause order seeking to enforce only a portion of the joint stipulation is unfair to them because they would not be able to litigate their claims that Bartzs have violated the joint stipulation and exceeded the prescriptive easement. Granting relief to Bartzs and requiring Piotters to initiate another lawsuit to enforce Bartzs' obligations under the prescriptive easement would not be a good use of judicial resources and would be contrary to the philosophy of compulsory counterclaims contained in Rule 13(a) of the South Dakota Rules of Civil Procedure. The following discussion outlines the issues and rights Piotters seek to enforce at a full evidentiary hearing herein.

Bartzs argue that the prescriptive easement permits them to drain water off of all of their land, not just that area next to the culvert which was stipulated to cover one-half ($\frac{1}{2}$) acre and the area which naturally drained into that $\frac{1}{2}$ -acre slough. However, Bartzs cite no authority for this proposition and such proposition is contrary to the holding in LaFleur, supra. Further, such argument apparently based upon the language of SDCL 43-13-3, which provides that "the land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement". That argument misreads the statute. The statute simply defines the dominant tenement as that land to which the easement is attached and makes no mention of the area which may be drained. It does not imply that the easement allows drainage of all of the land to which the easement is attached. In order to determine the area to be drained, one must look at the intent of the parties and the nature of prescriptive easements.

In the instant case, Bartzs have expanded the initial prescriptive easement by constructing ditches on their land and using the dirt to fill the $\frac{1}{2}$ -acre slough provided for in the joint stipulation. Such actions expand the initial prescriptive easement beyond the intent of the joint stipulation and in excess of the rights given.

A principle which underlies the use of all easements is that the owner of the easement cannot materially increase

the burden of the servient estate or impose thereon a new and additional burden. 25 Am.Jur.2d Easements and Licenses § 72. [I]n determining the extent and reasonableness of use, the grant or reservation is to be construed in the light of the situation of the property and the surrounding circumstances, for the purpose of ascertaining and giving effect to the intention of the parties. 25 Am.Jur.2d Easements and Licenses § 75 (emphasis added).

In effect the natural state of the land was determined by stipulation of the parties in 1983. The 92.9" elevation of the culvert referred to by Bartz is no longer applicable until the dominate property is returned to its natural state. The accumulation area which allowed evaporation pursuant to the parties agreement no longer exists as a result of Bartzs change of the land. Winterton v. Elverson, Supra.

The intent of the parties in this case was that the ¼-acre slough would hold some of the water naturally draining from Bartzs' land to Piotters' land, thus limiting the amount of water which would drain onto Piotters' land. However, Bartzs dug ditches to drain additional areas of the land into the ¼-acre slough and further limited the slough's capacity to hold water by using the dirt removed from the ditches to fill the slough. This can be compared to a bowl and saucer. The surface area of a cereal bowl could be the same as the surface area of a saucer; however, it would not take a genius to figure out that the cereal bowl would hold substantially more liquid than the saucer.

This analogy can be used to explain Bartzs' actions. The original intent is that the ¼-acre slough remain as is (comparable to a cereal bowl) with the amount of water held limited to a ¼-acre of surface area. Bartzs then filled the "cereal bowl", in effect making it a saucer. Although the surface area remained the same, the original intent to hold a certain amount of water has been subverted. Bartzs' actions have had the effect of collecting additional surface waters and casting them upon Piotters' land.

Bartzs' argument that the initial prescriptive easement to drain a portion of their property may now be expanded to cover the entire quarter of land is an attempt to bootstrap additional drainage rights onto the original prescriptive easement. However, such additional rights may only be obtained by the open, notorious, adverse, and continuous use for a period in excess of twenty (20) years, the period of prescription. Bartzs cannot construct ditches to drain additional land and then "tack" those rights onto the initial prescriptive easement in a lesser period of time than twenty (20) years.

The character and extent of a prescriptive easement are fixed and determined by the user under which is was acquired. No different or materially greater use can be made of such an easement, except by further adverse user

for the prescriptive period, or by the acquisition of additional rights in some other manner. 25 Am.Jur.2d Easements and Licenses § 84. Although an easement granted or reserved in general terms is not limited to the use required at the time of the grant or reservation, but may be exercised for any purpose to which the dominant estate may be subsequently devoted, such is not the case when the grantor reservation is not general in nature. 25 Am.Jur.2d Easements and Licenses § 74.

Thus, the prescriptive easement, which was defined and limited by the use made when acquired by Bartzs, cannot later be expanded by Bartzs, and it is clear that the prescriptive easement, although attached to the dominant tenement, does not allow unlimited ditching to drain the entire dominant tenement onto servient tenement. Rather, the area which may be drained by the prescriptive easement is limited to that area drained by the easement at the time of the joint stipulation.

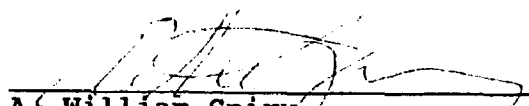
The absurdity of Bartzs' argument is made clear if one looks at a hypothetical situation. If Bartzs owned an entire section of land and only a small portion thereof drained across Piotters' land, would it be fair for Bartzs to ditch and drain the entire section of land onto Piotters' land? What if Bartzs owned two sections of land higher than Piotters' land and drained the entire area onto Piotters' land using the argument that the easement was "attached" to the dominant tenant? It is clear from these examples that the law does not allow unlimited and unreasonable drainage. Thompson, supra (rights and burdens must be consonant with good neighborliness and with the reasonable furtherance of husbandry); Fiestner v. Swenson, 386 N.W.2d 621 (SD 1985), (dominant landowners drainage rights must be exercised reasonably). Indeed, in LaFleur, supra, the Court ruled that an upper landowner could not drain a landlocked basin onto a lower landowner.

Conclusion

Although Piotters do not dispute Bartzs' limited prescriptive right to drain water onto their land, they do object to the granting of unlimited relief to Bartzs under the current procedural posture of this case. The Order to Show Cause does not allow a full evidentiary hearing or trial on all of the issues between these parties. Therefore, it is respectfully requested that the Court delay any decision and instead schedule an evidentiary hearing or trial at which time both parties may present evidence and argument in support of their respective claims. Failure to litigate all issues in one lawsuit would not be a good use of judicial resources and would be contrary to the philosophy of compulsory counterclaims contained in Rule 13(a) in the South Dakota Rules of Civil Procedure.

Respectfully submitted this 7th day of April, 1992.

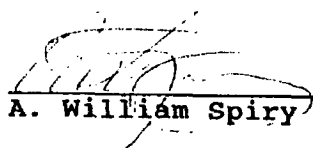
SPIRY & FROHLING


A. William Spiry
P.O. Box 919
Britton, SD 57430-0919
Tel. 605/448-2273
Attorneys for Defendants

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 11 day of April, 1992, he mailed, by first-class mail, postage prepaid, a true and correct copy of the foregoing Brief to the following:

Richard A. Glynn
Attorney at Law
516 2nd Avenue East
Sisseton, SD 57262


A. William Spiry

STATE OF SOUTH DAKOTA

COUNTY OF ROBERTS

IN CIRCUIT COURT

FIFTH JUDICIAL CIRCUIT

* * * * *

ARVIN BARTZ and RUTH BARTZ,

Plaintiffs

-v-

MARVIN PIOTTER and COLLEEN

MEMORANDUM OPINION

PIOTTER,

Defendants

* * * * *

APPEARANCES: Richard Glynn, Sisseton, S. D. for the Plaintiffs;

A. William Spiry, Britton, S.D. for Defendants.

* * * * *

This matter comes before the Court pursuant to an Order to Show Cause issued by the Court upon request of the Plaintiffs against the Defendants.

The Plaintiffs seek a court order authorizing them or their agents to enter upon the Defendants' land for the purpose of cleaning out a drainage ditch which carries water away from the land of the Plaintiffs.

There was previous litigation concerning this waterway. This previous litigation ended in a stipulation which recognized the Plaintiffs' prescriptive easement. The Plaintiffs now seek the right to clean out the ditch based upon this easement.

The Defendants admit the ditch has silted in to some extent. However, the Defendants argue that the Plaintiffs have violated the stipulation by filling in a half acre slough and doing other earthwork with increases the flow of water from the Plaintiffs'

land to the Defendants' land. The Plaintiffs apparently do not argue the point, but counter that the express language of the stipulation allows their action.

Plaintiffs' rest their argument on the language contained in paragraph (2) of the stipulation:

That said water flowing through said concrete culvert shall flow into an existing waterway located on the Defendant's land that shall be modified by Defendant at his expense according to the elevations to be established by Donald Larson of Larson Engineering, of Milbank, South Dakota, and Larry Holton of Holton Engineering, of Sisseton, South Dakota, so that no more water than would cover one-half acre would be retained on Plaintiff's land. (emphasis added)

Plaintiffs argue that this provision requires them to retain no water but should they choose to do so, it cannot be more than one-half acre.

It is an elementary rule of contract construction that the document is to be interpreted as a whole and not based upon one particular portion.

Numbered paragraph (1) of the 1983 stipulation notes that the Plaintiffs "HAVE a LIMITED prescriptive right to drain water from their land onto Defendant's land..."(emphasis added). The use of the word "have" denotes a right of the past and present, not the creation of a new right to be exercised in the future. Also, the use of the word "limited" would be incompatible with the Plaintiffs' interpretation under which they claim an unlimited general right to drain all waters on their property onto the Defendants' property.

Numbered paragraph (3) of the 1983 stipulation states that "a joint engineering report...shall be used to determine the extent of Plaintiffs' LIMITED prescriptive right for flowage of

water over and across Defendant's land."(emphasis added). That engineering report which is attached to the stipulation states in part:

The engineers determined that an assumed elevation of 92.9 would retain one-half acre (1/2 acre) of water on Mr. Bartz's land in the SE 1/4 of Section 17, T 126 N, R 49W. of the 5th P. M.

The relief that Plaintiffs seeks is to return the drainage ditch to the stipulated level of 92.9. Yet, as the above engineering report makes clear, the sole basis for the use of this figure is that it allows the retention of the one-half acre of water as it existed at the time of the 1983 stipulation. The affidavit of Donald R. Larson, one of the engineers, supports this interpretation:

That we, as the engineers, were informed that the intent of our report was to determine what elevations were to be maintained by the parties to hold up to one-half acre of water on the Bartz land. Elevations were shot on the Bartz low-land property adjacent to the Nickolauson land and it was determined that the Bartz low-land property would hold approximately one-half acre of water if no excavation or fill were done on his property.

It would also be assumed that if it were the real intent of the parties to the 1983 stipulation to allow the Plaintiff's unlimited increased drainage in the future, that the stipulation would have specifically said so.

Also instructive are the pleadings that lead up to the 1983 stipulation. Initially the Plaintiffs sought to restore the ditch on Defendant Nickolausan's land to the existing "flow in its natural course ..." (Plaintiff's Complaint). The Defendant's Answer accused the Plaintiffs of artificially deepening the waterway which increased the water flow upon the Defendant

Nicholausan's land to a greater amount that had been done by nature. Thus, the Defendant's Answer recognized the existence of the natural drainage but contested the Plaintiffs' right to increase that amount.

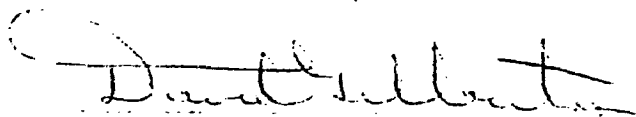
Against this background the 1983 stipulation was entered into. It is clear throughout that Nickolauson had the advice of experienced counsel who also signed the stipulation. If Plaintiff's argument is accepted, Defendant Nickolauson abandoned his claim and agreed to unlimited drainage in the stipulation upon his land. The Defendant Nickolauson would have given up more than the Plaintiffs were entitled to under SDCL 46A-10A-70 or existing case law, Winterton v. Elverson, 389 N.W.2d 633 (S.D. 1986), LaFleur v. Kolda, 22 N.W.2d 741 (S.D. 1946). Defendant Nickolauson would have even given up more than the relief Plaintiffs' demanded in their complaint. The Defendant would have been better off to let the Plaintiffs procure a default judgment against him based on their original prayer for relief.

Thus, the Court concludes that a fair reading of the 1983 stipulation is that it intended to set the elevations of the ditch to accommodate the existing drainage of the Plaintiffs' land.

This Court cannot address the issue of silting into the drainage ditch without further addressing the other issues which now arise under the stipulation. Therefore the relief requested by the Plaintiffs in their request for an Order to Show Cause is denied.

Dated at Sisseton, South Dakota this 7 day of May, 1992.

BY THE COURT:

A handwritten signature in dark ink, appearing to read "David S. Sullivan", written over a horizontal line.

Judge of the Circuit Court

ATTEST:

Clerk of Courts

Deputy



Office of County Auditor
Roberts County
Sisseton, South Dakota 57262

July 1, 1992

Mr & Mrs Marvin Plotter
Route 1 Box 102
Sisseton, SD 57262

Re: Notice of Hearing claim of Vested Drainage
Right

Dear Mr & Mrs Plotter:

Enclosed for you is a copy of the Notice of Hearing on a claim of vested drainage rights of Arvin and Ruth Bartz. Please note that this hearing was not set based on your correspondence with the Board of County Commissioners, but upon an objection filed by Michael I. Selvage, Sr., who is one of the beneficial owners of the trust land in the Northwest quarter of Section Seventeen.

You have been given notice because one of the ditches claimed by Bartz's cuts across your property before water is drained onto the trust land. If any waters from your land drains through this ditch onto the trust land, you are also affected parties and for that reason are included in this hearing.

You and your attorney have a right to appear and present your views at this hearing.

Sincerely,

Janet Griep
Roberts County Auditor

cc: William A. Spiry

NOTICE OF HEARING

TO: ARVIN BARTZ AND RUTH BARTZ: MARVIN PIOTTER AND CONNIE PIOTTER:
MICHAEL I SELVAGE: ALVAH QUINN, DELRAY GERMAN, TRIBAL LAND OPERATIONS,
SISSETON WAHPETON SIOUX TRIBE: TIM LAKE, AGENCY SUPERINTENDENT, SISSETON
AGENCY, BUREAU OF INDIAN AFFAIRS, AND ALL INTERESTED PARTIES:

NOTICE IS HEREBY GIVEN That an objection to the claim of Arvin and
Ruth Bartz of a vested drainage right from the land described as:

The Southeast Quarter of Section eight (8), Townhsip One Hundred
Twenty Six (126), Range Forty-Nine (49) West of the Fifth Principal
Meridian, Roberts County, South Dakota,

upon lands described as:

The Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section
Eight (8); the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$) of
Section Seventeen (17); and the Northwest Quarter (NW $\frac{1}{4}$) of Section
Seventeen (17), all in the Township One Hundred Twenty-Six (126)
North of Range Forty-nine (49) West of the Fifth Principal Meridian,
Roberts County, South Dakota.

NOTICE IS FURTHER GIVEN That a hearing on the objection filed by Michael
I Selvage, Sr., for himself and similarly situated beneficial owners of lands
held in trust by the United States government, to the claimed vested drainage
right will be held before the Roberts County Board of Commissioners sitting
as a Board of Resolution, on Tuesday, the 14th day of July, 1992, at Two (2)
o'clock P.M. at the 4-H Building, approximately one-quarter mile south of the
intersection of South Dakota Highway #10 and BIA Highway #700, Sisseton,
South Dakota.

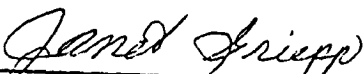
The issues to be reviewed at the hearing include:

- (1) Whether the general course and direction of the natural flow on
the above property is different from the claimed drainage right.
- (2) How long the claimed drainage right has existed.

All parties are further notified that the applications of South Dakota
drainage laws on tribal or Indian trust lands are generally preempted by
federal laws applicable to such lands.

All interested parties are notified of the above date, time and place
at which they may be heard on this matter and are advised to bring with them
all evidence, including witnesses, written documents, permits, maps, and
photographs, relevant to the determination of this matter.

Dated this 1st day of July, 1992.



Janet Griep, County Auditor

Sisseton-Wahpeton Sioux Tribe

LAKE TRAVERSE RESERVATION

BIG COULEE • BUFFALO LAKE • ENEMY SWIM • HEIPA/VEBLEN • LAKE TRAVERSE • LONG HOLLOW • OLD AGENCY

OFFICE OF THE TRIBAL SECRETARY

April 28, 1992

Roberts County Commissioners
Roberts County Courthouse
Sisseton, South Dakota 57262

REFERENCE: VESTED DRAINAGE RIGHTS

Dear Commissioners:

It has been brought to my attention that the Roberts County Board of Commissioners is considering to allow several land owners in Bryant Township to drain all their sloughs and low spots onto a quarter section of Indian Trust land.

This letter serves notice that such an action by the Board of Commissioners and those land owners in Sections 5, 8, and 17 of Bryant Township to be unconscionable and we strongly oppose such action.

On behalf of the Sisseton-Wahpeton Sioux Tribe and its members, I herein inform you that if you approve of draining water onto Indian Trust land without obtaining the appropriate authorization from the land owners (Sisseton Agency Superintendent approval on behalf of Indian land owners on the Lake Traverse Reservation) and Tribal Council approval for lands owned by the Sisseton-Wahpeton Sioux Tribe, we will take the necessary legal actions to intervene.

Please let me know your decision regarding my request of you to disapprove of draining water from lands owned by non-Indians onto lands owned by Indians in Roberts County.

Should you have any questions regarding this matter, please call me on 698-3911, Extension 26.

Sincerely,


MICHAEL I. SELVAGE, SR.
Tribal Secretary

OFFICE OF STATE'S ATTORNEY
ROBERTS COUNTY
SISSETON, SOUTH DAKOTA
57262

June 7, 1994

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Spiry and Frohling
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Michael I. Salvage Sr.
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Sisseton, SD 57262

Alva Quinn
Natural Resources Director
Sisseton Wahpeton Dakota Nation
P.O. Box 509
Agency Village CPO
Sisseton, SD 57262

Loretta Webster
Agency Superintendent
Sisseton Agency
Bureau of Indian Affairs
P.O. Box 688
Agency Village CPO
Sisseton, SD 57262

RE: Drainage Ditch # 4 - Bartz claim for vested drainage right - Sections 8
and 17, Bryant Township, Roberts County, South Dakota

Ladies and Gentlemen:

It has been brought to the attention of the Board of Commissioners of Roberts County, sitting in its capacity as a Board of Resolution in drainage matters in this county, that they have not received the stipulation among the parties that was to have been drawn and executed concerning ditch # 4 in the Bartz claim for vested drainage rights. As you may recall, a hearing was held at the 4-H building in the summer of 1992 concerning objections to the claim for vested drainage rights on this ditch. There are now complaints that the Bartz parties have taken action that further damages the section line right of way between Section 8 and 17.

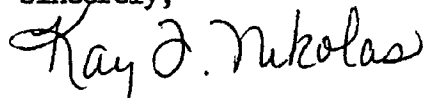
Richard A. Glynn
Dana Frohling
Michael I Selvage Sr.
Alva Quinn
Loretta Webster
June 7, 1994
Page 2

I understand that Mr. and Mrs. Plotter have signed a proposed stipulation and that it was sent on to Mr. Glynn for his clients' endorsement. Please advise the Board of the status of this stipulation as the Board has taken no formal action on drainage dispute pending the receipt of the stipulation settlement documents by the Board.

If no stipulation has been reached and further hearing is requested by any party, please contact the Board through the Auditor's office. If no request is received, the Board will expect to receive the stipulation at the parties' earliest convenience.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Kay F. Nikolas".

Kay F. Nikolas
Deputy State's Attorney
for the Board

cc: Board of Commissioners

**BOARD OF COUNTY COMMISSIONERS
ROBERTS COUNTY, SOUTH DAKOTA**

**IN RE VESTED DRAINAGE RIGHT REGISTRATION
OF ARVIN BARTZ AND RUTH BARTZ.**

Dominant Estate: SE $\frac{1}{4}$ 8-126-49
Servient Estate: NE $\frac{1}{4}$ SW $\frac{1}{4}$ 8-126-49
NW $\frac{1}{4}$ NE $\frac{1}{4}$ 17-126-49
NW $\frac{1}{4}$ 17-126-49
Filed: February 3, 1992, at 10:25 a.m., in Book M58
of Miscellaneous, Pages 89-90, Document #77583

Background

Arvin Bartz and Ruth Bartz, Rural Route 1, Box 154, Browns Valley, Minnesota 56219, filed a Vested Drainage Right Registration Form dated January 27, 1992 (hereinafter referred to as "the Bartz Registration"), in the office of the Register of Deeds of Roberts County, South Dakota. The Bartz Registration was recorded on February 3, 1992, at 10:25 a.m., in Book M58 of Miscellaneous, Pages 89-90, as Document #77583. Such filing was pursuant to SDCL 46A-10A-31.

The Board of County Commissioners of Roberts County, South Dakota, published a list of Vested Drainage Right Registrations as required by SDCL 46A-10A-31. On April 28, 1992, following publication of such notice (which included the Bartz Registration), Michael I. Selvage, Sr., individually and for similarly situated beneficial owners of lands held in trust by the United States Government, filed an objection to the Bartz Registration. Janet Griep, Roberts County Auditor, issued a Notice of Hearing dated July 1, 1992, informing all interested parties that a hearing would be held on Mr. Selvage's objections.

On July 14, 1992, the Board of County Commissioners of Roberts County, South Dakota, met pursuant to the notice. Those in attendance were advised that the Board of County Commissioners was meeting as the Board and not as a drainage commission. Therefore, pursuant to SDCL 46A-10A-31, any appeal would be to the Circuit Court and not to the Board of County Commissioners.

Arvin Bartz and Ruth Bartz and their son, Eugene Bartz, were personally present at the hearing and were represented by their attorney, Richard Glynn of Sisseton, South Dakota. Mr. and Mrs. Bartz filed the Bartz Registration and are the owners of the following-described real property:

The Southeast Quarter (SE $\frac{1}{4}$), Section Eight (8), Township One Hundred Twenty-Six North (126N), Range Forty-Nine (49), West of the 5th P.M., Roberts County, South Dakota

(hereinafter referred to as "the Bartz Property"). The Bartz Registration referred to four (4) ditches numbered one through four (1-4) and a tile drain as the man-made modifications to the drainage on the Bartz Property.

Marvin Piotter and Connie Piotter were present and were represented by their attorney, Dana J. Frohling of Britton, South Dakota. Piotters are interested parties by virtue of being the owners of the following-described real property:

The Northeast Quarter (NE $\frac{1}{4}$) of Section Seventeen (17), Township One Hundred Twenty-Six North (126N), Range Forty-Nine (49), West of the 5th P.M., Roberts County, South Dakota

(hereinafter referred to as "the Piotter Property"). Ditch number four (4) of the Bartz Registration would affect the flow of water across the Piotter Property.

Michael I. Selvage, Sr., was personally present and appeared individually and in his capacity as secretary of the Sisseton-Wahpeton Sioux Tribe. Tim Lake, Agency Superintendent for the Sisseton Agency, Bureau of Indian Affairs, was personally present and represented the Bureau of Indian Affairs. Alvah Quinn, Tribal Land Operations Manager for the Sisseton-Wahpeton Sioux Tribe, was also personally present in his representative capacity. Mr. Selvage, Mr. Lake, and Mr. Quinn are either beneficial owners or, in their capacity as Tribal officers, represent the interests of beneficial owners of the following-described real property:

The Northwest Quarter (NW $\frac{1}{4}$) of Section Seventeen (17), Township One Hundred Twenty-Six North (126N), Range Forty-Nine (49), West of the 5th P.M., Roberts County, South Dakota

(hereinafter referred to as "the Trust Property").

Ditch number four (4) of the Bartz Registration would effect the flow of water across and onto the Trust Property.

After the representatives of the Sisseton-Wahpeton Sioux Tribe presented their objections to the Bartz Registration, Bartzs testified that the water drained through the ditches numbered one (1), two (2), and three (3), and the drain tile did not flow onto the Piotter Property or the Trust Property, but rather accumulates in a slough located upon the following-described real property:

The Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Eight (8), Township One Hundred Twenty-Six North (126N), Range Forty-Nine (49), West of the 5th P.M., Roberts County, South Dakota,

and

The Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Eight (8), Township One Hundred Twenty-Six North (126N), Range Forty-Nine (49), West of the 5th P.M., Roberts County, South Dakota.

Bartzs also indicated that they had plugged ditch number four (4) and were no longer claiming a vested drainage right through ditch number four (4) because such drainage would flow through the Piotter Property and ultimately accumulate on the Trust Property.

The tribal representatives submitted a topographical map which included the properties in question. The map shows the elevations of the various properties. Bartzs submitted an exhibit consisting of a court order from previous litigation before Bartzs and Piotters' predecessors establishing a limited drainage right across the Piotter Property, but that drainage right is not pertinent to the objections to the Bartz Registration because it is not listed on the Bartz Registration. Piotters submitted a color-coded map of the properties which further showed the natural drainage of the properties in question. Following the testimony and review of the exhibits, the undersigned affected parties agreed to submit a stipulation to the Board to resolve the filed objections to the claimed vested drainage rights.

Stipulation

In consideration of the foregoing premises, the undersigned hereby warrant, stipulate, and agree as follows:

1. Arvin Bartz and Ruth Bartz warrant and stipulate that water which flows through ditch numbers 1, 2, and 3 and the drain tile described in the Bartz Registration flow into a slough located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ 8-126-49 and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ 8-126-49 and that such water and the water from the above-described slough does not flow onto the Piotter Property or the Trust Property. Piotters and the Tribe are not objecting to such ditches and tile based upon the representations and warranties of Bartzs that the water does not flow onto the Piotter Property or Trust Property. If it is ever determined that water from ditches one through three (1-3) and the drain tile flow onto the Piotter Property or the Trust Property contrary to the testimony and representations of Bartzs, Bartzs agree to prevent such flows by whatever means are necessary, including filling in and rendering ditches one (1), two (2), and three (3) and the drainage tile inoperative and/or building dikes to prevent such flows. This Agreement may be enforced by injunction or by a lawsuit claiming damages, or both. The rights and obligations herein, like the vested drainage rights, run with the land and are enforceable by and against successors-in-interest.
2. That ditch number 4 of the Bartz Registration shall be filled in and that Bartz's shall acquire no vested drainage rights in ditch number 4 because such ditch would alter the basic principles of water drainage outlined in SDCL 46A-10A-20 by

causing additional waters to flow over and onto the Piotter Property and the Trust Property and such ditch would substantially alter, on a permanent basis, the course of flow, the amount of flow, and the time of flow, thereby resulting in substantial harm to the Piotter and Trust Properties.

3. That this Stipulation and the attached Decision may be submitted to the Board of County Commissioners of Roberts County, South Dakota, without further notice to any party.

Stipulated, agreed, and acknowledged this _____ day of August, 1992.

Arvin Bartz

Ruth Bartz

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF ROBERTS)

On this _____ day of August, 1992, before me, _____, the undersigned officer, personally appeared Arvin Bartz and Ruth Bartz, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument, and acknowledged executing the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

(SEAL)

Notary Public -- South Dakota
My Commission Expires: _____

Stipulated, agreed, and acknowledged this _____ day of August, 1992.

Marvin Piotter

Connie Piotter

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF ROBERTS)

On this _____ day of August, 1992, before me, _____, the undersigned officer, personally

appeared Marvin Piotter and Connie Piotter, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument, and acknowledged executing the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

(SEAL)

Notary Public -- South Dakota
My Commission Expires: _____

Stipulated, agreed, and acknowledged this _____ day of August, 1992.

SISSETON AGENCY, BUREAU OF
INDIAN AFFAIRS

By: _____
Tim Lake
Agency Superintendent

STATE OF SOUTH DAKOTA)
COUNTY OF ROBERTS) SS.

On this _____ day of August, 1992, before me, _____, the undersigned officer, personally appeared Tim Lake, who acknowledged himself to be the Agency Superintendent of Sisseton Agency, Bureau of Indian Affairs, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Sisseton Agency, Bureau of Indian Affairs, by himself as its Agency Superintendent.

In witness whereof, I hereunto set my hand and official seal.

(SEAL)

Notary Public -- South Dakota
My Commission Expires: _____

Stipulated, agreed, and acknowledged this _____ day of August, 1992.

SISSETON-WAHPETON SIOUX TRIBE

By: _____
Michael I. Selvage, Sr.
Tribal Secretary

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF ROBERTS)

On this _____ day of August, 1992, before me, _____, the undersigned officer, personally appeared Michael I. Selvage, Sr., who acknowledged himself to be the Tribal Secretary of Sisseton-Wahpeton Sioux Tribe, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Sisseton-Wahpeton Sioux Tribe, by himself as its Tribal Secretary.

In witness whereof, I hereunto set my hand and official seal.

(SEAL)

Notary Public -- South Dakota
My Commission Expires: _____

Stipulated, agreed, and acknowledged this _____ day of August, 1992.

Michael I. Selvage, Sr.
Individually

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF ROBERTS)

On this _____ day of August, 1992, before me, _____, the undersigned officer, personally appeared Michael I. Selvage, Sr., known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged executing the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

(SEAL)

Notary Public -- South Dakota
My Commission Expires: _____

Decision

The Board of County Commissioners of Roberts County, South Dakota, having reviewed the foregoing Stipulation, having heard and reviewed the testimony, evidence, and arguments presented at the hearing held on July 14, 1992, and having determined that the foregoing Stipulation is consistent with the evidence and South

Dakota law as provided in SDCL Chapter 46A-10A, now issues its decision upon the objections filed by Michael I. Selvage, Sr.:

IT IS HEREBY ORDERED AS FOLLOWS:

1. That the objection to ditch number four (4) of the Vested Drainage Right Registration Form of Arvin Bartz and Ruth Bartz dated January 27, 1992, and filed and recorded in the office of the Register of Deeds of Roberts County, South Dakota, on February 3, 1992, at 10:25 a.m., in Book M58 of Miscellaneous, Pages 89-90, as Document #77583, is sustained.
2. That Arvin Bartz and Ruth Bartz do not acquire any vested drainage rights in ditch number four (4) by virtue of the filing of the above-described Vested Drainage Right Registration Form.
3. That Arvin Bartz and Ruth Bartz are ordered to cease using ditch number four (4) for drainage and to restore the surface area of ditch number four (4) to its pre-ditch condition as soon as practicable.
4. That the agreement contained in paragraph 2 of the Stipulation runs with the land and shall be binding upon all successors-in-interest.

Dated this _____ day of August, 1992.

BOARD OF COUNTY COMMISSIONERS
ROBERTS COUNTY, SOUTH DAKOTA

By: _____

Its Chairman

ATTEST:

Janet Griep
County Auditor

APPENDIX U
VESTED DRAINAGE RIGHT
REGISTRATION FORM

1. Claimant of Vested Drainage Right:

Name Bartz Eugene

Address RR1 Box 99
City Browns Valley State MINN Zip Code 56218

Co-Owner or Other Interest Owner:

Name _____
Address _____
City _____ State _____ Zip Code _____

2. A. State the legal description of the land from which the water is drained (dominant estate):

1/4 of the NE 1/4 of Sec. 8 Twp. 126 N. R. 49 in the County of Roberts

B. State the legal description of the land onto which the water is drained (servient estate):

NE 1/4 of the SW 1/4 of Sec. 8 Twp. 126 N. R. 49 in the County of Roberts

C. State the legal description of the land for which the drainage right is claimed, if different than A. above (prescriptive right):

1/4 of the 1/4 of Sec. 8 Twp. 126 N. R. 49 in the County of _____

3. The man made modifications consist of 1 Tile 4 Ditches (i.e. drain tile, ditch, levee, dike, etc.). Generally describe the modifications in terms of length, depth, width, etc. (i.e. a ditch 3 ft. deep and 80 ft. long):

Tile is 400' long x 8" concrete (Ditch #1 contains 3700' long x 3 1/2' deep)
Ditch #2 is 9500' long x 4 1/2' deep (Ditch #3 is 500' long x 3' deep) (Ditch #4 is 400' x 3 ft. deep)

4. The claimed drainage right has existed since:

A. middle 60's or

B. Unknown

5. State the general course and direction of the flow of water by means of the drainage right:

Tile runs E. to W. (Ditch #1 runs N. to S. then SW then W then S then SE to a culvert in driveway) (Ditch #2 runs NE to SW) (Ditch #3 runs NE to SW) (Ditch #4 runs W. then N.)

6. State the general course and direction of the natural flow:

A. Same as paragraph 5; or

B. _____

7. State any facts you believe relevant to the vested drainage right:

All the ditch drain through the same culvert in driveway
No water sit on land if ditch are clog.

Dated this 24 day of June 1992

Eugene Bartz
Gloria Bartz

STATE OF MINN

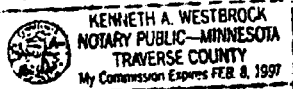
COUNTY OF Traverse SS.

On this 24 day of JUN 92, before me, Kenneth H Westbrock

the undersigned officer, personally appeared Eugene & Gloria Bartz, known to me or satisfactorily proven to be the person whose name _____ subscribed to the within instrument

and acknowledged that he _____ executed the same for the purposes therein contained.

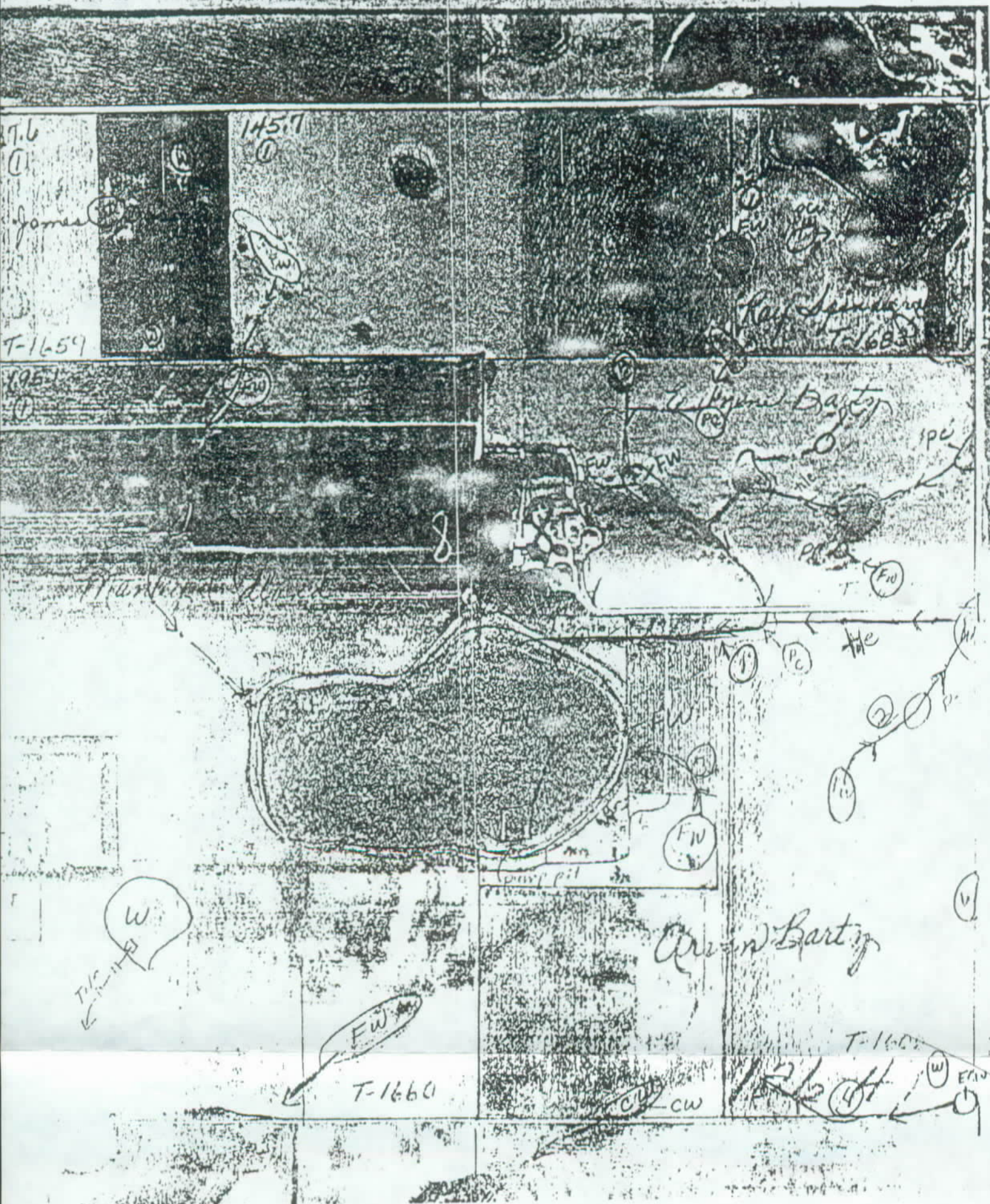
In witness whereof I hereunto set my hand and official seal.



Kenneth Westbrock

My commission expires _____

NOT TO SCALE



APPENDIX B
VESTED DRAINAGE RIGHT
REGISTRATION FORM

1. Claimant of Vested Drainage Right:

Name Bartz Arvin and Ruth

Address RR 1 Box 154

City BROWN Valley State Ark. Zip Code 56219

Co-Owner or Other Interest Owner:

Name _____

Address _____

City _____ State _____ Zip Code _____

2. A. State the legal description of the land from which the water is drained (dominant estate):

1/4 of the SE 1/4 of Sec. 8, Twp. 126, Rg. 49, in the County of Roberts

B. State the legal description of the land onto which the water is drained (servient estate):

NE 1/4 of the NE 1/4 of Sec. 17, Twp. 126, Rg. 49, in the County of Roberts

C. State the legal description of the land for which the drainage right is claimed, if different than A. above (prescriptive right):

_____ 1/4 of the _____ 1/4 of Sec. _____ Twp. _____ Rg. _____ in the County of _____

3. The man made modifications consist of 1 Tile 4 Ditch (i.e. drain tile, ditch, levee, dike, etc.).

Generally describe the modifications in terms of length, depth, width, etc. (i.e. a ditch 3 ft. deep and 80 ft. long):

(Tile 1,000' long x 8" concrete) (Ditch #1 is 1300' long x 5 1/2' deep)
Ditch #2 is 1000' long x 2 1/2' deep) (Ditch #3 is 900' long x 3' deep) (Ditch #4 is 1100'
long x 3' deep)

4. The claimed drainage right has existed since:

#1-3 A. Midgl 60s; or

#4 Fall 1786 or
B. Unknown

5. State the general course and direction of the flow of water by means of the drainage right:

Tile E. to W. (Ditch #1 Flows from culvert S. then W.) (Ditch #2
Flows SW. to NE) (Ditch #3 Flows N. then W.) (Ditch #4 Flows E. to W.,
then NW)

6. State the general course and direction of the natural flow:

A. Same as paragraph 5; or

B. _____

7. State any facts you believe relevant to the vested drainage rights:

known ditch are properly clean no water set in sloop
well ditch come out of

Dated this 1 day of 27 1992.

Arvin Bartz
Ruth Bartz



STATE OF SOUTH DAKOTA
COUNTY OF Roberts SS

On this 27 day of JANUARY, before me, Gregory Ellingson
the undersigned officer, personally appeared Ruth & Arvin Bartz, known to me or satisfactorily
proven to be the person whose name _____ subscribed to the within instrument
and acknowledged that _____ he executed the same for the purposes therein contained.

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

Gregory Ellingson
Notary Public
My commission expires 3-22-99

FILED IN SOUTH DAKOTA
ROBERTS COUNTY
Filed for record on the 3rd day of Feb.
1992 at 10:25 o'clock A.M. and recorded in Book
M.58 Page 89-90 of Roberts
Case 1786
Register of Deeds

STATE OF SOUTH DAKOTA)
COUNTY OF ROBERTS) :SS.

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

MARVIN PIOTTER AND)
CONNIE PIOTTER,)
Plaintiffs,)
-vs-)
EUGENE BARTZ AND GLORIA)
BARTZ; ARVIN AND)
RUTH BARTZ,)
Defendants,)

COMPLAINT

Plaintiffs, Marvin and Connie Piotter, hereinafter referred to as "Lower landowners," for their Complaint hereby allege as follows:

COUNT I
JURISDICTION

1. The court has jurisdiction to hear water dispute cases pursuant to SDCL § 46-10-2.

PARTIES

2. Lower landowners at all times herein mentioned were and now are the owners and occupiers of real property situated in the County of Roberts and State of South Dakota, described as follows:

The Northeast Quarter (NE1/4) of Section Seventeen (17), Township One Hundred Twenty-Six North (126N), Range Forty-Nine (49), West of the 5th P.M., Roberts County, South Dakota (hereinafter "Lower land").

Such lower land shown on the Bryant Township Map. **See Exhibit 1 attached hereto and incorporated herein by reference.**

3. Defendants Eugene and Gloria Bartz, hereinafter referred to as "Upper landowners", at all times mentioned herein, unless otherwise stated, were and now are the owners and occupiers of real property situated in the County of Roberts and State of South Dakota, described as follows:

The Southeast Quarter (SE1/4) of Section Eight (8), Township One Hundred Twenty-Six North (126N), Range Forty-Nine (49), West of the 5th P.M., Roberts County, South Dakota (hereinafter "Upper land").

4. Upper land was conveyed by their predecessors in interest, Arvin and Ruth Bartz, by a Contract for Deed, dated December of 1992. **See Exhibit 1.**

BACKGROUND

5. For many years prior to filing this action, a certain stream of water hereinafter referred to as "Natural Waterway" has run along and through Upper land thence southerly and westerly through Lower landowners land where it continues on a southwesterly direction which is its normal course.

6. Lower landowners land is agricultural land, and Lower landowners have operated it for many years as a farm.

7. Lower landowners land was purchased from Albert Nickolauson, the immediate predecessor in interest to the above referenced parcel of land.

8. On September 30, 1983, a Joint Stipulation was entered into by Albert Nickolauson and Arvin and Ruth Bartz, hereinafter referred to as "Nickolauson Stipulation," recognizing a limited prescriptive right to drain water from the Upper land onto the Lower landowners land through a concrete culvert located under a

township road, said township road located along the section line between the property of Bartz and Nickolauson. See Exhibit 2 attached hereto and incorporated herein by reference.

9. Such limited prescriptive right was to allow water to flow through said concrete culvert into the existing waterway from the Upper land to the Lower landowners land so that no more water than would cover one-half acre would be retained on the Upper land. See paragraph two (2) of Exhibit 1.

VESTED DRAINAGE

10. On January 27, 1992, a vested drainage right was filed by Arvin and Ruth Bartz. Such filing claimed a right in Upper landowners to drain waters off Upper land by means of modifications of a drainage system. Ditch number four (4), in particular, directly effected Lower landowners land. Exhibit 3, specifically paragraph three (3), attached hereto and incorporated herein by reference.

11. Lower landowners requested a hearing with the Roberts County Commissioners concerning their objections to the filing of these vested drainage rights. Specifically, objection was made as to ditch Number Four (4), listed in the registration of the vested drainage right. No objections were made to ditches One, Two or Three (1-3), nor to the drain tile, due to representations made by Arvin and Ruth Bartz that these structures did not flow onto Piotters' property.

12. A hearing was granted by the Commissioners, not based upon Piotter's objections, but, rather, based upon an objection filed by Michael I. Selvage, Sr., one of the beneficial owners of the trust land in the Northwest quarter of Section Seventeen (17), as evidenced by the letter from the Roberts County Auditor, Janet Griep, dated July 1, 1992. See Exhibit 4 attached hereto and incorporated herein by reference.

13. Pursuant to the Commissioners' hearing, held on July 14, 1992, an oral agreement was made between the parties, and a subsequent stipulation was drafted, that ditch Number Four (4) would be plugged and the land surface around ditch Number Four (4) would be returned to its pre-ditch condition. **See Exhibits 5 & 6 attached hereto and incorporated herein by reference.**

14. Subsequent to the drafting of this stipulation, Arvin and Ruth Bartz did not complete the agreement by signing the documentation.

15. As stated earlier, this property was transferred to Upper landowners by a Contract for Deed in December of 1992. Since that time, not only has ditch Number Four (4) not been returned to its original condition, but further enhancements to the drainage system on the Upper land have been made, as described in the section, **CHANGES TO UPPER LAND, infra.**

COUNT II
NUISANCE/CHANGES TO UPPER LAND
ACTUAL DAMAGES

16. Lower landowners reallege all the allegations in their Count I the same as though set forth herein.

17. Lower landowners are informed and believe and on such information and beliefs, allege that upper landowners are entitled to divert water so that no more water than would cover one-half ($\frac{1}{2}$) acre would be retained on certain lands owned by upper landowners, and that upper landowners own a right and easement to convey such water across lower landowners land by means of a concrete culvert pursuant to the Nickolauson Stipulation.

18. Such culvert connects lower landowners and upper land from north to south, as shown on the diagram marked **Exhibit 7** attached hereto and incorporated by reference.

19. Beginning in the month of November, 1992, and on several occasions thereafter, upper landowners, in disregard of lower landowners rights, have dug and ditched on their property in the following manner:

- a) Not restoring ditch 4 to it original condition;
- b) Taking out the township road dividing the two properties; and,
- c) Filling in the slough on the upper land and digging a deep hole in the slough immediately north of the culvert to retain water and decrease the one-half acre of slough on upper landowners property.

Such manipulations have increased the flow of water through the natural waterway by way of the culvert, thereby causing more water to flow through such culvert in great quantities, saturating and flooding lower landowners land, to such an extent that portions of lower landowners land were rendered untillable during the 1990 through 1996 crop years. Lower landowners have thereby been damaged in a sum to be determined at trial.

COUNT III PUNITIVE DAMAGES

20. Lower landowners reallege all the allegations in their Count I the same as though set forth herein.

21. Upper landowners have wilfully elaborated this drainage system to increase the flow of water onto Lower landowners land despite Upper landowners presence at the Commissioners hearing referenced supra, fully aware that such ditching and drainage was contrary to South Dakota law.

22. Lower landowners have requested Upper landowners to refrain from diverting more water than is their right as dominant land owners into such culvert, and to refrain from enlarging upper landowners ditching system further, increasing the drainage from Upper landowners to Lower landowners land, but upper landowners has unlawfully continued to divert excessive quantities of water into such ditch, damaging Lower landowners

land, and upper landowners has further threatened to enter Lower landowners land to further ditch to the south of the culvert so that it will carry more water than is Upper landowners right.

COUNT IV
INJUNCTION

23. Lower landowners reallege all the allegations in their Count I the same as though set forth herein.

24. If Upper landowners continue to divert such excessive quantities of water into such culvert, Lower landowners will suffer great and irreparable injury, in that Upper landowners right and easement to convey water across Lower landowners land will become enlarged by prescription, and Lower landowners land will become permanently saturated and overflowed.

Wherefore, Lower landowners respectfully request that:

1. Pending final determination of this cause on its merits, the court temporarily enjoin/restrain Upper landowners, and all persons acting through or under upper landowners who receive actual notice of such order, from discharging more water than is upper landowners right under the Stipulation through the culvert across lower landowners land;

2. The court declare that upper landowners is not entitled to convey more water than is their right under the Nickolauson Stipulation through such culvert at any time;

3. The court enjoin upper landowners, and all persons acting through or under upper landowners, from diverting a greater quantity of water into such culvert at any time, and from entering lower landowners land and enlarging such ditch or in a any other manner increasing the burden on lower landowners land;

4. The court declare that upper landowners current ditching and drainage is unlawful and require that upper landowners restore the land to its natural condition, prior to the current

ditching and drainage scheme;

5. Lower landowners recover damages against upper landowners in an amount to be determined at trial;

6. Lower landowners recover punitive damages against upper landowners in order to punish their wilful behavior;

7. Lower landowners recover costs herein; and

8. Receive such other and further relief as may be proper.

JURY TRIAL IS HEREBY DEMANDED ON THE DAMAGE CLAIM.

Dated this _____ day of November, 1996.

Marvin Plotter
Lower Landowner

Connie Plotter
Lower Landowner

A. WILLIAM SPIRY
DANA J. FROHLING
JASON A. CAMPBELL

SPIRY & FROHLING
ATTORNEYS AT LAW
724 MAIN ST., P.O. BOX 919
BRITTON, SOUTH DAKOTA 57430-0919
TEL. (605) 448-2273
FAX (605) 448-2275



December 2, 1996

ERIC GRONLUND
WATER RIGHTS PROGRAM
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SD 57501-3181

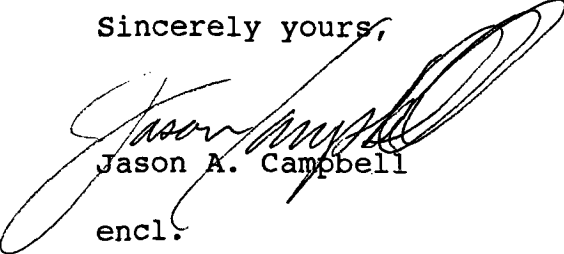
RE: Bartz Water Permit

Dear Eric:

Pursuant to our phone conversation today, please find enclosed an addendum or amendment to the Piotters' petition in opposition of the Bartz applications. Hopefully, this will help to further explain my clients' position on this matter. This is also to assist with notice that I will be serving as the Piotters' attorney regarding this matter.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely yours,


Jason A. Campbell

encl.

ADDENDUM TO PETITION IN OPPOSITION TO WATER PERMIT
APPLICATIONS NO. 5957-3 AND 5958-3.

MARVIN PIOTTER AND CONNIE PIOTTER,

Petitioners.

Petitioners, Marvin and Connie Piotter, hereinafter referred to as "Lower landowners," for their Petition hereby allege as follows:

I.

STATEMENT DESCRIBING INTEREST

1. The Water Management Board has jurisdiction to hear evidence concerning permit applications pursuant to SDCL § 46-2A-7.

2. Lower landowners at all times herein mentioned were and now are the owners and occupiers of real property situated in the County of Roberts and State of South Dakota, described as follows:

The Northeast Quarter (NE1/4) of Section Seventeen (17), Township One Hundred Twenty-Six North (126N), Range Forty-Nine (49), West of the 5th P.M., Roberts County, South Dakota (hereinafter "Lower land").

Such lower land shown on the Bryant Township Map. **See Exhibit 1 attached hereto and incorporated herein by reference.**

3. Applicant Eugene Bartz, hereinafter referred to as "Upper landowner", at all times mentioned herein, unless otherwise stated, was and now is the owner and occupier of real property situated in the County of Roberts and State of South Dakota, described as follows:

The Southeast Quarter (SE1/4) of Section Eight (8), Township One Hundred Twenty-Six North (126N), Range

Forty-Nine (49), West of the 5th P.M., Roberts County, South Dakota, and;

The North Half (N1/2) of the Northeast Quarter (NE1/4) of Section Five (5), Township One Hundred Twenty-Six North (126N), Range Forty-Nine (49), West of the 5th P.M., Roberts County, South Dakota (hereinafter "Upper land").

4. Lower land, as described above, is servient to Upper land, as described above, and is directly affected by waters drained by Upper landowner.

II.

REASONS FOR OPPOSITION

5. For many years prior to filing this petition, a certain stream of water hereinafter referred to as "Natural Waterway" has run along and through Upper land thence southerly and westerly through a concrete culvert onto Lower land where it continues on a southwesterly direction which is its normal course. **See Exhibit 2 attached hereto and incorporated herein by reference (at the time of the creation of Exhibit 2, Lower land was owned by Albert Nickolauson, Lower landowners predecessor in interest).**

6. There have been many problems that have arisen due to actions taken by Upper landowner in using the natural waterway.

7. Lower landowners have been adversely affected by Upper landowner's use of the natural waterway and have subsequently filed suit (specifically with respect to the property in Section 8) to stop Upper landowner from further using the natural waterway to Lower landowners' detriment.

8. Lower landowners feel that the current application for a permit to irrigate Upper land by using a slough on Upper land would allow Upper landowner to pump additional water onto Lower

land, via an elaborate ditching system, to Lower land's further detriment.

9. Conversations with Farm Services Agency in Sisseton, South Dakota, have revealed that Upper landowner already has a converted wetland on Upper land, and while converted wetlands may not be used for crop production, Lower landowners fear a deluge of additional water from Upper land.

10. That due to Upper landowner's harmful use of the natural waterway, Applications 5957-3 and 5958-3 should be denied.

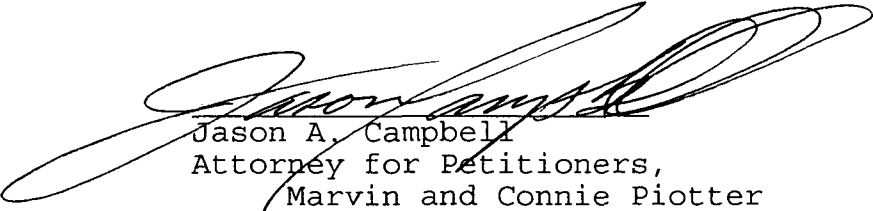
11. That, at the very least, a decision on Applications 5957-3 and 5958-3 should be postponed until a resolution to the pending lawsuit, referenced above, can be had.

12. Lower landowners request a hearing with the Water Management Board concerning their objections to the filing of this application for permit for irrigation.

III.

Signature and Mailing Address

Dated this 2nd day of November, 1996.



Jason A. Campbell
Attorney for Petitioners,
Marvin and Connie Piotter
(Lower landowners)
P.O. Box 919
Britton, SD 57430



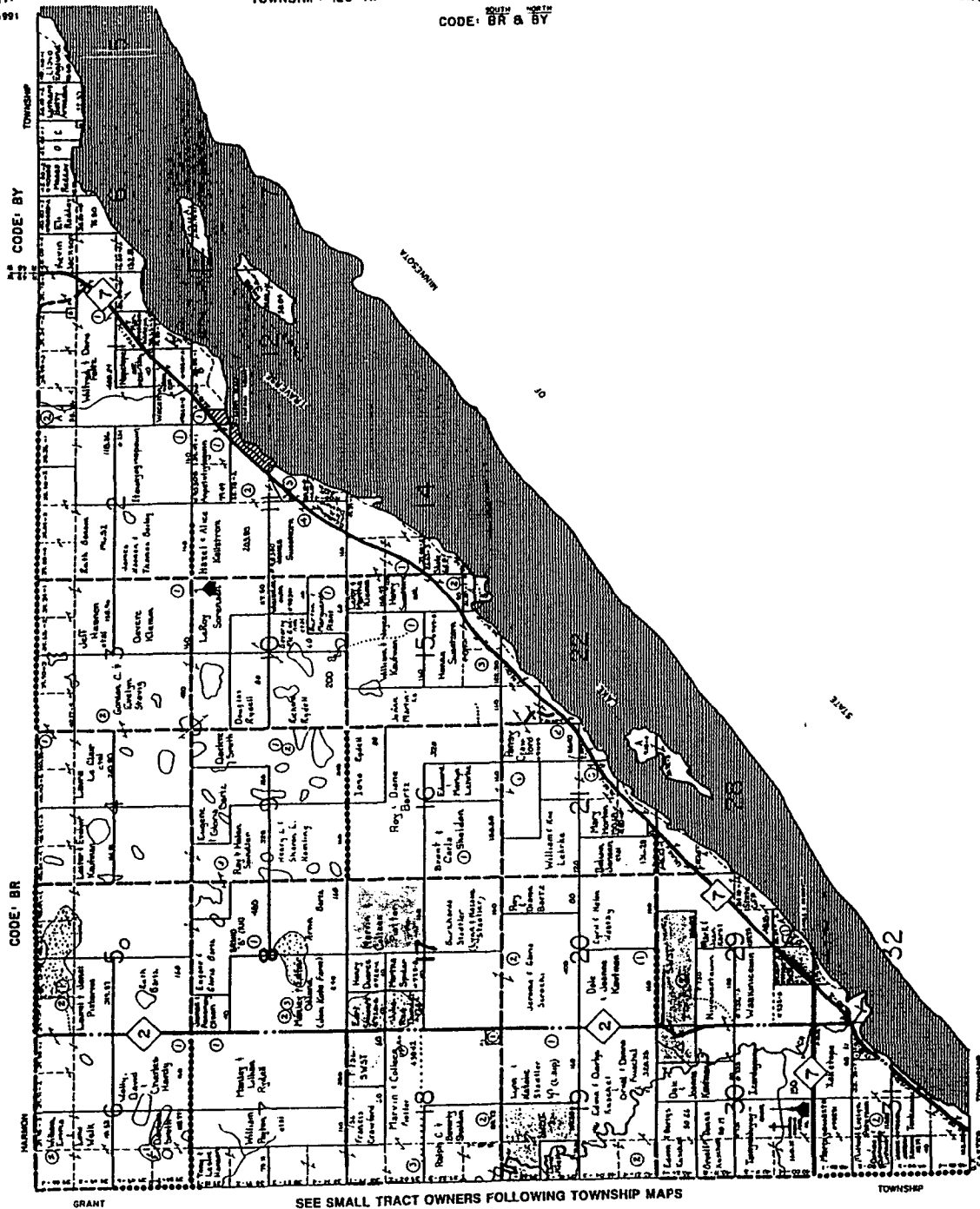
Exhibit 1
**MAP OF
BRYANT**



TOWNSHIP: 126 N.

RANGE: 48 & 49 W.

CODE: BR & BY

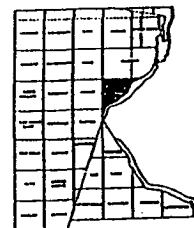


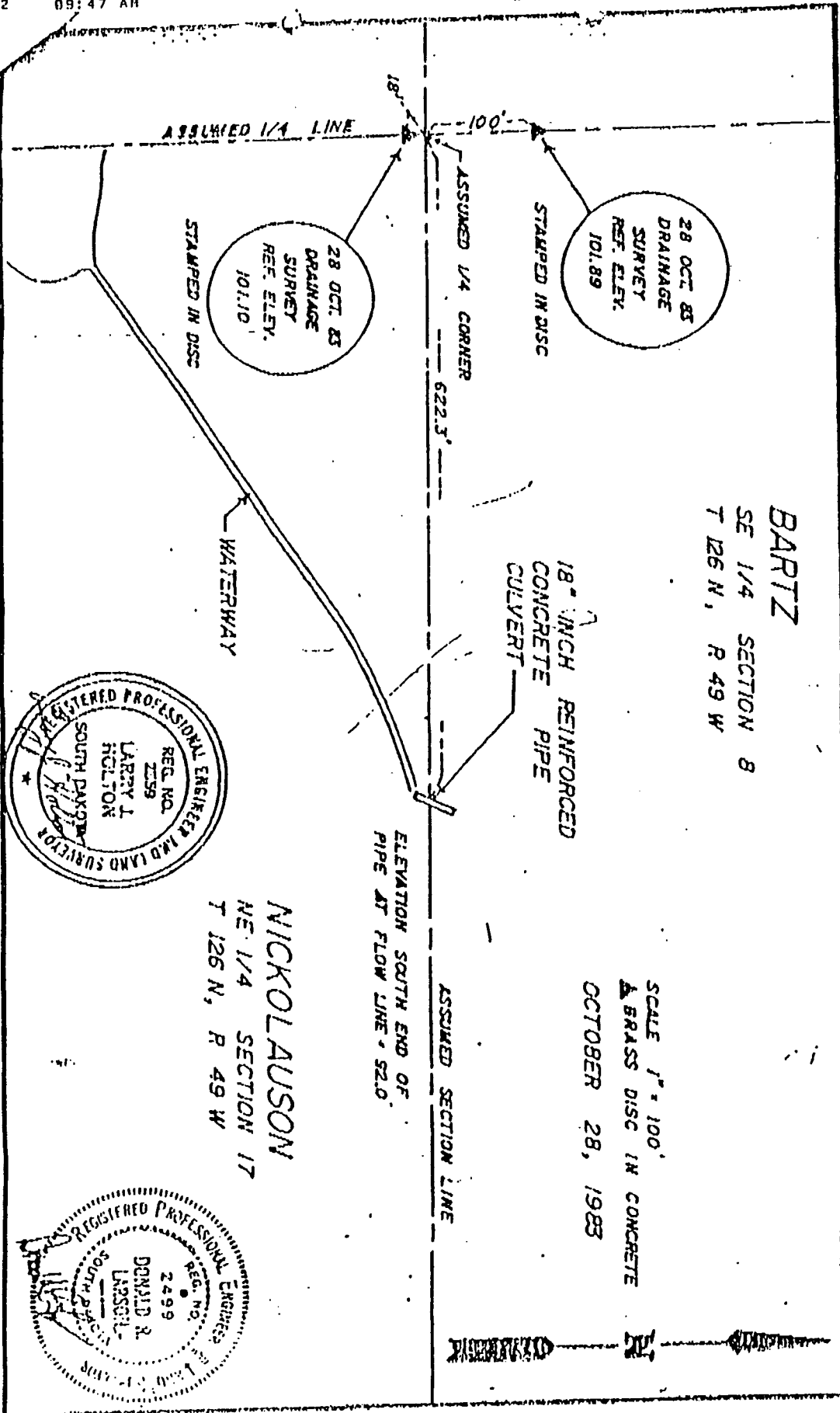
SEE SMALL TRACT OWNERS FOLLOWING TOWNSHIP MAPS

Ronald K. Roehr
Attorney at Law

General Practice
including real estate,
probate, and estate planning

325 S. Main St.
Milbank, SD
Phone: 432-4952







**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 5, 1996

NOTICE

TO: Eugene Bartz
RR 1, Box 99
Browns Valley, MN 56219
and Parties of Record (see attached list)

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

SUBJECT: Notice of Hearing on Contested Water Permit Application Nos. 5957-3 and 5958-3,
Eugene Bartz

A petition in opposition to Application Nos. 5957-3 and 5958-3 has been filed in response to the Notice of Intent to appropriate water published November 20 and 27, 1996, in the Sisseton Courier. Enclosed is a copy of the petition. Because a petition in opposition to the application has been filed, pursuant to SDCL 46-2A-23, the Chief Engineer must provide notice of a hearing before the Water Management Board to all parties of record.

Application No. 5957-3 proposes to appropriate 1.46 cubic feet of water per second (cfs) from a slough at a point located in the NW1/4 SE1/4 Section 8 with water impounded in the NE1/4 SW1/4, NW1/4 SE1/4 Section 8; to irrigate 102.3 acres located in the SE1/4 Section 8: all in T126N, R49W.

Application No. 5958-3 proposes to appropriate 2.35 cfs from a slough at a point located in the NW1/4 NE1/4 Section 5 with water impounded in the SE1/4 SW1/4, S1/2 SE1/4, Section 32, NE1/4 NW1/4, N1/2 NE1/4 Section 5: to irrigate 164.8 acres located in the NE1/4, SE1/4 Section 5: all in T126N, R49W.

The Water Management Board will conduct a hearing to consider Application Nos. 5957-3 and 5958-3 at 10:30 am on March 5, 1997, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing. The agenda time is an estimate. The actual time of hearing may be later than 10:30 am due to prior agenda items.

December 5, 1996

Notice of Hearing on Application Nos. 5957-3 and 5958-3

Page 2 of 2

Pursuant to SDCL 46-2A-2, The Chief Engineer has recommended APPROVAL of Application Nos. 5957-3 and 5958-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny these applications based on evidence and record of the public hearing. Contact Eric Gronlund by February 21, 1997, at the Water Rights Program, 523 E. Capitol Ave., Pierre, SD 57501 or call (605 773-3352) to request copies of information pertaining to the applications, to assure access to the hearing by the handicapped, or to obtain an interpreter for the hearing impaired.

This hearing is an adversary proceeding. Any party of record and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The March 5, 1997, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any party of record opposing or supporting the applications. The Chief Engineer's address is the Water Rights Program, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD 57501. The request for an automatic delay may not be filed later than February 21, 1997.

The applications are made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

enclosure

c: Diane Best, Assistant Attorney General

PARTIES OF RECORD

WATER PERMIT APPLICATION NOS. 5957-3 and 5958-3

APPLICANT

Eugene Bartz
RR 1, Box 99
Browns Valley, MN 56219

PETITIONER

Marvin & Connie Piotter
RR 1, Box 102
Sisseton, SD 57262

represented by:

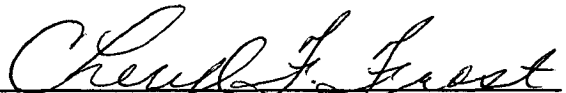
Jason A. Campbell
Spiry & Frohling
Box 919
Britton, SD 57430-0919

CERTIFICATION

I hereby certify that on December 5, 1996, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated December 5, 1996, along with a copy of the Parties of Record List, and a copy of the Petition in Opposition, regarding Notice of Hearing on Contested Water Permit Application Nos. 5957-3 and 5958-3, Eugene Bartz, addressed as stated below, and on the attached Parties of Record list:

A copy of the above described Notice and attachments was sent inter-office to:

Diane Best, Assistant Attorney General, Capitol Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of December, 1996




Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 11, 1997

NOTICE

TO: Eugene Bartz
RR 1 Box 99
Browns Valley, MN 56219
and Parties of Record (see attached list)

FROM: John Hatch, Chief Engineer
Water Rights Program
(605) 773-3352

SUBJECT: Change of Hearing Time for Water Permit Application Nos. 5957-3 and 5958-3

The hearing before the Water Management Board on Application Nos. 5957-3 and 5958-3 has been rescheduled to **9:30 AM, March 6, 1997**, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD. The hearing time was previously set for 10:30 AM on March 5, 1997.

Applicable provisions of the notice sent to parties of record on December 5, 1996, will still apply at the hearing. The 9:30 AM agenda time is an estimate and may be delayed due to prior agenda items.

If you have any questions, please contact Eric Gronlund at (605) 773-3352

c: Diane Best, Assistant Attorney General

PARTIES OF RECORD

WATER PERMIT APPLICATION NOS. 5957-3 and 5958-3

APPLICANT

Eugene Bartz
RR 1, Box 99
Browns Valley, MN 56219

PETITIONER

Marvin & Connie Piotter
RR 1, Box 102
Sisseton, SD 57262

represented by:

Jason A. Campbell
Spiry & Frohling
Box 919
Britton, SD 57430-0919

CERTIFICATION

I hereby certify that on February 12, 1997, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 11, 1997, along with a copy of the Parties of Record List, regarding Change of Hearing Time for Water Permit Application Nos. 5957-3 and 5958-3, addressed as stated below, and on the attached Parties of Record list:

Eugene Bartz, RR 1, Box 99, Browns Valley, MN 56219.

A copy of the above described Notice was sent inter-office to:

Diane Best, Assistant Attorney General, Capitol Building.



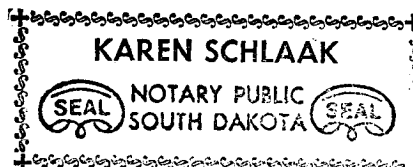
Eric S. Gronlund
Natural Resources Engineer III

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 13th day of February, 1997



Notary Public



KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001

STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

CONSIDERATION OF WATER PERMIT)
APPLICATION NOS. 5957-3 AND 5958-3,)
EUGENE BARTZ)
_____)

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

PROCEEDINGS:

Thursday, March 6, 1997;
523 East Capitol Avenue,
Pierre, South Dakota

APPEARANCES:

On Behalf of the Department
of Environment and
Natural Resources:

MS. DIANE BEST
Assistant Attorney General
500 East Capitol
Pierre, South Dakota

Appearing Pro Se:

EUGENE and GLORIA BARTZ
Rt. 1 Box 99
Browns Valley, Minnesota

On Behalf of Marvin and
Connie Piotter:

MR. JASON A. CAMPBELL
Spiry & Frohling
P.O. Box 919
Britton, South Dakota

Reported by Carla A. Bachand, RMR, Capital Reporting
Services, P.O. Box 903, Pierre, SD 57501 (605) 224-7611.

I N D E X

<u>EXHIBITS:</u>	<u>MARKED:</u>	<u>RECEIVED:</u>
DENR Exhibit No. 1.	3	4
DENR Exhibit No. 2.	3	4
DENR Exhibit No. 3.	3	4
DENR Exhibit No. 4.	3	4
 Bartz Exhibit No. 1	 28	 28
Bartz Exhibit No. 2	28	28
Bartz Exhibit No. 3	28	28
Bartz Exhibit No. 4	28	28
Bartz Exhibit No. 5	28	28
Bartz Exhibit No. 10.	28	28
Bartz Exhibit No. 14.	30	30
Bartz Exhibit No. 16.	34	35
 Piotter Exhibit A	 13	 13
Piotter Exhibit B	42	43
Piotter Exhibit C	42	43
Piotter Exhibit D	42	43
Piotter Exhibit E	42	43
Piotter Exhibit F	54	56
Piotter Exhibit G	61	61
Piotter Exhibit H	65	65
 Certificate of Court Reporter.	 	 78

1 THURSDAY, MARCH 6, 1997

2 EXHIBITS:

3 (DENR Exhibit Nos. 1 through 4 marked for
4 identification.)

5 CHAIRMAN ROLLAG: I think we are all here, so the last
6 item on our agenda is the 9:30 agenda item, consider water
7 permit application numbers 5957-3 and 5958-3, Eugene Bartz,
8 and we will call on Diane.

9 MS. BEST: Thank you. By way of introduction, this is
10 an application for a permit to irrigate and we would like to
11 treat this fairly informally. The parties have talked some in
12 advance and the parties have agreed at least to stipulate to
13 the division exhibits in this matter, so my role, what I would
14 like to do is put the exhibits into evidence and turn it over
15 to Mark Rath to talk about the place of the project and the
16 chief engineer's recommendation and his report as well. So
17 for exhibits -- Mark will be testifying I expect with regard
18 to his review of this matter and may be offering an expert
19 opinion or two and I do have marked as DENR 1 a list of
20 qualifications of Mark Rath and ask that he be allowed to
21 testify as an expert without any further foundation. I also
22 have the file in this matter, DENR 2. That consists of the
23 application for an irrigation -- two applications for
24 irrigation permits, this involves two separate irrigation
25 applications. The files also include the affidavits of

1 publication, letters from intervenors, and there are
2 intervenors in this proceeding and they are present here to
3 testify today. It also includes the chief engineer's
4 recommendation, Mark Rath's report and then correspondence
5 among the parties. The Division's other two exhibits are
6 Exhibit 3, which is a topo map of the area involved and
7 Exhibit 4, which is a state highway map, just to give you some
8 bearing on the area that we are talking about. And I'd ask
9 those all be admitted because there is no disagreement among
10 the parties regarding that and then I will ask Mark to
11 testify.

12 CHAIRMAN ROLLAG: They will be admitted.

13 EXHIBITS:

14 (DENR Exhibit Nos. 1 through 4 received into
15 evidence.)

16 Thereupon,

17 MARK RATH,
18 called as a witness, being first duly sworn as hereinafter
19 certified, testified as follows:

20 CHAIRMAN ROLLAG: Please state your name for the
21 record.

22 A. My name is Mark Rath and I'm a natural resources
23 engineer with the water rights program. Just a little
24 housekeeping, if you have a copy of the reports in front of
25 you, on 5958-3, the first line, there is a transposed number,

1 it's 2.35 CFS instead of 2.53, be aware of that. This
2 afternoon the board is going to consider two water permit
3 applications for irrigation. They are 5957-3 and 5958-3 for
4 Eugene Bartz. The first application, application 5957-3, is
5 to appropriate 1.46 cubic feet per second of water to irrigate
6 102.3 acres. The source of this water is to be from a slough
7 and I will refer to the slough up here in Section 8, Township
8 126 North, Range 49 West and that will be -- water from that
9 slough will be pumped on to land in the southeast -- I take
10 that back, this is the lower one, the southeast quarter of
11 Section 8. The second application is 5958-3, to appropriate
12 2.35 CFS to irrigate 164.8 acres. Again the water source
13 would be from a slough, in this case up here, to irrigate land
14 in the east half of Section 5 there. To orient the board to
15 where this is, it would be in northeast Roberts County.
16 Sisseton is located here, the town of New Effington and
17 Rosholt up to the north and this is the area delineated in
18 green is this area on this larger topo map.

19 As I indicated, the source for both applications will
20 be from sloughs that would catch local runoff from
21 precipitation events. Sloughs cannot be considered a reliable
22 source of water during dry climatic conditions, so it wouldn't
23 be expected that at all times the slough would be considered a
24 reliable source. Easements have been obtained by the
25 applicant from landowners adjacent to the sloughs to pump from

1 the sloughs. There's other landowners who own some land that
2 the sloughs inundate and they have signed the easements for
3 that. The chief engineer is recommending approval of both
4 application 5957-3 and 5958-3 with qualifications. We
5 received one letter in opposition to the applications, which
6 the board should have a copy, and both the applicant and the
7 party in opposition are here. Does the board have any
8 questions?

9 CHAIRMAN ROLLAG: Any questions for Mark?

10 MR. BRINK: How did you generate that map? That's
11 kind of nice.

12 A. I scanned in a portion of a USGS topo map and blew it
13 up and we have a large plotter now.

14 MR. BRINK: Your cad plotter will produce that?

15 A. It's a design jet plotter.

16 MR. HOLZBAUER: The water supply on this is adequate
17 with that slough? You said it ain't --

18 A. It couldn't be considered to be reliable. During
19 certain periods, yes, there would probably be enough water in
20 the slough to handle it. During dry periods I wouldn't expect
21 it to be a reliable source.

22 MR. HOLZBAUER: Is that slough used for any other
23 purpose for water source?

24 A. Not that I know of. I reviewed the files and we did
25 not have any other appropriations for the sloughs.

1 MR. RICKENBACH: I have a question on the upper
2 exhibit, that is on the upper portion of your map there. Are
3 those two sloughs connected? There's a red mark between
4 them.

5 A. The red mark indicates where the diversion point was
6 indicated on the application. Then this one would be for the
7 other application.

8 MR. HOLZBAUER: The diversion would be between the
9 two?

10 MR. RICKENBACH: Which slough are they pumping from?

11 A. Right now I would guess probably both.

12 MR. RICKENBACH: That's a pretty good sized body of
13 water.

14 MR. HOLZBAUER: Any idea how many acre foot of water
15 is there?

16 A. Yes, I can kind of give you an indication. For the
17 north application, an engineer estimated that there would
18 be -- the slough is impounding approximately 335 acre feet of
19 water and in the southern one, the southern slough is
20 impounding approximately 135 acre feet of water.

21 CHAIRMAN ROLLAG: These aren't wetlands now or
22 anything like that?

23 A. I talked to the applicant about that when the
24 application came in and he indicated he had been dealing with
25 NRCS on that matter.

1 MR. BRINK: Do you know if there has been any
2 resolution to that or should we ask the applicant?

3 A. It would be best to ask the applicant.

4 CHAIRMAN ROLLAG: The way we will proceed is we will
5 first hear from those that are favorable to this application,
6 then after that the ones that are opposing this application
7 and then after that we will have a chance for people to rebut
8 what the others say. So we will first call upon anyone who is
9 in favor of this -- supports these two applications.
10 Thereupon,

11 EUGENE BARTZ,
12 called as a witness, being first duly sworn as hereinafter
13 certified, testified as follows:

14 CHAIRMAN ROLLAG: Please state your name for the
15 record.

16 A. Eugene Bartz, the applicant that is applying for the
17 water rights. I'm applying for the water rights with the
18 knowledge that yes, the sloughs are limited sources of water,
19 but talking with Mark on the phone, I have let him know and
20 this is my total intention, is to finish the summer crop like
21 your corn and beans if you hit a dry spell. It's not intended
22 to irrigate from day one to harvest time you might say. The
23 bigger application up on top is a corner pivot irrigation
24 system, which would be pumping from this point. The two
25 sloughs are hooked together. The other application, or the

1 diversion point is here, making a three quarter circle. I
2 guess I have no further, unless you guys have questions.

3 CHAIRMAN ROLLAG: Someone asked about the wetlands.

4 A. The wetland, prior to '85 we have owned an irrigation
5 system, my dad has owned it and I previously bought it a
6 number of years back here now, and we have irrigated out of
7 these areas, which gives us the pumping rights according to
8 the NRC or the government deal there, so they have no problems
9 with it. Kent Duerre, the regional director down there, says
10 it's fine with him, it doesn't make any difference because we
11 do have them pumping rights and I still maintain and have that
12 pumping system, it's just a big gun that's on a trailer,
13 better than a half mile of pipe, something like that, with a
14 six-inch pump. It's too time consuming, that's why I would
15 like to go to something like this here now, which would be
16 easier to cover the ground and more even application.

17 MR. BRINK: Do you own the land the sloughs are on?

18 A. Yes, I own, where you see this right here, I own this
19 half of this slough. I own this part of this slough and all
20 of this one.

21 MR. BRINK: You own basically the northeast of five,
22 you own that whole quarter?

23 A. Yes, I own this quarter and this quarter.

24 MR. BRINK: Then in Section 8 it would be the
25 southeast quarter, you own all the southeast quarter?

1 A. This one and this one, this is my home base there, to
2 give you an idea where my farmstead is.

3 MR. HOLZBAUER: Help me on this. If you have
4 irrigated, what are we doing here today?

5 A. According to what I've heard, I have to have a pumping
6 permit to remove that many gallons of water. Before I was
7 moving a smaller amount of water and it was not necessary to
8 have such a permit. Now we are talking more gallons of water,
9 spreading it out over more acres and according to law, I have
10 to have a permit for that. I don't know what the law number
11 is or anything. Any other questions?

12 CHAIRMAN ROLLAG: Any other questions for Mr. Bartz?
13 Thank you very much, sir. Anyone else that wants to testify
14 in favor of this application? Very well, we will take those
15 that are in opposition that want to speak in opposition to
16 this application.

17 MR. CAMPBELL: Good afternoon, my name is Jason
18 Campbell and I'm representing the intervenors, the Piotters,
19 on this matter.

20 CHAIRMAN ROLLAG: Are you an attorney?

21 MR. CAMPBELL: I am an attorney. I'm not going to
22 testify, but Mrs. Piotter will be appearing in a minute. I
23 wanted to give a brief introduction, I guess, if you will
24 allow me a little bit of time. Then she can kind of fill in
25 the details and answer any questions that you might have. The

1 facts that give rise to my clients' opposition to this
2 application is that for several years there has been some
3 water drainage disputes between the Piotters and the Bartzes
4 and these problems have led to the filing of a lawsuit
5 currently up in Roberts County. The Piotters aren't here
6 today to ask the board to resolve that dispute, but they feel
7 that the water rights dispute is inherently connected to the
8 irrigation permit that's being applied for here in that with
9 the past actions that have occurred, the Piotters do feel that
10 with this permit or these permits, the Bartzes will in effect
11 have license to pump water in essence into a drainage system
12 that will adversely affect the Piotters' land. That would
13 substantially hinder their rights to enjoyment of their
14 property and it would also be in the public interest to maybe
15 try and -- to stop this application would be in the public
16 interest so that in the future we are not here again with more
17 litigation, with maybe a declaratory action of some kind with
18 the board again to hopefully alleviate those future types of
19 problems.

20 As such, according to SDCL 46-2A-9, being a violation
21 of public interest and also an infringement on the Piotters'
22 rights in their property, the Piotters feel that the
23 application should be denied and at the very least the
24 Piotters are asking the board at least defer any decision to
25 the conclusion of the current water drainage dispute.

1 Otherwise the Piotters feel that giving or granting these
2 applications today would in essence again give the Bartzes a
3 license to aggravate an already volatile situation I guess in
4 terms of they feel they are being flooded out with water. I
5 have given the state a copy of a packet and I have given the
6 Bartzes a copy of a packet of some documents that the Piotters
7 would like to enter into evidence and I don't think the state
8 has any objections. If the Bartzes don't have any objections,
9 the Piotters would like to offer this into evidence.

10 CHAIRMAN ROLLAG: We will accept it if there's no
11 objection.

12 MR. BRINK: Are you objecting to both sites
13 collectively or one site more particularly?

14 MR. CAMPBELL: Most particularly to the site in
15 Section 8, but also the Piotters are objecting to the site in
16 Section 5 and Mrs. Piotter will fill you in on the details as
17 to why that's so.

18 CHAIRMAN ROLLAG: Could you describe where your
19 clients' land lies?

20 MR. CAMPBELL: Certainly. The Piotters own this
21 section, the northeast quarter in Section 17 and as you can
22 see, there's a water way that runs directly through their
23 land.

24 MR. GUHIN: For the record, I wonder if we should get
25 one of these marked so we know what we are talking about

1 later.

2 EXHIBITS:

3 (Piotter Exhibit A marked for identification and
4 received into evidence.)

5 MR. GUHIN: Piotter A is the exhibit that has been
6 admitted.

7 MR. CAMPBELL: I will turn it over to Mrs. Piotter to
8 go ahead and testify and answer any questions you might have.
9 Thereupon,

10 CONNIE PIOTTER,
11 called as a witness, being first duly sworn as hereinafter
12 certified, testified as follows:

13 CHAIRMAN ROLLAG: Would you please state your name,
14 maybe spell it for the court reporter?

15 A. Connie, C-O-N-N-I-E, Piotter, P-I-O-T-T-E-R. I'm here
16 to speak on behalf of my husband and myself, who are
17 landowners in Section 17, which you have already been pointed
18 out, which is directly below the application for the
19 irrigating permit on Section 8. In the package of documents
20 that Jason Campbell gave you, the first one is a complaint
21 just to let you know that there is an ongoing court case
22 regarding our drainage dispute. We are not asking you to do
23 anything about that, but we just want to work it in to show
24 you why we are objecting to this irrigating. The Bartzes have
25 flaunted a court order and did ditching in this area right

1 here where a culvert is numerous times, constituting lawyers
2 and courts and et cetera, since 1983 when the first one was
3 decided, a stipulation where both landowners in Section 8 and
4 17, neither side would change, they would keep it the same and
5 Bartzes immediately went out and changed their side. You
6 don't have to go through it, it's just to let you know it's
7 here.

8 The second item is a Bryant Township map, I think it's
9 roughly about the same thing as what you have up on the board,
10 and the third one that's marked Exhibit 2 is the actual
11 stipulation signed by the previous owner of Section 17 and the
12 father of Mr. Bartz in Section 8, they signed a joint
13 stipulation whereby neither party nor any subsequent owners of
14 the land would change either -- would change anything
15 according to the court case and that is the one that the
16 Bartzes have disregarded, and the reason I'm bringing this up
17 is we are basing our objection on the fact that Mr. Bartz is
18 not going to use this irrigation permit to irrigate, he's
19 going to use it so he can push more water through our land, as
20 I'm showing you that he's done in the past. That is why I'm
21 bringing up the ditching.

22 Exhibit 3, we have a vested drainage application and
23 on here it's ditch four, roughly Mr. Bartz dug a ditch kind
24 of -- I'm probably not completely accurate, it goes through
25 where this culvert in question in the court case states that

1 neither side can be changed, he dug a ditch through here that
2 would drain, according to the soil conservation office in
3 Sisseton, a defined and designated wetland and we had a
4 hearing and the county commissioners in Roberts County denied
5 him ditch four. He agreed -- he and his father both agreed to
6 fill this in, sign a stipulation saying that they would fill
7 it in, put the land back and have done with it and they have
8 neither filled in the ditch nor signed the stipulation, as I
9 will show you. It's still draining through this culvert here
10 and that is what constitutes our having to go back to court.

11 The next one shows a letter from the Roberts County
12 Auditor just notifying of a meeting regarding the vested
13 drainage hearing claim. The next one is the minutes of that
14 meeting where if you look towards the end of it, Bartzes,
15 Piotters and there were some Indian owners whose land would
16 eventually get the Bartzes' water through this culvert onto
17 this Section of 17 or quarter of 17 that were there and in
18 these minutes, the Bartzes agreed to remove the ditch, sign a
19 stipulation, and the one marked Exhibit 6 is the stipulation
20 itself that they were to sign, which they did not. They
21 ignored it. Exhibit 7 is just a drawing, an engineer's
22 drawing of the elevation of the water way where I showed you
23 both sides decided that -- or they agreed that it would stay
24 the same. The very next day the Bartzes -- after this was
25 filed in court and everything, the Bartzes went out and dug a

1 big square hole roughly in this area that you could just about
2 put a large house in, used the fill from that hole, filled in
3 this low spot here in complete violation of the court order.

4 The next two papers are the Bartzes' application for
5 the irrigation permit. I want to point out that I don't
6 have -- well, on this map, on the map behind, there's a map
7 like this of Section 5 and another one of Section 8. In five
8 he has a network of ditches that come down, drain to the
9 south, he's got other ones that drain to the east, this is a
10 rough approximation, but you ought to be able to see those on
11 the maps that you have, going directly down here. I will try
12 to continue it on eight. He's got a network of ditches going
13 here draining here, he's got the infamous ditch four here,
14 he's got a network here, here, here, here. This one is a
15 dike, it's not a ditch going into here along back through
16 here, draining into the slough that he proposes to irrigate
17 from, and this is all coming down going -- he's proposing to
18 irrigate -- my most vehement objection is in Section 8,
19 because as you can see, all this water is going to go through
20 on to our land in one way or another, as his network of
21 ditches. I forgot to draw in this one. And this one, I had
22 opportunity to fly overhead in an airplane with a photographer
23 and I was just amazed at the network of dikes and ditches that
24 all come from up here in Section 5, go down to Section 8,
25 connect to these draining into this, going onto ours. And I

1 might point out that this one, according to Kent Duerre in the
2 soil conservation office in Sisseton, where ditch four starts
3 is a wetland and there is documentation in the office to that
4 effect. Also where he dug the hole is a wetland, I believe
5 it's the CW, which means converted wetland, but it's a wetland
6 nevertheless.

7 I took up your time with a lot of ditching objections
8 and I realize that you have nothing to do with it and I hope
9 you realize that I'm not asking you to do anything regarding
10 any of our ditching troubles. I only bring these up to try to
11 show to you that Mr. Bartz does not keep his word and that Mr.
12 Bartz, I don't know any other way to say it, but lies. He
13 will try to ditch one way or another and we have numerous -- I
14 could have brought an awful lot of documents, I didn't want to
15 take your time up, where he has said one thing and done
16 another. In one case in point I want to show you or remind
17 you that it was the county commissioners where he got the best
18 of by saying he was going to close up the ditch and didn't do
19 so.

20 Again we don't think he's going to irrigate with this
21 when he's got this extravagant network of drainage systems
22 already set up. The water is just going to go through his
23 drainage ditches onto us and I'm pleading with you to see
24 through this ruse that he would have you believe him. By
25 giving Mr. Bartz the opportunity to drain more water is only

1 going to make more litigation, more hearings, bother more
2 people, not only us but the BIA and the Indians have
3 complained and appeared at the county commission meeting
4 also. And I believe back in 1987 your office or a connection,
5 Division of Water Rights, they were called out in October, I
6 believe October 27th, 1987 by the Roberts County Commissioners
7 to review the Bartzes' ditching and we have a letter from them
8 that said that the county commissioners couldn't take action
9 or refer us to go through the courts again regarding the
10 Bartzes, and I quote, illegal drainage. I have all these
11 documents if you would like to look at them. I didn't offer
12 them or tie up your time or anything, but I just ask that
13 first of all, please deny this ploy of Mr. Bartz's and if you
14 can't do that, please defer it until this court case that is
15 ongoing, which concerns the drainage problem, is resolved to a
16 point where you would be able to know if I'm just spouting off
17 or what. Thank you.

18 MR. FREEMAN: I have a question. On your Exhibit 6,
19 which is the board of county commissioners proceedings.

20 A. The minutes or --

21 MR. FREEMAN: It's in regard vested drainage right
22 registration of Arvin Bartz and Ruth Bartz. Was that ever
23 signed?

24 A. The way that the county commissioners wanted to have
25 it done was we sign it, Mr. Bartz sign it. Yeah, they have

1 the BIA sign it, you see on the back there. We signed it and
2 sent it on to Mr. Bartz's attorney, and he notified our
3 attorney that the Bartzes refused to sign and then it just
4 stopped.

5 MR. FREEMAN: Okay. So it was never signed by the
6 county commissioners either?

7 A. No, because the other people had to sign it before
8 they got it back.

9 MR. FREEMAN: Thank you.

10 CHAIRMAN ROLLAG: Any other questions? Thank you.
11 Anyone else want to speak in opposition to the application?
12 Do you have any comments regarding her comments?

13 EUGENE BARTZ: Yes, I do, I have quite a few of them,
14 to be honest with you. Getting to the stipulation that you
15 just asked a question about here, our lawyer, and if you look
16 on page three of that stipulation in paragraph one, on the
17 stipulation paragraph one, there are three other drainage
18 ditches in this area that I claim vested drainage rights.
19 They go this direction instead of the way she wrote them in.
20 There's a tile line that comes along here, dumps into this
21 drainage ditch here and runs down into the slough. The day we
22 were talking about ditch four here, which is this one right
23 here that she did draw in, all that was mentioned was that
24 ditch one, two and three was not contested by them because
25 that wasn't draining onto them. Ditch four was the one that

1 was contested for the vested drainage rights. It has been
2 closed up, it was closed up in '93. That was an incorrect
3 statement on her part and I have proof to show you if you wish
4 to see that.

5 The stipulation here in front of you says that if one,
6 two -- ditches one, two and three and the tile line should
7 ever take an overflow onto their land or the trust land, I
8 would be liable for damages, whatever. My grandpa put them
9 ditches in way before, I couldn't help it if Mother Nature --
10 at one time it rained 40 days and 40 nights and even the water
11 was in this room, so I feel that, and I told the lawyer that
12 there was no way I was going to sign that until that part was
13 taken out. I would turn around and sign it excluding ditch
14 four, which was agreed on, and that's what -- we never, ever
15 got another statement back from their lawyers to be re-signed,
16 so that's where that ended.

17 As far as the upper portion here, none of this water
18 drains down here, absolutely none. This water can run into
19 that slough, this slough. None of this here can get over a
20 hill and past this point, absolutely none. This area up here
21 has no effect to them whatsoever. The landlords that have the
22 land alongside of me, which is William Spindler or Bud
23 Spindler, he has given an affidavit stating that I'm allowed
24 to pump water out of the slough, which wouldn't affect him a
25 bit. Laurel Pistorius lives here, which he has given me an

1 affidavit if his water disappears here, fine. He's not
2 worried about any of his land. This is a high quarter of land
3 right here, a road that divides, there's no way water can go
4 that way. In fact this water comes from this slough down to
5 here and across and then down this drainage ditch into here.
6 I own this quarter of land here, this is a high quarter of
7 land and my dad owns this quarter of land, so there's no way,
8 the Piotters' closest piece of land is down here and way over
9 in this area over here. That has no effect to them. The only
10 area that water drains off this land, none of this water comes
11 this direction, it goes into this slough. There's a small
12 area here like this here that will turn around and runs
13 through this area.

14 Some of the other deals that she said about this
15 ongoing lawsuit, I have a letter here answering the lawsuit
16 that they filed. This is dated, if you look at it, December
17 18th. We have heard nothing back about this and it's like I
18 said, they will probably keep this ongoing for years if they
19 could so that if the board here does not act on this water
20 permit, it could last -- I would not be granted the irrigation
21 system then, which could cause loss to my revenue. Do you
22 have any questions up to this point?

23 MR. FREEMAN: I do. When did you put in ditch four?

24 EUGENE BARTZ: That was put in probably back in '91,
25 '90, somewheres in that area.

1 MR. FREEMAN: Why did you put it in?

2 EUGENE BARTZ: My lawyer said that due to the
3 stipulation back that we agreed upon, that the Nickolausons
4 and the Bartzes agreed upon, would you like -- I will hand
5 that out to you.

6 MR. FREEMAN: This one?

7 EUGENE BARTZ: Yes, you have a copy of it. In that
8 stipulation, he agreed or advised that we could put that ditch
9 in because we had vested drainage rights down through that
10 culvert there.

11 MR. FREEMAN: What's it supposed to drain?

12 EUGENE BARTZ: There's a small area right here, a half
13 acre, one half acre.

14 MR. FREEMAN: I thought you said that already drained
15 into that.

16 GLORIA BARTZ: Gene, aren't you talking about the
17 water that ditch four would carry?

18 MR. FREEMAN: Right.

19 EUGENE BARTZ: Ditch four is the one you were
20 referring to?

21 MR. FREEMAN: The one you ultimately closed.

22 EUGENE BARTZ: That's closed.

23 MR. FREEMAN: What was that designed to drain?

24 EUGENE BARTZ: This little corner here and a small
25 little slough area that was right on a dirt road. There's a

1 dirt road that people use and when that ditch was operable,
2 the dirt road was always usable because it never went under
3 water. Now with the ditch closed back up again, the township
4 road or that little dirt road, and all it is is a section
5 line, never been upgraded or anything like that, turns around
6 and floods now so that you cannot cross it.

7 MR. FREEMAN: What about the hole that Ms. Piotter
8 said was big enough to put a house in?

9 EUGENE BARTZ: The hole was dug due to the fact we
10 wanted -- at one time, they had worked the ditch shut on their
11 side, in fact they have even covered the culvert with dirt, so
12 the hole was dug because we were out of compliance with the
13 stipulation of '83 here that was agreed upon by the
14 Nickolausons and me and no place in this stipulation says I
15 could not change the lay of my land on my side. We went
16 through a court hearing, the court hearing said that I had to
17 retain the half acre of water that was agreed upon. I have a
18 document here, document number five, this is an engineer's
19 report.

20 CHAIRMAN ROLLAG: Anyone have any objections to this
21 one?

22 MS. BEST: The department has no objection.

23 MR. BRINK: We are referring to a half acre foot.

24 EUGENE BARTZ: Half acre of land, a half acre of
25 surface water.

1 MR. BRINK: When I look at his calculations here, he
2 says the hole is constructed to a volume of --

3 MR. CAMPBELL: They are still reviewing this, Mr.
4 Chairman.

5 CHAIRMAN ROLLAG: We have to get this done.

6 MR. CAMPBELL: Mr. Bartz, do you have any idea when
7 this survey was done? The date at the top says '92, was it
8 done at that time?

9 EUGENE BARTZ: December 2nd of '92 is when it was
10 done. The reading of it was probably done prior to that. The
11 actual field work coming out was probably done in the first
12 part of November or something.

13 MR. CAMPBELL: It was probably done, the actual field
14 survey was probably done that year?

15 EUGENE BARTZ: Yes.

16 CHAIRMAN ROLLAG: Any objections?

17 EUGENE BARTZ: Hold it. This was his recommendation
18 in '92.

19 MR. CAMPBELL: I think that the Plotters would object
20 on the grounds that this is -- we are trying not to get into
21 making the board make a determination on the drainage issue
22 and this is starting to get in more evidence, the Plotters
23 have an engineer of their own who has made an engineering
24 report and this is starting to get into the crux of I guess
25 the lawsuit and what's going on right now. We would object

1 that it would be irrelevant at this point simply because we
2 don't want to ask the board to make a determination on the
3 drainage, simply to give consideration to the fact that the
4 Piotters feel that the irrigation would be used to do some
5 further pumping and draining the Bartzes' land onto the
6 Piotters.

7 MR. GUHIN: The difficulty I see with the objection is
8 that there's already been testimony from the Piotters about
9 this hole. They were the ones that opened the door, as it
10 were, and now there is more evidence about the hole. I think
11 it's rather hard pressed to keep that evidence out once they
12 have opened the door by testifying about it.

13 CHAIRMAN ROLLAG: Your objection will be overruled and
14 we will accept this.

15 MR. GUHIN: This is document five from the Bartzes.
16 There is also document ten which has not been admitted and
17 that is the answer to the complaint Piotter v. Bartz and I
18 assume that's going to be admitted because the complaint has
19 been admitted so I assume the answer will be admitted, too.

20 CHAIRMAN ROLLAG: We will admit that, too. Now
21 proceed. Francis, you had a question.

22 MR. BRINK: No. Rodney and I I think found it, or
23 Rodney found it.

24 EUGENE BARTZ: Back at that time we asked to have the
25 ditch maintained on their side of the road to the elevation

1 agreed upon in the stipulation of '83, which is 92.9. The
2 ditch had filled up four and a half or four and three quarter
3 inches in that time and I have an engineer's report of that,
4 if need be submitted here if someone objects to my -- that I'm
5 telling a false statement or whatever. Going through this
6 proceeding with Judge Dave Gilbertson, and they had an
7 attorney there and my attorney was also there, the judge ruled
8 that I could not have ditch four open anymore because that was
9 putting more flowage through that culvert and across their
10 land than what originally was agreed upon in '83 and that I
11 also had to retain the half acre of water, not more than a
12 half acre but a half acre.

13 So through an engineer's report, by using vertical
14 slopes, he wasn't going to go through the idea of trying to
15 figure out what a bowl would look like and try to figure the
16 cubic feet of dirt out. I told him don't use vertical slopes,
17 it would be like if you stepped off from a sand beach into a
18 lake that was ten feet deep in the middle of the shoreline.
19 That don't happen, it don't happen in a slough, it's tapered.
20 Vertical slopes using one half acre or holding one half acre
21 computes out to 15,246 cubic feet of dirt removed. I did
22 construct the hole at 20,997 cubic feet, which is 5,751 cubic
23 feet greater than what was necessary, plus you gotta take into
24 consideration it was sloped sides, we used vertical sides on
25 the slough, so it would have retained -- needed to be less

1 than what it was. I'm holding way more water on my land than
2 what was currently agreed upon.

3 The Piotters want me to spread this water around on my
4 land, just so I can't raise a crop on it and make a dollar off
5 of it. They don't care if that water is in that hole, they
6 want it spread out is what they want. Is there any further
7 questions on document five before we go on? That is where the
8 hole -- on the back page of the thing shows the construction
9 of how it was built or how it looks from a vertical,
10 whereabouts it would be, where the culvert is in the township
11 road and the stipulated waterway of 92.9.

12 MR. HOLZBAUER: Could you point on the map again where
13 that hole is at?

14 EUGENE BARTZ: The hole would be approximately here
15 with the culvert approximately here.

16 MR. FREEMAN: The reason you dug the hole was because
17 the Piotters weren't maintaining their culvert?

18 EUGENE BARTZ: Maintaining the culvert or the ditch is
19 correct.

20 MR. HOLZBAUER: That's the reason the hole was dug?

21 EUGENE BARTZ: Yes, to get back in compliance with --

22 MR. HOLZBAUER: Or because you had a half acre of
23 water?

24 EUGENE BARTZ: I had to hold that half acre of water.

25 MR. HOLZBAUER: Because some other places were filled

1 in?

2 EUGENE BARTZ: Yes.

3 MR. HOLZBAUER: Okay.

4 EUGENE BARTZ: One more document. On top of this is
5 document one, document two, document three and document four.
6 You see document one, if you turn pages you are going to come
7 across document two, they are stapled together. You will come
8 across document four towards the end then.

9 CHAIRMAN ROLLAG: Any objections to this one?

10 MR. CAMPBELL: No objection from the intervenors, Mr.
11 Chairman.

12 EUGENE BARTZ: I have highlighted some stuff on --

13 CHAIRMAN ROLLAG: Just a moment.

14 MR. GUHIN: If we have marked the document as Bartz
15 five and Bartz ten, we ought to do Bartz one through five.

16 EUGENE BARTZ: One through four, because we have got a
17 Division 1 through 4.

18 CHAIRMAN ROLLAG: Any objection?

19 MS. BEST: None.

20 CHAIRMAN ROLLAG: These will be accepted, then.

21 MR. GUHIN: It's Bartz 1 through 4 have been
22 accepted.

23 EXHIBITS:

24 (Bartz Exhibit Nos. 1 through 5 and 10 marked for
25 identification and received into evidence.)

1 EUGENE BARTZ: On document one, I have highlighted
2 some of the information on there that I want you to know.
3 When you turn over to the back side of that document, you will
4 see paragraph six is outlined or in parentheses, it says both
5 parties agree to exercise due diligence to keep their end of
6 the culvert free from obstructions that would violate the
7 terms of this stipulation. If you turn to document four of
8 this same pamphlet now, this is Kent L. Duerre, district
9 conservationist out of Sisseton, South Dakota. It says, to
10 whom it may concern, a field check completed in late October
11 of '95 on, and it would be this tract of land here, in Bryant
12 Township indicates fill material, parentheses, soil, placed
13 over the culvert outlet in the township road. To this date,
14 that has not been removed yet, the culvert is still blocked.

15 MR. FREEMAN: I don't see -- it says placed over the
16 culvert in the township road.

17 EUGENE BARTZ: Placed over the culvert in the township
18 road, see attached map. You don't have that on yours?

19 MR. FREEMAN: Yeah, but you said over the culvert
20 outlet in the township road.

21 EUGENE BARTZ: Over the culvert in the township road.

22 CHAIRMAN ROLLAG: Does that mean that there was
23 material put over the end of the culvert where the water
24 flows?

25 EUGENE BARTZ: Where the water would flow out.

1 CHAIRMAN ROLLAG: That would be the culvert outlet?

2 EUGENE BARTZ: Outlet, yes. We had a meeting with the
3 commissioners board of drainage in Roberts County. I want to
4 submit document 14.

5 MR. GUHIN: Could I ask this be marked now?

6 EXHIBITS:

7 (Bartz Exhibit No. 14 marked for identification.)

8 CHAIRMAN ROLLAG: Any objection to this?

9 MR. CAMPBELL: No objection from the intervenors.

10 MS. BEST: I need to read this. It looks like it's a
11 settlement negotiation. I guess if the parties to the
12 settlement agreement or negotiations are in agreement it be
13 admitted, we have no objection.

14 CHAIRMAN ROLLAG: It's accepted.

15 EXHIBITS:

16 (Bartz Exhibit No. 14 received into evidence.)

17 EUGENE BARTZ: As you can see, there was a hearing
18 held February 20th at the commissioners chambers on the
19 plugging of the culvert. This is a letter written to the
20 state's attorney there by their lawyer and it states plugging
21 of the drainage ditch. Well, it's plugging of the culvert.
22 As you can see on the sheet that I had given you prior to that
23 where Kent Duerre said that there was fill put over the
24 culvert, not a plugging of the ditch, even though the ditch
25 does need cleaning also, that they had agreed they were going

1 to clean this debris out and stuff and has not been done to
2 this date. We could go on and on about stuff that's
3 happened. The drainage board of Roberts County is looking in
4 on a lot of this stuff.

5 I'm here applying for drainage rights. This is not a
6 ploy to drain water onto somebody. This is an irrigation
7 deal. I have an irrigation system. If I wanted to take and
8 run water down onto them, I wouldn't have to go buy \$100,000
9 worth of pivot irrigation system. I could set my own pump
10 system up and turn around and just run it over the hill if
11 that's what I was here for. I'm not here for that. I'm here
12 for irrigation permits to irrigate in the late season on corn
13 and beans. At this time I guess to make things short and
14 thank you guys for your time, I'm going to sit down now and if
15 you have any questions, please feel free to ask me at any
16 time.

17 MS. BEST: I do have some questions.

18 EXAMINATION

19 BY MS. BEST:

20 Q. First of all, I don't know if you explained to the
21 board yet or not, but have you already bought your irrigation
22 equipment that you intend to use?

23 A. No, I have not. I am waiting for the permit. I have
24 some bids, if you choose to see that I'm sincere about this.

25 Q. And you are looking at center pivot irrigation

1 equipment for both parcels; is that accurate?

2 A. Yep.

3 Q. What kind of investment do you anticipate making?

4 A. I have the actual figures if you would like.

5 Q. Ballpark.

6 A. \$125,000 with pumping station.

7 Q. With regard to this water flooding drainage dispute,
8 it's pretty obvious that we have some conflicting viewpoints
9 from the parties here, so I'm going to need you to run through
10 this with me again. First of all, we have drainage ditch
11 number four and I've got yet another marker. Can you come up
12 here and write a number four where this drainage ditch was or
13 is?

14 A. Was. Right there.

15 Q. Okay. I need you to put your initial by this because
16 I'm going to make sure -- I'm going to obviously ask the same
17 questions to the other party as well. You are telling me, you
18 are telling the board that this drainage ditch was originally
19 filed as a vested drainage right, correct, with the county?

20 A. I filed it and it comes before the board of
21 committee -- county board. If there's opposition to that
22 ditch, at that time it's heard, and the county board deemed
23 that I did not have that right, so the ditch is now closed and
24 restored back to its original.

25 GLORIA BARTZ: Gene, this is not entered into

1 evidence, which maybe you probably should because that's where
2 it says the ditch number four is closed.

3 A. This here says ditch closed in 1983 and this happens
4 to be his initials of the soil conservation office, Kent
5 Duerre, Sisseton, South Dakota.

6 Q. (BY MS. BEST) So you are saying this is an official
7 record of the soil conservation office?

8 A. Yes, it is. I'm sorry I don't have more of them
9 because I just picked them up when I was coming through.

10 MS. BEST: I have no problem if, as a response to a
11 cross-examination question, we put in another Bartz exhibit.

12 MR. GUHIN: In the meantime, Ms. Best, was a four
13 actually written where you asked him to mark it? I don't see
14 one.

15 MS. BEST: It's just the line. Go ahead if you want.
16 Put the number four there.

17 A. That ditch is no longer in use, it was closed in '92.
18 Kent looked at his records and when he deemed it closed that
19 he could tell was '93 and that's what is on there, so it has
20 been closed since '93, according to his records.

21 Q. (BY MS. BEST) I'm going to ask you some more
22 questions about that as soon as Mr. Campbell has an
23 opportunity to speak to the exhibit.

24 A. That map will also show you directions of what way
25 water flows off of this land that's in question here. I'm

1 sorry I didn't have a map of the upper parcel there that shows
2 directions of water.

3 MR. CAMPBELL: I believe the Piotters would object as
4 to lack of foundation as to we don't know exactly what this
5 document is and who produced it.

6 MR. GUHIN: Where did the document -- tell us about
7 this document, where did it come from and how do you know it
8 came from the place you think it came from?

9 A. Kent Duerre's office out of Sisseton, South Dakota, I
10 picked it up before I come out to Pierre.

11 MR. GUHIN: You picked it up from his office?

12 A. From his office, right from him.

13 MR. GUHIN: Do you want to ask him a question?

14 MR. CAMPBELL: Assuming of course that Mr. Bartz is
15 telling the truth, I guess we would have no objection on that
16 grounds. We also, the intervenors submitted documentation
17 from Mr. Duerre's office, so again assuming that is the case,
18 there would be no objection.

19 MR. GUHIN: I wonder if we could get this document
20 marked before we go any further.

21 GLORIA BARTZ: We didn't have it labeled so put
22 whatever you want on it.

23 EUGENE BARTZ: Put 16, please.

24 EXHIBITS:

25 (Bartz Exhibit No. 16 marked for identification.)

1 MS. BEST: The exhibit has been admitted?

2 CHAIRMAN ROLLAG: Accepted, yeah.

3 EXHIBITS:

4 (Bartz Exhibit No. 16 received into evidence.)

5 Q. (BY MS. BEST) Mr. Bartz, how was this ditch filled
6 in?

7 A. I have a scraper and a Cat Challenger I do my own
8 ditch cleaning and work with, so I filled it in personally.

9 Q. You physically took construction equipment, filled
10 in --

11 A. Ditch four.

12 Q. -- ditch four, the entirety of the ditch, you didn't
13 plug the end of the ditch, you filled in the entire ditch?

14 A. The entire thing is plugged.

15 Q. It's filled. Then could you point out for me, I think
16 it's already on the square there, but I want to make it 100
17 percent clear where the constructed, if you will, retention
18 pond is.

19 A. Do you want that in blue?

20 Q. Go ahead and use this red.

21 A. It's on top of that red line, though. It's right
22 here. Do you want me to mark it in red again?

23 Q. Why don't you put a little arrow there and put
24 retention pond. Then there is an issue, as I understand it,
25 there is an issue with a third structure and that is a

1 culvert, correct?

2 A. The culvert is in the township road.

3 Q. That's the place where it's -- okay. There's some
4 confusion with whether you complied with the county's
5 requirement that ditch number four be filled in. Do you have
6 any idea why that confusion would occur?

7 A. Because I was claiming vested drainage rights and if
8 you claim them and once the county deems it to you, you cannot
9 have -- no one can come back and ask you to close a ditch.
10 It's fine, the system works well, I can't argue that. The
11 county had an objection to ditch four from the trust land
12 people that own Indian land there and the Piotters. After
13 realizing this, that I was not allowed to drain water, through
14 litigation with Judge Gilbertson and stuff, I had already
15 closed the ditch prior to that hearing, that was already
16 closed and it is now totally restructured back to the way it
17 was.

18 Q. The dugout was constructed when? I just need to know
19 what year.

20 MR. FREEMAN: You said earlier '93.

21 A. I didn't have an extra one of them copies. It's in
22 the one where it says -- with the red lines on it.

23 GLORIA BARTZ: 3A, wherever that's at.

24 MR. FREEMAN: Is this what you are talking about?

25 A. Yes, the dugout would have been constructed in the

1 fall of '91 because -- or fall of '92 because he come out then
2 in November and looked at it and then he wrote that up in
3 December when he had time.

4 Q. (BY MS. BEST) That's consistent with the court order;
5 is that correct?

6 A. That I had to put the dugout there?

7 Q. Right.

8 A. No.

9 Q. Why did you put the dugout there?

10 A. To retain the half acre of surface water that was once
11 agreed upon in '83.

12 Q. Was that a court approved agreement?

13 A. Yes, that was.

14 Q. So the dugout goes back to an old 1983 agreement, the
15 ditch number four goes back to the validation of vested water
16 right proceedings with the county. How are those two things
17 interrelated?

18 A. Ditch four also goes back to the stipulation of '83
19 because I was putting more water down through the culvert than
20 was deemed right in '83, according to what Judge Gilbertson
21 said. If you read the stipulation, there's no place in the
22 stipulation that reads where I could not put more, it's fine
23 little words that lawyers like to use, limited prescriptive
24 easement, and the agreement is in front of you there on this
25 deal of how they worked around getting it so that I was not

1 allowed to use the culvert, which is fine. I plugged up ditch
2 four, there's no problem with that, I'll live with it.

3 This is not a drainage deal here. You guys know as
4 well as I do that it costs money to pump water and you are not
5 going to pump water just to flood someone out. Furthermore,
6 who would want to spend, let's say this one -- this pivot down
7 here is forty some thousand and the other one is sixty some
8 thousand and the pumping station is 10,000. Who would want to
9 spend forty some thousand dollars to pump water onto another
10 neighbor's land when I have a pumping system of my own right
11 now I could do it without spending that money? I'm here to
12 benefit my ground, add more crop, more bushels to my
13 production out there by just giving it one or two or three
14 inches of rain in the right time. Is there any further
15 questions?

16 CHAIRMAN ROLLAG: Any more questions for Mr. Bartz?

17 MR. BRINK: You have pumped on there before, haven't
18 you?

19 EUGENE BARTZ: Yes, I have. In fact I pumped from
20 where this slough is all this piece here, we used to have
21 alfalfa back in the early seventies, even mid sixties, we have
22 the irrigation of alfalfa in there. No, no water run down
23 there and flooded across the land. The only reason I'm not
24 using that system, it's a gun system, it takes too much time,
25 it demolishes too much crop because you gotta pull a trailer

1 through the field, hook pipe up, you probably all understand,
2 it's too time consuming. This is much more -- covers more
3 ground, much more efficient.

4 Q. (BY MS. BEST) Let me ask you this. With respect to
5 this culvert, I guess I'm a little confused here as to exactly
6 what happened. What's the status of the culvert at the
7 present time?

8 A. It's covered.

9 Q. It's covered with dirt. Are you telling me that the
10 entire reach of the culvert is filled with dirt, is that what
11 you mean?

12 A. At one time it was totally covered with dirt --

13 GLORIA BARTZ: The south end.

14 A. The south end of it, the north end, which is my end,
15 is totally open. Last spring when -- when I say south end,
16 that would be onto the Piotters' side, the north side would be
17 my side. Last spring when the water got high enough on my
18 side of the road, it pushed a small hole this big probably up
19 through the dirt and then run down towards the ditch, still
20 leaving the culvert, after all the runoff has been off, still
21 leaving that culvert plum full of water, which will in turn
22 some day totally silt in because water has to run completely
23 through a culvert to empty the bottom out. It will silt that
24 culvert in.

25 Q. (BY MS. BEST) Do you have any idea how much soil is

1 in front of the culvert?

2 A. It's a 16-inch culvert, there's over 16 inches of dirt
3 in front of it, depth. If there's any discrepancy to my
4 statements here, I guess I'd be willing to wait until the snow
5 disappeared this spring and have somebody down there that
6 would be very qualified that you guys would approve of take a
7 look at whether you think I'm telling the truth or not or
8 whether they will be telling the truth.

9 MR. FREEMAN: Am I correct the Piotters' attorney
10 assured the state's attorney that you weren't going to have to
11 have a county commission meeting because the Piotters were
12 going to unplug their end of the ditch?

13 A. It hasn't been done.

14 MR. FREEMAN: That's what one of the exhibits says.

15 A. It hasn't been done.

16 Q. (BY MS. BEST) Let me ask the next obvious question.
17 Is the south end of that culvert snow covered at the present
18 time?

19 A. Oh, yes, everything is snow covered up there.

20 Q. That answers a great deal.

21 A. Quite snow covered. It would be impossible to take a
22 look at it until the snow disappears.

23 Q. We don't know whether there's seepage through the
24 culvert this spring or there will be?

25 A. There will be water that will flow through the culvert

1 because it boiled a hole up through the dirt from pressure and
2 that will probably do it again, but there will still be 15 or
3 16, 17 inches of dirt in front of that culvert that has got to
4 go up over where it pushes it up through, meaning that once
5 that runs off, that culvert is still going to be full of water
6 16 inches deep instead of four inches deep, according to the
7 agreement back in '83.

8 Q. On a different related subject; you do understand --
9 do you understand that the water laws of the State of South
10 Dakota would not allow for you to irrigate in excess of what's
11 needed for your crops?

12 A. That's right.

13 MS. BEST: I have nothing further.

14 CHAIRMAN ROLLAG: Mr. Bartz was in rebuttal here.
15 Anybody have any questions for him? Thank you very much.
16 Anyone else want to rebut anybody else?

17 CONNIE PIOTTER: I believe you looked at these
18 pictures already.

19 MS. BEST: Those photographs are the ones that were
20 sent in to the state in a petition to intervene so they are
21 already in the record.

22 CHAIRMAN ROLLAG: They are already in the file.

23 CONNIE PIOTTER: Can I have them back so I can refer
24 to them? One other thing that I would like to refer to but I
25 wasn't planning on it, so I only have the one copy, if you

1 want to make copies, is this -- how do I do this?

2 CHAIRMAN ROLLAG: You have to show it to the attorneys
3 and our attorney.

4 MS. BEST: Whether it's objected to or not, I imagine
5 it's offered. . . I would ask at this time if we can take a
6 five-minute break.

7 CHAIRMAN ROLLAG: Five-minute break.

8 (Whereupon, the hearing was in recess at 1:30 p.m.,
9 and subsequently reconvened at 1:40 p.m., and the following
10 proceedings were had and entered of record:)

11 EXHIBITS:

12 (Piotter Exhibits B, C and D marked for
13 identification.)

14 CHAIRMAN ROLLAG: Did you get a document number on
15 that?

16 MR. GUHIN: I think the court reporter has marked the
17 three photographs but I don't believe the written document has
18 been marked.

19 EXHIBITS:

20 (Piotter Exhibit E marked for identification.)

21 MS. BEST: No objection to Exhibit E.

22 CHAIRMAN ROLLAG: Do you have any objections to it,
23 Mr. Bartz?

24 EUGENE BARTZ: Could I finish reading it, please?

25 CHAIRMAN ROLLAG: Sure.

1 EUGENE BARTZ: I guess at this time I'm a little lost
2 on some of the stuff in here, but they may be explained as
3 they will go along. I will accept it as entered in.

4 CHAIRMAN ROLLAG: We will accept that, then. Is that
5 the only copy? This would be Piotter Exhibit E. These photos
6 have also been given labels and so on.

7 EXHIBITS:

8 (Piotter Exhibit E received into evidence.)

9 MR. GUHIN: Those are B, C and D, Piotter B, C and D.
10 They have not yet been admitted I don't believe.

11 CHAIRMAN ROLLAG: They were in the file, weren't
12 they?

13 MR. GUHIN: I don't believe they are admitted as part
14 of the substantive evidence in the case.

15 CHAIRMAN ROLLAG: Is there any objections to these?

16 EUGENE BARTZ: I haven't seen them, if that counts for
17 anything.

18 CHAIRMAN ROLLAG: Any objections?

19 EUGENE BARTZ: No.

20 CHAIRMAN ROLLAG: These will be accepted.

21 MR. GUHIN: Piotters B, C and D.

22 EXHIBITS:

23 (Piotter Exhibits B, C and D received into evidence.)

24 CONNIE PIOTTER: How do I do it? Do I tell you what
25 each picture is about and let you pass it on?

1 MR. GUHIN: Identify the picture and describe it and
2 pass it on.

3 CONNIE PIOTTER: By the exhibit number? Exhibit
4 number B shows ditch four in the summer of '96, still open,
5 still running water on us. Exhibit C was taken by Lila
6 Raeburn, the daughter of the owner at that time in 1987 and
7 shows fresh dirt work done immediately prior to that date in
8 the area of Section 8, right north of the culvert that was in
9 the court case, that was kind of a depression or a slough and
10 it shows where it has been filled in, in 1987. Exhibit D was
11 taken on April 10th, 1993 and it shows fresh scraper marks
12 where Eugene Bartz took dirt from the section line road
13 between Sections 8 and 17 in the area separating the two
14 sections between the north and the south there, he did this in
15 the fall of 1992. If I could point out, I say it on the back,
16 it's facing east so this is the land -- we are facing east, so
17 this is north. Just wait for you?

18 MR. HOLZBAUER: On this Exhibit B where this pickup is
19 sitting on this little trail or road, is that the section
20 line?

21 CONNIE PIOTTER: That is the section line.

22 MR. HOLZBAUER: That is the section line where that
23 pickup is sitting in this picture?

24 CONNIE PIOTTER: I believe the pickup is sitting
25 exactly where a pickup should go in the section line.

1 MR. HOLZBAUER: Where is the culvert in this section
2 line in relationship to this pickup?

3 CONNIE PIOTTER: I have to look and see where we are
4 at.

5 MR. HOLZBAUER: Where is that culvert in question?

6 CONNIE PIOTTER: It would be -- this is up in, way up
7 in -- this is way up here at kind of like the beginning of
8 ditch four and I believe the pickup would be facing to the
9 east so that the culvert in the court case would be way behind
10 it.

11 MR. FREEMAN: Mrs. Piotter, have you all plugged up
12 your end of the culvert?

13 CONNIE PIOTTER: No. Do you want me to go ahead with
14 that or do you want me to wait until you are done viewing the
15 pictures?

16 MR. FREEMAN: I guess we will wait for the pictures.
17 I jumped the gun.

18 MR. HOLZBAUER: This here picture in relationship to
19 this fresh dirt, we are supposed to assume that that is ditch
20 four?

21 CONNIE PIOTTER: No.

22 MR. HOLZBAUER: What is this now?

23 CONNIE PIOTTER: I said this fresh dirt that is in
24 that picture comes from this low spot just north of the
25 culvert being filled in on Bartzes' land.

1 MR. BRINK: That was in '87?

2 CONNIE PIOTTER: Yes. August of '87, is that the date
3 on there?

4 MR. HOLZBAUER: There is no date on here.

5 CONNIE PIOTTER: The court papers were filed in 1986
6 and they had it filled in by 1987. I believe I have a date on
7 there.

8 MR. HOLZBAUER: Bartz '87 it says, but I don't know if
9 that means anything.

10 CONNIE PIOTTER: That's when it was taken. It was
11 taken by another party, I have that on there.

12 MR. HOLZBAUER: I'm sorry.

13 CHAIRMAN ROLLAG: You may proceed.

14 CONNIE PIOTTER: What was the question again?

15 MR. FREEMAN: Have you plugged up your end of the
16 drainage culvert?

17 CONNIE PIOTTER: No. There is no dirt on top of the
18 culvert on the section line road, that's what I think I heard
19 Mr. Bartz say. No. I have so much --

20 MR. BRINK: Could there be more than one culvert
21 across there?

22 CONNIE PIOTTER: Apparently there must be. I only
23 know of one. I didn't bring in a tenth of what I have because
24 I didn't want to take up your time, I didn't want to turn this
25 into a drainage issue, I just wanted to point out that we have

1 been misled in the past. In the fall of -- in November of
2 1995, Eugene Bartz came out here on this culvert between
3 Sections 17 and 8 and dug a big hole on our side south of the
4 section line, he came onto our land and dug a big hole and
5 when we noticed that the ground was mostly frozen already, we
6 tried nevertheless to push that dirt back in the hole so we
7 wouldn't be sitting here until next year with a big hole, and
8 we couldn't, we were unable to do so. There was ice, frozen
9 dirt, big clumps, we just had to leave it. I suppose maybe
10 somebody got the idea we had plugged the culvert, but we did
11 not.

12 MR. FREEMAN: Doesn't your attorney say that Piotters
13 will return the ditch to its proper level as indicated in the
14 prescriptive easement this spring when conditions permit?

15 CONNIE PIOTTER: Right, and what he means on there is
16 we are trying to fill in this hole that Eugene Bartz dug and
17 there was probably some of these frozen clumps that were in
18 the ditch.

19 MR. FREEMAN: Why would you fill in a hole that they
20 dug?

21 CONNIE PIOTTER: It's on our land. He dug a hole on
22 our land.

23 MR. FREEMAN: I still don't understand why you would
24 agree to fill it in, why didn't you tell him to fill it in if
25 he's the one who dug it?

1 CONNIE PIOTTER: We have been trying to -- we hired
2 lawyers to tell him to fill in ditches and he says he's done
3 so and he hasn't. He came in and without permission,
4 without --

5 MR. FREEMAN: There was going to be -- wasn't there
6 going to be a hearing before the Roberts County Commission
7 acting as a water board to determine Mr. Bartz made a claim
8 that you all plugged the drainage ditch and they set a hearing
9 for February 20th, '96, and your attorney then says it won't
10 be necessary to have a hearing on Mr. Bartz's claim because
11 you all are going to remove the dirt and put it back at its
12 proper level?

13 CONNIE PIOTTER: Right, I'm trying to explain. I'm
14 talking about this document 14 is written on top of my copy,
15 that's what I'm referring to. I'm maybe not doing it right.
16 But what started it was in the fall, in November I believe of
17 1995 Eugene Bartz came onto our land, dug a big hole on
18 Section 17 and the culvert. We were trying to put the hole
19 back just so we didn't have all winter and all spring and
20 summer with this inaccessible dirt pile, and he brought I
21 believe a soil conservation person who said that, yeah,
22 there's a dirt pile there in front of the culvert. This was
23 not our dirt pile, we didn't make it, but we said that we
24 would make that ditch, which extends from the culvert down, by
25 the court papers, we would make sure that that ditch or pile

1 of dirt was smoothed out, that it wasn't sitting in front of
2 the culvert. That's what this says our lawyer told him.

3 MR. FREEMAN: My question is, why didn't you go to the
4 county commissioners and tell them that this gentleman dug a
5 hole and plugged the ditch on your side?

6 CONNIE PIOTTER: We did. We did bring it up to the
7 county commissioners. Lavonne Ringsocker viewed it twice, one
8 of the county commissioners. We brought it up to the county
9 commissioners what had ensued here and they advised us that if
10 we have a drainage problem, we just have to hire a lawyer and
11 go to court because it's actually his word against ours, I
12 suppose. I don't want to bring this -- I don't want to drag
13 this -- I have so much more that I could show you but your
14 time is important, too. The only thing I want to refute -- I
15 don't know what you have on this Larson Engineering letter, if
16 you have a number. You got copies, right?

17 MR. HOLZBAUER: E, Exhibit E.

18 CONNIE PIOTTER: I want to bring your attention to the
19 middle paragraph with the heading drainage north side of
20 quarter. If you would look, it was surveyed in 1993 and this
21 is a year after it's purported to be surveyed by the Bartz's
22 engineer, I believe if I'm correct, and it was found to be --
23 he says, the ditch meets the requirements of the agreement,
24 he's talking about the 1983 agreement. I don't know what more
25 I can do to refute what Mr. Bartz has said, but I have the

1 surveyor measurements I could bring in. It also says the
2 drawing -- he's talking about the big map with all the
3 measurements -- shows where the section line road has started
4 to have been removed to try to force the water onto our land.
5 The road is an impediment to the water coming across Mr.
6 Bartz's land onto ours and he's removing it, as you can see by
7 the photographs and this engineering report.

8 The county commissioners checked the culvert in the
9 spring of '96 and at the end of November of '96 and the
10 Roberts County Commissioners, all of them in the spring agreed
11 that that culvert was open, it is open today. Lavonne
12 Ringsocker, one of the county commissioners, came in November
13 of '96, declared that culvert was open and clear. We have
14 been going through this for years and years and years and
15 years and I don't want to turn this into a come back again
16 tomorrow with more proof, although I can do so. All I want to
17 do is point out that we can't trust Mr. Bartz's word and we
18 have a court case now to try to clean this up. We filed the
19 papers, I think that he's right, they did get served on them
20 sometime in December and I don't know really why there hasn't
21 been a deposition date settled yet, but it is ongoing.

22 If court papers were checked, this is the only time we
23 have instigated a court suit against Mr. Bartz and I believe
24 he's instigated it, he or his father or his brother have
25 instigated lawsuits or legal claims against us at least six or

1 seven times and then dropped them and didn't do anything. We
2 are going to continue this. I either ask you to wait until
3 this court case has gone through the courts, and it will, it
4 will be wrapped up this '97, otherwise I'm begging you to not
5 let him drain any more water on us. I have got a lot more
6 letters and stuff, but it all pertains to ditching and it's
7 only to show you that we can't trust him.

8 MR. FREEMAN: Ms. Piotter, I don't mean to beat a dead
9 horse, but if as you claim, Mr. Bartz plugged up your end of
10 the drainage or the culvert, wouldn't the water then back up
11 on his land?

12 CONNIE PIOTTER: No, I didn't say he plugged up our
13 end of the culvert, he did not.

14 MR. FREEMAN: He dug a hole.

15 CONNIE PIOTTER: He dug a hole. He dumped the dirt
16 kind of in front of it, kind of beside it and in the process
17 of trying to smooth that ditch back to where it's supposed to
18 be, some of the dirt was remaining in the ditch course
19 itself. He did not plug up the end of the culvert and neither
20 did we.

21 MR. FREEMAN: Thank you.

22 MS. BEST: If I may, I'd like to ask a couple of
23 cross-examination questions.

24 EXAMINATION

25 BY MS. BEST:

1 Q. Drainage ditch four, it has been filled in; is that
2 correct?

3 A. No.

4 Q. It's not filled in at the present time?

5 A. No.

6 Q. Do you dispute where drainage ditch four is, is Mr.
7 Bartz's drawing an accurate drawing?

8 A. Okay, yes, I do.

9 Q. You do dispute that?

10 A. It's on the maps that everyone has. It comes -- it
11 swings across into ours a little more.

12 Q. Could you draw that on this map?

13 A. I'm not going -- I won't be accurate unless I have the
14 map we all have, but it kind of swings across onto ours and
15 then kind of goes up.

16 Q. Could you put your initials? That gives us a better
17 feel for what the difference of opinion is there. Is there
18 another drainage ditch near what you feel is drainage ditch
19 four, are there two drainage ditches there?

20 A. I believe it's the picture with the pickup, I forgot
21 the number. It was kind of showing this, but what it was
22 showing was water coming -- okay, where the black is is still
23 water I think is kind of what it showed on that picture and
24 according to Mr. Larson's engineering letter, he is saying
25 when he surveyed it, that the Bartzes have removed the road

1 grade right where I drew the black line along the section
2 line, in effect turning the road into a drainage ditch.

3 Q. I see you have a photograph there to provide
4 additional support for what you were just explaining. Let's
5 go ahead and look at that photograph. Can you explain to me
6 what that is?

7 A. This is a picture of the hole Eugene Bartz has dug.
8 It's kind of hard to see where the culvert is but our end of
9 the culvert should be roughly here.

10 Q. Is this hole on your property?

11 A. Completely.

12 Q. This is not the engineered hole that Mr. Bartz talked
13 about previously?

14 A. No.

15 EUGENE BARTZ: Is that going to be submitted into
16 evidence? How close is this hole to the culvert?

17 A. From where it starts, maybe --

18 EUGENE BARTZ: One foot?

19 A. Maybe four feet, three feet. It's hard to say because
20 it was frozen under the ice, the snow and the frozen dirt.

21 EUGENE BARTZ: The hole was dug by me, it's inside the
22 road right-of-way. At the time the culvert was plugged over,
23 I donated my time to the township to open that culvert back
24 up. I had okay from the township board to do it. Within the
25 next week, it was filled back in and that's when I had Kent

1 Duerre come out and relook at it. That's his document four.
2 That's his signature and everything.

3 MS. BEST: Let's stop right here, get the exhibit
4 marked.

5 EXHIBITS:

6 (Piotter Exhibit F marked for identification.)

7 EUGENE BARTZ: The hole is no deeper than the bottom
8 of the culvert.

9 MR. FREEMAN: We can't take testimony.

10 Q. (BY MS. BEST) Mrs. Piotter, I have some further
11 questions. You gave me a photograph of a hole in response to
12 my question about this old drainage ditch number four. What
13 does this hole have to do with drainage ditch number four?

14 A. I'm sorry, I didn't realize you were talking about
15 four. This picture has to do with the culvert here.

16 Q. Okay. With regard to -- so with respect to the
17 irrigation application that's being applied for here today,
18 how does drainage ditch number four enter into that?

19 A. The only reason we bring it up is because Mr. Bartz
20 agreed to close it up, sign a stipulation agreeing that he had
21 closed it up and he did neither of those things. I bring it
22 up to show or to point out that his word is no good.

23 Q. So you are not bringing it up to show that the water
24 is going to flow this way now?

25 A. Not --

1 Q. That the irrigation will cause and aggravate this, or
2 is that your --

3 A. In a sense maybe, yes, because I'm saying ditch four
4 still takes the water from the southeast corner of Section 8
5 and brings it over and eventually goes through this culvert,
6 which is why the Roberts County commissioners told Mr. Bartz
7 he had to close it up, but he did not do so, so if he does
8 irrigate anything, it will go through.

9 Q. When was the last time you saw ditch number four?

10 A. Probably September or October of last year. Because
11 we have got so much snow, I haven't been over there since.

12 Q. So as of September or October of last year, the ditch
13 had not been filled?

14 A. Right. The photographs that I show you are taken in
15 the spring -- or the summer so you see the water, it's easier
16 to see where the water flows than it is to see where the land
17 lays and that's the only reason. I have a couple more I would
18 like to enter.

19 Q. Let's talk about this culvert business. Explain this
20 hole as it relates to the culvert in this photograph.

21 MS. BEST: Did you object to this exhibit or not? You
22 started testifying about it.

23 EUGENE BARTZ: Can I say something about it
24 eventually?

25 MS. BEST: Yes.

1 EUGENE BARTZ: No, I will not object to it.

2 MS. BEST: I think we have been pretty loose here and
3 I ask it be admitted.

4 CHAIRMAN ROLLAG: Very loose.

5 EXHIBITS:

6 (Piotter Exhibit F received into evidence.)

7 Q. (BY MS. BEST) It's very difficult to get to the
8 precise nugget that needs to be decided here.

9 A. This little red mark constitutes the culvert, I
10 believe.

11 Q. Yes.

12 A. That hole would be kind of south of that.

13 Q. Is there any question in your mind that the culvert
14 you were talking about, which is represented in the red line
15 that you just pointed to, is there any question that you and
16 Mr. Bartz are talking about two different culverts?

17 A. No.

18 Q. And the hole was on your side of the culvert?

19 A. Yes.

20 Q. And who dug the hole?

21 A. Eugene Bartz.

22 Q. So there's a hole there, the hole was dug and then
23 there's fill from that hole that's up over the end of the
24 culvert; is that accurate?

25 A. No.

1 Q. Tell me more correctly how you would characterize
2 that.

3 A. He just dug a hole and dumped the dirt on the side of
4 the hole.

5 Q. It happened to cover the culvert?

6 A. No, I don't believe it covered the culvert. A little
7 maybe, maybe not. Like you take a loader, you dig a hole and
8 dump the dirt on the end. He wasn't sitting on the culvert
9 when he dug, it was more slant, so we don't have green there,
10 shall I use green? If you want me to draw a circle where the
11 hole is.

12 Q. Use this black marker and put your initials by it.

13 A. The culvert is roughly a little closer maybe. This
14 would be the hole and I believe the fill was kind of here and
15 here, maybe a couple little clumps did touch on the culvert
16 but the majority of it was over.

17 Q. Do you have any idea how the culvert -- do you think
18 that the culvert was actually covered with dirt on the south
19 side?

20 A. Part of it could have been.

21 MR. BRINK: Is that what we are looking at in this
22 last exhibit, is that the hole that was dug on the end of the
23 culvert?

24 A. Yes. I have a better -- a couple better ones I would
25 like to enter into evidence.

1 Q. (BY MS. BEST) Let me ask you this question, what does
2 the existence of the hole have to do with this case?

3 A. Mr. Bartz brought it up. The existence of the hole is
4 to point out the fact that Mr. Bartz is unscrupulous in the
5 fact he will enter onto someone else's private land to make
6 corrections in how he feels the land should lay and he's
7 unscrupulous in the fact that he tries to twist the facts and
8 say that we plugged the culvert up in the first place. He's
9 unscrupulous in the fact that he will turn around and he will
10 start a lawsuit over something that he started in the first
11 place. He did the same thing in 1983, dug a big hole by the
12 culvert and then sued the previous owner of the land.

13 Q. So basically it goes to reputation or credibility as
14 opposed to how the irrigation practices would occur?

15 A. Right, this really has nothing to do with the
16 irrigation, this hole. I will be the first to admit that.

17 Q. So if a person were to purchase center pivot
18 irrigation equipment and irrigate these parcels, is there any
19 way in your mind they can irrigate those parcels without
20 causing seepage onto your property?

21 A. I don't believe so.

22 Q. So you would resist this application whether they were
23 irrigating using generally accepted irrigation practices or
24 not?

25 A. Well, I know my son just bought a quarter of land and

1 if Mr. Bartz can dry this land up, he will have accumulated
2 quite a bit of workable land, and a quarter of land nowadays
3 in Roberts County is in excess of 100,000. We have another
4 large area up there that would be plantable if it was drained,
5 too. Economically speaking -- this is really nothing to do
6 with -- I just want to point out, and I don't want to go into
7 detail --

8 DANIEL PIOTTER: Can I say something here?

9 MS. BEST: No.

10 Q. (BY MS. BEST) Mrs. Piotter, the question I need to
11 know is, if Mr. Bartz irrigated using accepted irrigation
12 practices, would you still object to the application or are
13 you objecting because you are assuming he will not use
14 appropriate irrigation practices? That's where I'm coming
15 from.

16 A. I guess from experience, I would have to object
17 because we have had many years of bad agreements.

18 MS. BEST: I have no further questions. Thank you.

19 CONNIE PIOTTER: Can I enter these?

20 MS. BEST: I think Mr. Campbell probably may have some
21 additional dialogue here with you. Thank you.

22 MR. CAMPBELL: I think the board has seen enough
23 pictures, I'm not sure that these will add anything and if you
24 don't have anything further to testify to.

25 MR. BRINK: This is a section line road, right, that

1 you are on?

2 CONNIE PIOTTER: Yes.

3 MR. BRINK: It may not be an approved section.
4 Section line right-of-way is 66 feet. Would you say that that
5 hole that's dug out there is more than 33 feet from the middle
6 of the road? Is it on your land or is it in public
7 right-of-way?

8 CONNIE PIOTTER: I would say it's more than 33 feet
9 and if I was able to enter one picture into evidence, it would
10 show it. Would you accept one?

11 MR. CAMPBELL: We would offer another picture subject
12 to Mr. Bartz's objection.

13 MR. BRINK: Do you own a backhoe?

14 CONNIE PIOTTER: No.

15 MR. BRINK: Do you know if Mr. Bartz owns a backhoe?

16 DANIEL PIOTTER: He has used a big pay loader.

17 CONNIE PIOTTER: A scraper or a loader or whatever,
18 yes, is what he usually uses.

19 MR. BRINK: Tractor backhoe?

20 CONNIE PIOTTER: I have no idea, I know he hired -- I
21 thought he hired the big excavation done but I'm not sure.

22 MR. BRINK: Do you own a backhoe?

23 EUGENE BARTZ: No, I own a pay loader and the township
24 board asked me to clean out the mouth of that culvert, which I
25 did, and I was within the 33 feet.

1 EXHIBITS:

2 (Piotter Exhibit G marked for identification.)

3 MR. GUHIN: This has been marked Piotter Exhibit G.

4 CHAIRMAN ROLLAG: This will be accepted and you can
5 explain to us what you wanted to use this photo for.

6 EXHIBITS:

7 (Piotter Exhibit G received into evidence.)

8 CONNIE PIOTTER: I don't know what number the other
9 one was, I gave you a picture of F. Can I compare them?

10 Picture G depicts the section line road facing to the east and
11 it shows the pile of dirt amid the ice and the snow. That is
12 also shown on Exhibit F. Is that good enough?

13 MR. FREEMAN: Could I ask you a question about Exhibit
14 G? The trees in the background, where would they be on our
15 map here? Would they be to the east?

16 CONNIE PIOTTER: I believe they would be -- let me
17 see.

18 MR. FREEMAN: I guess I don't see any drainage ditch.

19 CONNIE PIOTTER: The lighter trees you are talking
20 about.

21 MR. FREEMAN: I don't see any ditch four in this
22 picture.

23 CONNIE PIOTTER: Right, you won't. This is right here
24 and you are seeing, it's facing east and you are seeing some
25 trees way back over here, but this is what, three quarters of

1 a way down the section to the east is where the ditch four
2 would be.

3 MR. FREEMAN: Thank you.

4 CHAIRMAN ROLLAG: Do you care to say anything else?

5 CONNIE PIOTTER: I'm talked out.

6 MR. CAMPBELL: Does the board have any other
7 questions?

8 CHAIRMAN ROLLAG: Does the board have any more
9 questions for Mrs. Piotter? Thank you. Anyone else want to
10 say anything regarding this matter?

11 EUGENE BARTZ: I'd like to have a few comments about
12 the pictures that were introduced, if possible.

13 CHAIRMAN ROLLAG: Go ahead.

14 EUGENE BARTZ: The other two or three pictures first.
15 This is ditch four here it says, Exhibit B. Now, if ditch
16 four is working, this is the township road where the pickup is
17 sitting, if ditch four would be working, there would not be
18 water alongside that road. Am I correct? So ditch four is no
19 longer working. Where the pickup is sitting is here, the
20 little ditch that you see in the picture happens to be this
21 tail right here of this thing, the ditch used to go kitty
22 corner across the field. If that ditch was still there, that
23 water would not be sitting in that road ditch there.

24 MR. BRINK: Is that looking west?

25 EUGENE BARTZ: Yes. That is looking west. That is

1 water on my land. The water cannot cross onto their land
2 because of the road, as you see. The road is actually holding
3 the water there. The road has not been moved. I do not deny
4 this picture here one bit, I put dirt in that slough, you bet
5 I did. Here is that same road, this is a picture taken to the
6 east, water on both sides, the road is still there. If the
7 ditch was there, this -- if the ditch was operable, this water
8 would not be here, it would go down through here and through
9 that culvert then, so the ditch is not operable, by their
10 pictures.

11 The other pictures, the ones with the culvert, I think
12 if the court -- what I can remember back, she stated that the
13 hole was dug about four to five feet away from the culvert.
14 Take an eight-foot bucket on a pay loader, add four feet to
15 it, but I was right next to the culvert, but add four feet to
16 it, you come up with 16 feet. Half of that culvert would be
17 another 16 feet at the maximum. I was within the road
18 right-of-way. I cleaned out the opening or the exit out of
19 that culvert is what I did and within a week it was covered
20 over again, by Kent Duerre's --

21 MR. BRINK: Did you personally expose the end of it?

22 EUGENE BARTZ: Yes, I did. And if there's any
23 questions to my statements here, I'm willing to wait on this
24 application here, the bottom one, and we will get somebody out
25 there this spring that will look at it and give you a

1 firsthand view if that's what it takes. This one up here
2 pertains nothing to them, no water ever runs this direction.
3 If they say it does, and I can prove them wrong, then I
4 challenge them then to say, I will take and pull my rejections
5 out on these applications and let them go through scot free.
6 That's how sure I am about it.

7 I want to thank the board for their time and I want to
8 thank all the other people that were in here for their time
9 also. If there's any other further questions.

10 MR. BRINK: There would be no advantage to you to plug
11 the end of that pipe.

12 EUGENE BARTZ: No, there wouldn't. That's why I
13 opened it.

14 MR. FREEMAN: I have a question of Mark. Do we have
15 any topographical maps or anything to show whether the top one
16 would have any potential drainage south?

17 MARK RATH: Just looking at this map, we have got --
18 there is a hill set in here, there is somewhat of a hill, high
19 point here, looks like a low area through there, so most of
20 this stuff, other than this, if it did run off, most of it
21 would be going that way and some of it going off into this.
22 It's kind of a long way around.

23 MR. FREEMAN: It would be extremely unlikely?

24 MARK RATH: Yes, unless there was a lot of, extreme
25 amount of that.

1 MR. FREEMAN: It would do it whether it was irrigated
2 or not?

3 MARK RATH: Uh-huh.

4 MR. FREEMAN: Thank you.

5 CHAIRMAN ROLLAG: Any other statements from anyone?

6 CONNIE PIOTTER: Can I enter one more into evidence to
7 refute his last statement?

8 EXHIBITS:

9 (Piotter Exhibit H marked for identification.) H.

10 CHAIRMAN ROLLAG: What's the number of that exhibit?

11 CONNIE PIOTTER: H.

12 CHAIRMAN ROLLAG: We will accept that one.

13 EXHIBITS:

14 (Piotter Exhibit H received into evidence.)

15 MS. BEST: I don't need to see it, that's fine.

16 CONNIE PIOTTER: I offer this picture in showing
17 something called a ripper that Mr. Bartz uses that digs deeper
18 than a plow. I don't understand it, and he does this along
19 and in effect takes away the section line road. The pickup
20 that you see is where the wheel tracks should be. The trench
21 is dug on Mr. Bartz's side, actually it's dug on the road
22 itself, but that constitutes the area where you saw in the
23 other photo with the pickup and the little stream of water,
24 that is why there's water in this little stream, because of
25 the ripping area here or the deep plowing in the years he

1 hasn't ripped and it comes from the corner where ditch four is
2 where he's dug out the section line road.

3 MR. BRINK: When was that taken?

4 CONNIE PIOTTER: This was taken last fall, was this
5 last fall or '95, when he did the ripping? Was it '96 or
6 '95? '96. I guess that's all.

7 CHAIRMAN ROLLAG: Anyone else want to speak?

8 EUGENE BARTZ: You look at me like I'm supposed to say
9 something. I'm tired of it, I don't see that the pictures
10 have any bearing on this deal here. How I farm, whether I rip
11 my ground, plow it or disk it or hay it, I don't tell them how
12 to plant their seed or fertilizer or anything like that.

13 DANIEL PIOTTER: Can I ask to testify?

14 CHAIRMAN ROLLAG: Well, it would be slightly irregular
15 because I asked people earlier if they wanted to speak for or
16 against and we have gone through that process.

17 DANIEL PIOTTER: I think you just kind of got the
18 facts -- a couple facts mixed up. I was going to straighten
19 them out.

20 MR. GUHIN: Mr. Chairman, the Piotters are represented
21 by counsel. If counsel is offering the witness, counsel ought
22 to offer the witness at this point.

23 MR. CAMPBELL: I realize it's irregular, Mr. Chairman,
24 members of the board. Mr. Piotter, young Mr. Piotter
25 evidently at the time that you asked for further witnesses in

1 opposition didn't feel the need to testify at that time and
2 has I guess, since the dialogue back and forth, feels the need
3 to testify.

4 Thereupon,

5 DANIEL PIOTTER,
6 called as a witness, being first duly sworn as hereinafter
7 certified, testified as follows:

8 CHAIRMAN ROLLAG: State your name for the reporter.

9 DANIEL PIOTTER: Daniel Piotter.

10 CHAIRMAN ROLLAG: Go ahead.

11 DANIEL PIOTTER: A couple of them pictures, if you
12 still have them. This here, he cleaned it out, that's all
13 ice.

14 CHAIRMAN ROLLAG: This is Exhibit F.

15 DANIEL PIOTTER: See, you can see the culvert, the
16 culvert, the water is not draining out, so it wasn't plugged
17 as you can see, otherwise the water would have kept on going,
18 right?

19 CHAIRMAN ROLLAG: Where is the culvert?

20 DANIEL PIOTTER: The culvert is back here, the water
21 flow goes down through this snow. If the culvert would have
22 been plugged up, that water would have kept on draining down
23 through there. That's all water in there, so when he moved it
24 out of the way, he put the dirt out, when we put it back, it's
25 solid ice and you put dirt on top of ice and it's froze, looks

1 like a big mound. In the spring it settled down and that's
2 when he sent the man out, it was a pig pile on top of ice.
3 Diane misled the facts a little bit. I don't know how he can
4 get out of these. This is a ditch, if you can't say that
5 water is not running through there, there's water going to sit
6 in a ditch, but that's been pumping, that's pumping all year
7 round, you can't use that road, that used to be a real nice
8 built up road, now you can't even use it. It's a big ditch.

9 MR. GUHIN: He's been referring to Piottter B.

10 DANIEL PIOTTER: A5, this is what --

11 CHAIRMAN ROLLAG: Exhibit D.

12 DANIEL PIOTTER: This is in '93. Every year he takes
13 this off, that was what, four years ago, it's still running,
14 it's going down the left side and that's running down to ditch
15 four. That is ditch four in the road, that's what the road
16 is, it's ditch four. So I don't know --

17 EUGENE BARTZ: The road runs kitty corner out in --

18 MR. FREEMAN: You can't testify at the same time.

19 DANIEL PIOTTER: You say ditch four, he says he's
20 draining here, the pictures show that water is running down
21 that road, it goes into this culvert. Now, when he -- the
22 water wasn't running fast enough so he took that out and he
23 wanted -- that's why he's applying for this, he can't pump
24 enough water fast enough so he's applying for a bigger pump.
25 Now, here he cleaned this out because it wasn't running fast

1 enough, this whole road is just a big ditch. He says -- he's
2 got hundreds of acres, if he says he's going to put a 100,000
3 investment, if you get that much, you are talking 100, 200,000
4 of land he can farm for \$100,000 investment, that would be
5 well worth the investment. So if he can farm all that and
6 get -- pump all his water out for \$100,000 and farm 160 more
7 acres and pump it onto our land, that's why he's doing it, so
8 he can farm more land.

9 You have seen pictures and you heard his testimony how
10 he's said one thing and the pictures clearly show others and
11 he's done this to the county commissioners, stipulations, he's
12 lied in front of them and not signed them. He's doing the
13 same, that's the tip of the iceberg. We could bring all the
14 stuff in but I thought we weren't going to get into all this.
15 This all drains into here, we weren't going to get into it, so
16 I don't know, I guess I'm asking you guys to wait till after
17 this court case is cleared up in a couple months or a year,
18 till we get it resolved, I guess.

19 CHAIRMAN ROLLAG: Any questions? Thank you. What is
20 the pleasure of the board?

21 MR. BRINK: Mr. Chairman, I will speak first again, I
22 guess. I really -- all this background has been interesting,
23 but I'm not sure I'm really interested in it. I think our
24 position here is one that, is there water, is it being put to
25 beneficial use? The only reservation I would have is that not

1 more water is pumped than is allowed per acre for irrigation.
2 We have a permit here that is on a CFS basis. I thought we
3 were always talking about inches of water and acre feet of
4 water and a certain amount of water spread on a certain amount
5 of land and somebody brought up the question of, well, maybe
6 we are just going to water the heck out of things so I got
7 some more land to farm. This might prevent that argument from
8 going any further if we had a more definitive definition for
9 the pumping. Staff, help me out here a little. Don't we
10 normally put an acre foot limitation on it rather than an
11 instantaneous pumping?

12 MS. BEST: Yes, when you initiated that dialogue we
13 did want to speak to it and thank you for asking. I think
14 Mark is going to address the issue.

15 MARK RATH: Yes, there is an acre foot limitation, two
16 acre foot per irrigated acre. That's a statutory limit,
17 unless the board under circumstances extends that up to three
18 acre foot per acre. So there is a two acre foot per acre
19 limit, so whatever the number of acres for the specific field
20 is the annual acre foot amount, which is 24 inches.

21 MR. BRINK: That's implied in the permit. I only see
22 something in here of CFS, but if he's got 200 acres he has 400
23 acre feet of pumping?

24 MARK RATH: That is his annual limit, yes.

25 MR. BRINK: That would be borne out on the

1 questionnaire?

2 MARK RATH: Uh-huh.

3 MS. BEST: In addition, in response to your question,
4 there are also other statutes pertaining to ways to water, so
5 the application of any amount in a particularly wet year, we
6 could be looking at waste of water statutes as well.

7 CHAIRMAN ROLLAG: Any other comments?

8 MR. RICKENBACH: I have a question, Mark. There seems
9 to be some question in my mind at least about this matter of
10 there being a division point between these two areas that
11 would prevent overflow from the north part there, the north
12 irrigation, proposed irrigation system draining toward the
13 south. Are you satisfied in your mind that that's the case?
14 Can you tell by looking at that map whether -- I don't read
15 those maps well enough to know.

16 MARK RATH: There is a higher area through here, kind
17 of cuts that direction. It is a little bit lower on this
18 southeast side. Again there is another high area right in
19 here, lower right there to where that slough is sitting. For
20 the type of irrigation that Mr. Bartz has talked about, I
21 don't foresee the irrigation runoff coming off as being an
22 issue from here running. That particular type of irrigation,
23 even under poor management conditions, does not have a lot of
24 runoff associated with it.

25 MR. RICKENBACH: Thank you.

1 CHAIRMAN ROLLAG: Any other comment from any other
2 member of the board? What is your pleasure?

3 MR. FREEMAN: Mr. Chairman, I would recommend approval
4 of application number 5957-3 and 5958-3 subject to the
5 recommendation and qualification of the chief engineer.

6 CHAIRMAN ROLLAG: Do I hear a second?

7 MR. BRINK: I will second that and I would also like
8 to add if there's any way that we can get out there and take a
9 look at that, one party says the ditch is full, the pipe is
10 closed, the other party says the ditch is open and the pipe is
11 open, I would like to have that reviewed. I don't need to
12 make it a part of the permit, but I think we have got
13 conflicting testimony.

14 JOHN HATCH: We can definitely look at it. With the
15 amount of snow, I don't know if we can get it done by the end
16 of April or not. I suppose there would be a possibility you
17 could either -- if you are going to approve it and you are
18 going to need findings and a final decision, I suppose that
19 could even be delayed into July, but I'm not sure what the
20 board wants to do. Yes, we can get up and look at it.

21 MR. FREEMAN: Let me withdraw the motion.

22 MR. BRINK: I will withdraw the second.

23 MR. FREEMAN: I would make a separate motion, then.
24 Which is the north one, is that 5957?

25 MARK RATH: 5958-3 is the north.

1 MR. FREEMAN: I would move to approve 5958-3.

2 CHAIRMAN ROLLAG: Do I hear a second?

3 MR. BRINK: I will second.

4 CHAIRMAN ROLLAG: Any discussion? All those in favor
5 of the motion signify by saying aye.

6 (Whereupon, the motion was approved by the board.)

7 CHAIRMAN ROLLAG: Opposed the same sign.

8 MR. FREEMAN: Then on 5957-3, I would move approval
9 subject to an inspection by the chief engineer no later than
10 our July meeting. Wait a minute. I guess I would move
11 approval of that one separately and approve and suggest that
12 the findings of fact and conclusions for that one be submitted
13 to us in our July meeting.

14 CHAIRMAN ROLLAG: Do I hear a second?

15 MR. BRINK: I will second it for discussion.

16 EUGENE BARTZ: Is that all legal?

17 MR. GUHIN: Mr. Chairman, the approval -- I'm not sure
18 if this is a tentative approval or if it is an approval that's
19 divisible.

20 MR. BRINK: What happens if we defer?

21 MR. GUHIN: You can certainly defer it. I think the
22 problem with deferring, quite frankly, is it seems to be we
23 are deferring because we are concerned there's a credibility
24 question and the credibility question obviously goes to both
25 permits. Or maybe I'm not interpreting why it's being

1 discussed to treat these two separately.

2 MR. FREEMAN: Let me back up. I'm just going to make
3 the motion to approve 5957-3. If it's defeated, it's
4 defeated. I think there is water available. If for some
5 reason he's not following state law, we got a lawsuit going
6 and we have other action they can take, so I'll move straight
7 approval.

8 CHAIRMAN ROLLAG: Is there a second?

9 MR. BRINK: What was your motion?

10 MR. FREEMAN: To approve 57-3.

11 CHAIRMAN ROLLAG: According to the recommendation of
12 the chief engineer.

13 MR. BRINK: I will second it.

14 CHAIRMAN ROLLAG: It's been moved and seconded. Any
15 discussion?

16 MR. RICKENBACH: I don't hear too well. Is this on
17 58?

18 MR. BRINK: 58 is the north one.

19 MR. FREEMAN: On the south one.

20 MR. RICKENBACH: That's 57.

21 MR. HOLZBAUER: 58 has been approved.

22 MR. GUHIN: The north permit has already been
23 approved. The south permit is on the floor right now.

24 MR. RICKENBACH: Okay, I got it straight now.

25 CHAIRMAN ROLLAG: Any comments? All those in favor of

1 the motion signify by saying aye.

2 (Whereupon, the motion was approved by the board.)

3 CHAIRMAN ROLLAG: Opposed the same sign. The motion
4 carried, the permit has been granted. We will have findings
5 of fact for this, both of these, right? Is there any other
6 business to come before this board?

7 MS. BEST: Just for the record, while everybody is
8 here, I want to make an offering with regard to this last
9 application and that is that the chief engineer has committed
10 someone from the staff to go out there and take a look at this
11 situation, and if need be, I'm going to put everybody on
12 notice, that if they go out there and this situation looks to
13 be somewhat different than what we were given to understand,
14 in this case, I know it may be irregular, but we probably
15 would be inclined to ask for reconsideration. But I'm not
16 going to ask for that today because we haven't seen the lay of
17 the land this spring, so that's how I would factor in that
18 later inspection that Mr. Freeman was asking about.

19 MR. BRINK: Would that be done after findings and
20 months later?

21 MS. BEST: We need to see when we can get out there.

22 MARK RATH: Probably the earliest convenience I can
23 get out there, we are going to be dealing with some flooding
24 issues for a while here anyway.

25 MR. FREEMAN: The problem with that is this gentleman

1 has a \$100,000 investment to make and we have got conflicting
2 testimony and obviously the board has resolved the conflicts
3 in its own mind and has approved the permits and if you all
4 have evidence that somebody perjured themselves, then there is
5 a forum to present that.

6 MS. BEST: Okay. We were responding basically to the
7 board's concern that maybe there should be some additional
8 study by the state. You are right.

9 MR. GUHIN: Any party can bring a motion for
10 reconsideration, at least up to the time the findings are
11 actually signed, and I think what the staff is saying, well,
12 they might do that, any party can do that. They don't have to
13 tell us about it.

14 EUGENE BARTZ: I would like, then, whoever is coming
15 out to view this would come out immediately after the snow has
16 disappeared so that you can see it before anything happens to
17 the ground.

18 CHAIRMAN ROLLAG: When it's muddy.

19 EUGENE BARTZ: I'll take you around, I got a
20 Challenger that will go through about anything. Whoever wants
21 to come out, I will give them a ride across the muddiest field
22 there is.

23 JOHN HATCH: Mr. Chairman, I lost my train of thought,
24 but we -- I lost it. What I wanted to say really is I think
25 everybody needs to understand that there is no permit until

1 the board adopts final findings and a final decision.

2 MR. GUHIN: Then the parties ought to be aware of what
3 happens when an appeal is filed.

4 JOHN HATCH: There's a 30-day appeal period.

5 MR. GUHIN: If an appeal is filed. We don't know.

6 CHAIRMAN ROLLAG: Very well. Any other business to
7 come before the board? The meeting is adjourned.

8 (Whereupon, the proceedings were concluded at 2:45
9 p.m.)

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C E R T I F I C A T E

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RPR, CM, Freelance Court
Reporter for the State of South Dakota, residing in Pierre,
South Dakota, do hereby certify:

That I was duly authorized to and did report the
testimony and evidence in the above-entitled cause;

I further certify that the foregoing pages of this
transcript represents a true and accurate transcription of my
stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my hand on
this the 18th day of March, 1997.



Carla A. Bachand, RPR, CM
Freelance Court Reporter
Notary Public, State of South Dakota
Residing in Pierre, South Dakota.

My commission expires: June 10, 2000.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 10, 1997

NOTICE

TO: Eugene Bartz
RR 1, Box 99
Browns Valley, MN 56219
and Parties of Record (see attached lists)

FROM: John Hatch, Chief Engineer
Water Rights Program
(605) 773-3352

SUBJECT: Preparation of Findings of Fact, Conclusions of Law and Final Decision

The Water Management Board directed John Guhin, the Board's attorney, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision for Water Permit Application Nos. 5957-3 and 5958-3. The Board will consider the proposed Findings, Conclusions and Final Decision at 1:00 PM on April 29 1997, in the Conference Room, Floyd Matthew Training Center, 523 E. Capitol Ave., Pierre, SD 57501.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and Parties of Record (name and addresses enclosed) by April 9, 1997. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney and all Parties of Record by April 21, 1997.

Oral arguments by parties filing written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision may be made on April 29, 1997. The public hearing was completed March 6, 1997. No additional testimony will be received on April 29, 1997.

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

PARTIES OF RECORD

WATER PERMIT APPLICATION NOS. 5957-3 and 5958-3

APPLICANT

Eugene Bartz
RR 1, Box 99
Browns Valley, MN 56219

PETITIONER

Marvin & Connie Piotter
RR 1, Box 102
Sisseton, SD 57262

represented by:

Jason A. Campbell
Spiry & Frohling
Box 919
Britton, SD 57430-0919

WATER MANAGEMENT BOARD MEMBERS

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320 Lincoln Lane South
Brookings, SD 57006-2741

Francis E. Brink
1214 South Wells Street
Aberdeen, SD 57401-7351

Bernita Loucks
219 42nd Street
Rapid City, SD 57702-0240

Marian Gunderson
811 West 3rd
Yankton, SD 57078-3702

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Joel Rickenbach
Box 97
Oelrichs, SD 57763-0097

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

BOARD ATTORNEY

John Guhin, Deputy Attorney General
Office of Attorney General
Natural Resource Section
State Capitol Building
Pierre, SD 57501

WATER RIGHTS PROGRAM

Department of environment and
Natural Resources

John Hatch, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

STAFF ATTORNEY

Diane Best
Assistant Attorney General
Office of Attorney General
Natural Resource Section
State Capitol Building
Pierre, SD 57501

CERTIFICATION

I hereby certify that on March 10, 1997, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 10, 1997, along with a copy of the Parties of Record List and a copy of the Water Management Board Members' names and addresses, regarding Preparation of Findings of Fact, Conclusions of Law and Final Decision for Water Permit Application Nos. 5957-3 and 5958-3, addressed as stated below and on the attached Parties of Record List:

Eugene Bartz, RR 1, Box 99, Browns Valley, MN 56219.

A copy of the above described Notice and attachments were sent inter-office to:

John Guhin, Deputy Attorney General, Capitol Building.

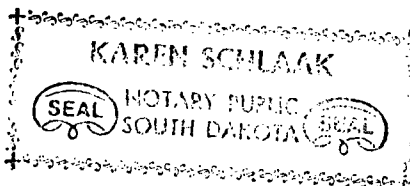
Diane Best, Assistant Attorney General, Capitol Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 11th day of MARCH, 1997


Notary Public



KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 5, 1997

NOTICE

TO: Eugene Bartz
RR 1, Box 99
Browns Valley, MN 56219
and Parties of Record (see attached list)

FROM: John Hatch, Chief Engineer
Water Rights Program
(605) 773-3352

SUBJECT: Adoption of Findings of Fact, Conclusions of Law and Final Decision

This is to notify you that the Final Decision, including Findings of Fact and Conclusions of Law, were adopted April 29, 1997, by the Water Management Board for Water Permit Application Nos. 5957-3 and 5958-3. A copy of the signed Findings of Fact, Conclusions of Law and Final Decision is enclosed.

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days of this notice and be in accordance with procedures established in SDCL 1-26-31.

enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

PARTIES OF RECORD

WATER PERMIT APPLICATION NOS. 5957-3 and 5958-3

APPLICANT

Eugene Bartz
RR 1, Box 99
Browns Valley, MN 56219

PETITIONER

Marvin & Connie Piotter
RR 1, Box 102
Sisseton, SD 57262

represented by:

Jason A. Campbell
Spiry & Frohling
Box 919
Britton, SD 57430-0919

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF	)	FINDINGS OF FACT,
WATER PERMIT APPLICATIONS	)	CONCLUSIONS OF LAW, AND
NOS. 5957-3 AND 5958-3,	)	FINAL DECISIONS
EUGENE BARTZ	)	

FINDINGS OF FACT

I

Eugene Bartz has applied for two water permits, one to irrigate the northern part of his property, and one to irrigate the southern part of his property. The projects are located in Roberts County approximately 11-12 miles northeast of the town of Sisseton.

II

Application No. 5958-3 proposes to appropriate 2.35 cubic feet of water per second (cfs) from a slough to irrigate 164.8 acres in the northern part of Applicant's property.

III

Application No. 5957-3 proposes to appropriate 1.46 cfs from a second slough to irrigate 102.3 acres in the southern part of Applicant's property.

IV

The Applicant intends to use the water to finish crops such as corn and beans in the event that he has been able to store water in the sloughs but a dry period has occurred.

V

The Board finds that because the source of water for both applications will be sloughs that would catch local runoff, the sources of water cannot be considered reliable during dry periods.

There will, however, sometimes be sufficient water in the slough to handle the type of irrigation intended by the Applicant.

VI

The opponents to the application engage in farming immediately south of the Applicant's property. The opponents urge that the applications not be granted because the Applicant, they allege, is unscrupulous, because his word cannot be trusted, and because he will utilize the water, not primarily for irrigation, but for the purpose of draining water onto the land of the opponents.

VII

The Board has carefully examined the evidence adduced with regard to the intentions of the Applicant, and finds that the Applicant intends to use the water in the manner he has proposed, i.e., for irrigation, and not for the purpose of draining water on the opponents land.

VIII

The Board further finds that water is very unlikely to be able to move, under normal conditions, from the northern portion of the land to be irrigated by Applicant to the land of the opponents because of the topography of the area.

IX

The Board further finds that, with the pivot irrigation proposed by the Applicant, and with regard to the total amount of water which the Applicant would be allowed to pump, (two acre feet per acre per year), it is highly unlikely that irrigation runoff would occur to the opponent's lands even under poor management

conditions. This finding applies to irrigation both on the northern and southern areas of irrigation.

CONCLUSIONS OF LAW

I

The Board has jurisdiction of each of the Applications made here.

II

There is a reasonable probability that there is unappropriated water available for the Applicant's proposed use under each of the Applications.

III

SDCL 46-5-6 limits the volume of water under each of the Applications not to exceed two acre feet per acre per year and that limitation is applicable here. SDCL 46-5-46 prohibits the waste of water and is applicable here.

IV

The proposed diversions can be developed without unlawful impairment of existing rights when developed in accordance with South Dakota statute, including those provisions cited in Conclusion of Law III.

V

The proposed diversions are consistent with the public interest in promoting the use of water for irrigation purposes. The opponents have failed to demonstrate that the Applicant has the intention to or will drain unreasonable amounts of water onto their

property under these Applications and therefore their public interest attack on this basis fails.

VI

The proposed uses, for irrigation, are beneficial uses.

VII

The Board concludes that no principle of law prevents it from entering its Final Decision at the same time litigation is pending between the parties. The litigation now pending between the parties does not, in any event, directly concern the Applications before the Board.

VIII

The Board also concludes that the opponents have failed to show reasonable cause to delay its decision in this case. The argument made, at least implicitly, by the opponents was that the decision should be delayed so that matters relevant to the credibility of the Applicant could be further examined either by the Court in the pending litigation or by the Board. The Board has resolved the credibility question, however, in the Applicant's favor.

FINAL DECISION IN WATER PERMIT APPLICATION NO. 5957-3.

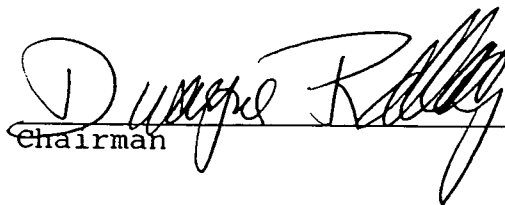
Application No. 5957-3 to irrigate 102.3 acres at a rate of 1.46 cfs is granted with the following qualification: This permit is approved subject to the irrigation water use questionnaire being submitted each year.

FINAL DECISION IN WATER PERMIT APPLICATION NO. 5958-3.

Application No. 5958-3 for 2.35 cfs to irrigate 164.8 acres is granted with the following qualification: This permit is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this _____ day of _____, 1997.

BY THE BOARD


Chairman

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CERTIFICATION

I hereby certify that on May 6, 1997, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 5, 1997, along with a copy of the Parties of Record List and Copy of the Findings of Fact, Conclusions of Law, and Final Decisions, regarding Adoption of Findings of Fact, Conclusions of Law and Final Decision for Water Permit Application Nos. 5957-3 and 5958-3, addressed as stated below, and on the attached Parties of Record List:

A copy of the above described Notice and attachments were sent Inter-office to:

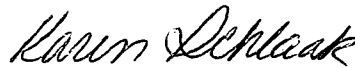
John Guhin, Deputy Attorney General, Capitol Building

Diane Best, Assistant Attorney General, Capitol Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 15th day of May, 1997


Notary Public



KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF	)	FINDINGS OF FACT,
WATER PERMIT APPLICATIONS	)	CONCLUSIONS OF LAW, AND
NOS. 5957-3 AND 5958-3,	)	FINAL DECISIONS
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FINAL DECISION IN WATER PERMIT APPLICATION NO. 5957-3.

Application No. 5957-3 to irrigate 102.3 acres at a rate of 1.46 cfs is granted with the following qualification: This permit is approved subject to the irrigation water use questionnaire being submitted each year.

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Dated this _____ day of _____, 1997.

BY THE BOARD


Chairman

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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

JUN 10 1997

Eugene Bartz
RR 1, Box 99
Browns Valley, MN 56219

Dear Mr. Bartz:

Enclosed are Water Permit Nos. 5957-3 and 5958-3 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permits.

Also enclosed are Form 10's, 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 systems and/or have put the water to beneficial use. An inspection can then be scheduled so that the Water Licenses may be issued, thus completing your acquisition of a Water Right.

Very truly yours,

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

enclosures

PLEASE NOTE: Certain changes may be made to your water permits usually without affecting the priority date. The location of a point of diversion may be changed or additional points of diversion may be approved if the water source remains unchanged; no additional water is appropriated; and, if irrigating, no additional land is irrigated. The change may be allowed without application or publication, if the Water Rights Program is contacted and the chief engineer makes a finding that the change does not increase the potential for interference with existing diversions.

A new water permit application is required to change water sources, increase the permitted diversion rate, or increase the irrigated acreage. If the application is approved, the water permit will receive a new priority date.

NOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USEDate July 29 - 1997TO: Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181FROM: Eugene Bartz RR 1 Box 99
(name) (address)
Browns Valley MN. 56219 605-694-2737
(city) (state) (zip) (phone)

I have completed the construction of the water diversion system and I have put the water to beneficial use to the maximum extent it is going to be used. I have not exceeded the amounts specified in Water Permit No. 5957-3.

Water Permit No. 5957-3 states that the diversion system is to be constructed by April 29 - 2006, and that the water is put to beneficial use by
(date)

April 29 - 2006
(date)

The diversion system was completed on July 29 - 1997.
(date)

Applying the water to beneficial use was completed on July 29 - 1997.
(date)

You may schedule an inspection so that the Water License may be issued.

Eugene Bartz
(signature)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 20, 2001

5957-3
6050-3

Eugene Bartz
RR 1 Box 99
Browns Valley, MN 56219-9740

Dear Mr. Bartz:

On August 16, 2001, an investigation of your water use systems, including the extent of application of water to beneficial use, as developed under Water Permit Nos. 5957-3 and 6050-3, was completed by Mark Rath, a staff engineer with our program. The final water right documents, the water licenses, can now be issued.

State law requires that we charge a \$50.00 fee (each) for the investigation and issuance of the water license. Upon receipt of the \$100.00 fee from you, we will complete processing your water license. The check or money order for the fee should be made payable to the "Water Rights Program".

Your licensed water right will be similar to a property right that can not be lost as long as the water use continues and you abide by the permit requirements.

If you have any questions regarding the water permit, investigation of your water use system or payment of the fee, please contact me.

Sincerely,

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

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

416930

Pierre, October 9, 2001

RECEIVED OF Eugene Bartz, Rt. 1 Box 99, Browns Valley, MN 56219-9740
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. <u>5957-3</u>	50	00
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	50 00

By

Darland Erbe
Chief Engineer
gm

Permit No. 5957-3
Minnesota River - Water District

Contact Person & Address: Eugene Bartz RR1 Box 99, Browns Valley MN, 56219

Report Of Examination Of Works

On, August 16, 2001, I made a thorough examination of the water use system constructed by Eugene Bartz of RR 1 Box 99, Browns Valley, MN holder of Permit No. 5957-3, bearing the priority of September 25, 1996 authorizing the diversion of 1.46 cu. ft. per second of the waters of surface water (slough) for irrigation purposes, in Roberts County.

The system is in the following condition good. The point of diversion is located from the SE corner of Sec 8 T126N-R49W (Res): 2420 ft west and 1470 ft north with a longitude of -96.82250 and a latitude of 45.70722. 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 land is located in Sec 8 T126N-R49W (Res)

NW1/4 SE1/4 - 10.2 ac

NE1/4 SE1/4 - 30.7 ac

SE1/4 SE1/4 - 30.7 ac

SW1/4 SE1/4 - 30.7 ac

comprising a total of 102.3 acres of land and the license should be issued for 1.46 cfs.

Review of Permit Qualifications And Regulations:

- 1) Special qualifications to permit being abided by yes
- 2) All structures, wells and lands on map yes
- 3) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period yes.
- 4) Exceptions to compliance are: none

Report On the Specifics of the System

Diversion Point Information:

Pump:

- | | |
|------------------------|-----------------------------|
| 1) Make <u>Berkley</u> | 2) Model <u>Centrifugal</u> |
| 3) Size <u>4"</u> | 4) Capacity <u>800</u> GPM |

Motor:

- | | |
|-----------------------------------|-------------------------------|
| 1) Make <u>John Deere</u> | 2) Model No. <u>4039DF001</u> |
| 3) Horsepower rating <u>45</u> hp | |

DISTRIBUTION LINES OR CANALS:

- 1) Type PVC 2) Size 8 inches 3) Length 1200 feet

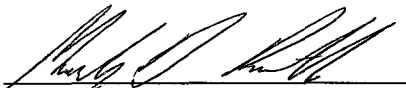
SYSTEM TYPE:

Center pivot:

- | | |
|------------------------------------|------------------------------------|
| 1) Make <u>Valley</u> | 2) Overall length <u>1280</u> feet |
| 3) Number of towers <u>7</u> | 4) End gun <u>yes</u> |
| 5) High or low pressure <u>low</u> | 6) Capacity <u>800</u> GPM |

CHEMIGATION EQUIPMENT:

- | | |
|--|-------------------------------------|
| 1) Does chemigate <u>yes</u> | 2) Main line check valve <u>yes</u> |
| 3) Inspection port/air relief <u>yes</u> | 4) Low pressure drain <u>yes</u> |
| 5) Discharge is 20' from source <u>yes</u> | 6) Interlock type <u>electric</u> |
| 7) Injection pump type <u>piston</u> | 8) Injection check valve <u>yes</u> |
| 9) Injection line check valve or positive displacement pump <u>yes</u> | |
| 10) All chemigation equipment appears to be installed in the proper position and complies with chemigation laws and rules <u>yes</u> | |
| 11) Comments : <u>none</u> | |



Mark D. Rath
Natural Resources Engineering Specialist
DENR, Water Rights Program

9-17-01
Date

No. 5957-3



Mark D. Rath

Mark D. Rath
SD DENR

9-17-01



STATE OF SOUTH DAKOTA

WATER LICENSE NO. 5957-3

(1) Eugene Bartz, RR 1 Box 99, Browns Valley MN 56219 made Application No. 5957-3, September 25, 1996 for a water permit to divert 1.46 cubic feet of water per second from a slough, Roberts County, South Dakota for irrigation purposes. Permit No. 5957-3, with a priority date of September 25, 1996 was approved April 29, 1997 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before April 29, 2002 and for the application to beneficial use of said water on or before April 29, 2006.

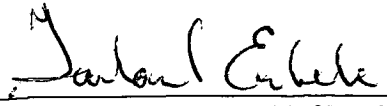
The permit holder submitted a *Notice of Completion of Works and Application of Water to Beneficial Use* on August 4, 1997. The *Notice* stated the diversion system was completed and the water placed to beneficial use on July 29, 1997.

(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 1.43 cubic feet of water per second for beneficial use. The location of the diversion point is 2,420 feet west and 1,470 feet north of the southeast corner of Section 8-T126N-R49W (RES) (NW ¼ SE ¼).

(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:

Section 8-T126N-R49W (RES)	NW ¼ SE ¼	10.2 acres
	SE ¼ SE ¼	30.7 acres
	NE ¼ SE ¼	30.7 acres
	SW ¼ SE ¼	30.7 acres
Total 102.3 acres		

(4) Pursuant to South Dakota Water Law 46-5-30.1 Eugene Bartz, RR 1 Box 99, Browns Valley MN 56219 the holder and/or owner of Water Right No. 5957-3 is issued a license to appropriate water, the right to use 1.46 cubic feet of water per second from a slough with a priority date of September 25, 1996 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 Water Right No. 5957-3 and subject to South Dakota State Law.


GARLAND ERBELE, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

NOV 07 2001
date





NOV 07 2001

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

5957-3

Eugene Bartz
RR 1 Box 99
Browns Valley, MN 56219

Dear Mr. Bartz:

Enclosed is Water License No. 5957-3. This is the final water right document completing your process of obtaining a Water Right. Enclosed is Receipt No. 416930 in the amount of \$50.00 which you paid for the investigation and issuance of the Water License.

As long as you use the water beneficially, as stated in the Water License, State Water Laws provide that you have a continuing right to use the water.

Sincerely,

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

enclosures

5957-3



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

October 23, 2013

5957-3

Eugene Bartz
11549 469th Ave
Sisseton SD 57262-7135

Dear Mr. Bartz:

Enclosed is a "Notice" dated October 18, 2013 concerning the 2013 irrigation questionnaire.

The notice was originally mailed to Browns Valley, MN. The post office notified us that your address has changed and I will update our records accordingly.

If you have any questions, please contact me.

Sincerely,

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

enclosures