

No.

96-3

Office of State Engineer
DOCUMENT FILE

Joseph Albrecht
Hedfield, S. Dakota

Sept 5-16-64
Spink County

James Hugo Nistich
Pine Bluff, Ark.
(Breck)

Edward B. Mathew
Dakota Engineering Co.
Mitchell, S. Dakota

Map
No.

75-3

NO. 96-3

Corrected
Application
RECEIVED
7:15 A.M.
MAR 12 1954Water Division No. 3 James River District
(Blanks to be filled by the State Engineer.)

APPLICATION FOR PERMIT

To appropriate water within the State of South Dakota 10:15 AM.
MAR 11 1954

OFFICE OF STATE ENGINEER

PIERRE, S. DAK.

1. Name of applicant ... Delvin C. Demmers
Box 208, Redfield, SD 57469

Postoffice address ... Redfield, County ... Spink, State ... South Dakota

I. If a corporation

- (a) Name of same
- (b) Date and place of incorporation
- (c) Amount of capital stock
- (d) Amount paid in
- (e) Names and address of directors:

(NOTE—A certified copy of articles of incorporation must accompany the application.)

II. Method of accomplishing the work and financial resources of the applicant:

- (a) Method of accomplishing work (Whether by contract, employment of others, or by direct labor) ... all methods
- (b) Cash on hand, \$ 5000.00 (c) Treasury stock, \$ none
- (d) Bonds to be issued, \$ none (e) Other resources, \$ none for all needs

2. Name of diversion work ... Turtle Irrigation District No. 1

3. Quantity of water claimed ... 2 cubic feet per second.

4. Source of water supply ... Turtle River

5. Location of point of diversion ... On either bank of Turtle River Reservoir on Sec. 5

Twp 116N Rg 64E of 5th PM on either bank.

6. Annual periods during which water is to be used ... whenever needed for irrigation or domestic purposes.

7. To be used for:

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

- (a) Number of acres to be irrigated ... 140 acres. (except reservoir area, highway
- (b) Legal subdivisions to be irrigated ... Sec. 5-116-64 and building dry land yards.

(NOTE—A list of lands to be irrigated, giving each subdivision and fraction with acreage thereon, should be written here, or may be appended as a part of this application. Same must also be shown on accompanying map.)

- (c) Statement as to domestic use (giving location, etc.) ... For family or stock use

domiciled on said Sec. 5-116-64.

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

- (a) Nature of use ... Stock watering, fire protection incidental to use of said land and the processing and development of agricultural products for use or sale
- (b) Amount of power to be generated ... none horse power.

Amount claimed for engine cooling

- (c) Location of plant
- (d) Method of developing power
- (e) Point where water will be returned to stream

8. Estimated cost of works:

- (a) Head gates, \$ none (b) Pumping plant, \$ 1500.00
(c) ~~Flumming~~ portable pipe 2500.00 (d) Canal-earth, \$ none Rock, \$ none
(e) Other structures ~~dem. at Redfield~~ 10000.00 \$10.00 efficiency Total, \$ 5000.00

9. Description of diversion works:

1. Nature of works: (Reservoir, dam, ditch, flume, pumping plant, etc.) Water will be taken from natural creek flow & stored water on said land by portable pump and distributed thru main & lateral pipes to points indicated on said map, 7-16-64 at a rate not exceeding 2 cu ft per sec. or 90 gals per min.

- (a) Dam: Height.....feet; length at bottom.....feet; length at top.....feet; thickness at bottom.....feet; thickness at top.....feet; slope at front water face.....; slope of back face.....; material used in construction.....
(b) Reservoir: Capacity when filled.....100.....acre feet. Surface area at highwater mark.....20 or more.....acres, on my land. Reservoir is.....100.....miles in length.

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

Instead of a weir or headgate, water will be measured by meter at the pump. Meters and pressure gauges may be reported later and used for each of a meter.

- (c)* Head gate: Width.....none.....feet; height.....feet; Material.....

- (d) Canal: Total length.....none.....miles.

LOCATION BELOW HEADGATE	DEPTH	BOTTOM WIDTH	WIDTH AT WATER LINE	GRADE PER MILE
AtMile	feet	feet	feet	feet
AtMile	feet	feet	feet	feet
AtMile	feet	feet	feet	feet
AtMile	feet	feet	feet	feet
AtMile	feet	feet	feet	feet
AtMile	feet	feet	feet	feet

(Give dimensions where reductions in size are made.)

10. Time required for completion of work.....2.....years.
11. Time required for complete application of water to the proposed beneficial use.....15.....years.
12. Choice of newspaper for publication of notice of intention to appropriate.....

STATE OF SOUTH DAKOTA

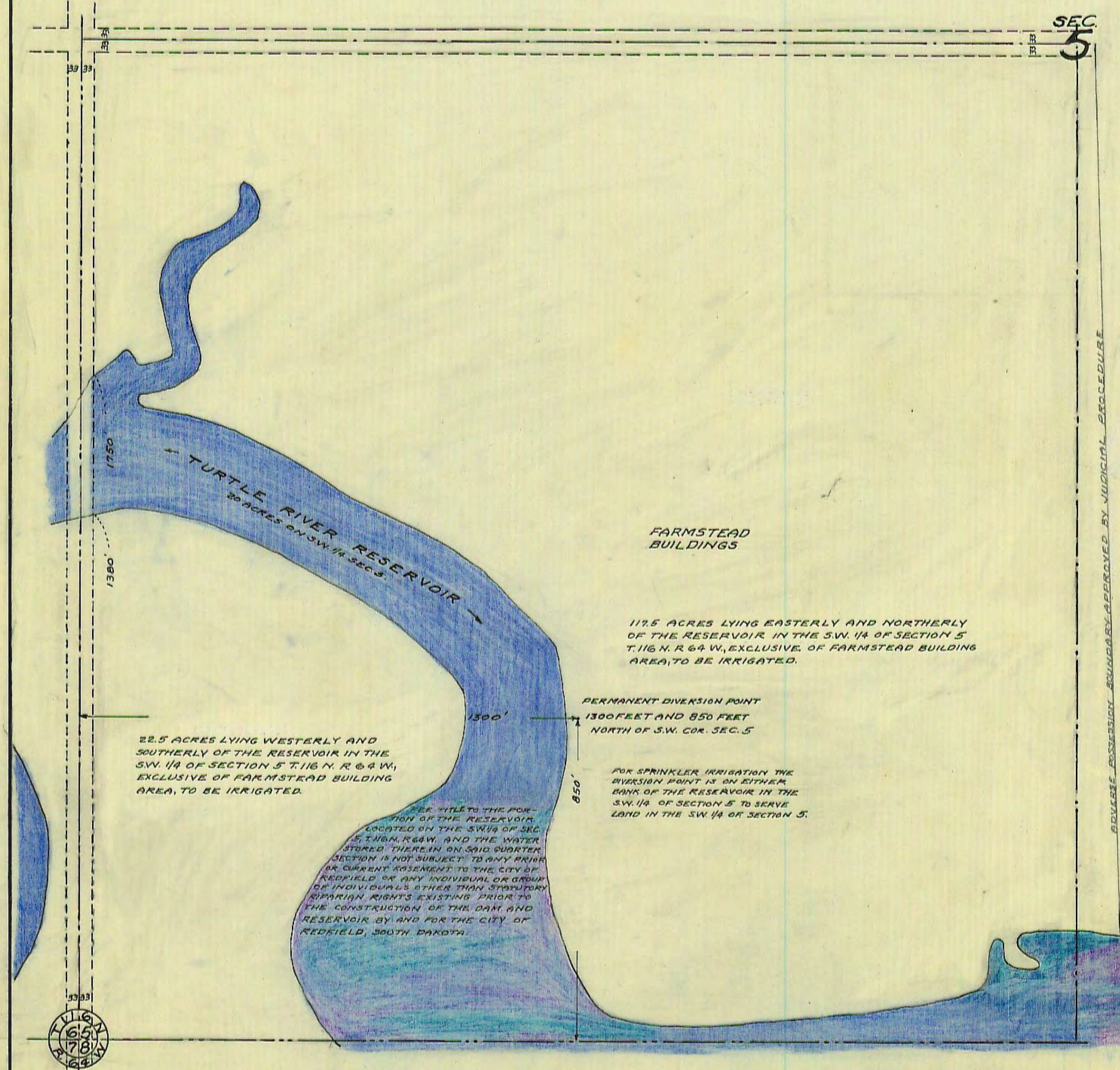
County of Spink } ss.

I, Joseph Albrecht, being first duly sworn on my oath depose and say: That my relation to the above described, undertaking is that of owner, that I have read the above foregoing statement, and examined the map accompanying the same, and that I know of my own personal knowledge that the matters herein stated and shown are true.

Signed Joseph Albrecht

Subscribed and sworn to before me this 6th day of February, 1953

Notary Public
Notary Public (or other qualified officer.)



(Water Right No. 196-3)
Map No. 75-3

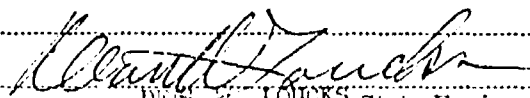
TO ACCOMPANY APPLICATION OF
PH ALBRECHT OF REDFIELD, SOUTH DAKOTA
FOR WATER RIGHT IN

DAKOTA ENGINEERING CO.
CONSULTING ENGINEERS & LAND SURVEYORS
MITCHELL, SOUTH DAKOTA

Remarks by State Engineer:

STATE OF SOUTH DAKOTA
County of Hughes } ss.
Pierre, South Dakota, May 21, 19 53

This is to certify that the foregoing application was received at this office at 10:15 o'clock
A. m. upon the 11th day of February, 19 53 and that after examination it
was found to comply with the South Dakota water laws, was published in accordance with the provisions
thereof and consideration given to any and all information presented as described under the
above remarks by the State Engineer.


DEAN W. LOUCKS, State Engineer.

Number of permit 26-3

Date of first receipt of application February 11, 19 53

Date of return to applicant for correction February 12, 19 53

Date of receipt of corrected application March 12, 19 53

Date from which applicant may claim right February 11, 19 53

Approved May 21, 19 53 Recorded in Book 3 Page 42

This is to certify that I have examined the foregoing application for a permit to appropriate
water of the State of South Dakota, and I hereby grant the same as stated herein, subject, however,
to the following limitations and conditions:

1st. The equivalent of at least one-fifth, of the work above specified is to be completed on or
before November 21, 19 55

2nd. The whole of said work is to be completed on or before May 21, 19 58

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith
is May 21, 19 58

4th. The water appropriated shall be used for the purpose of domestic and irrigation uses,
stockwatering, fire protection incidental to use of SW 1/4 Sec. 5 as a farm and the
processing and developing of agricultural products for use or sale.

5th. The prior right of all persons who, by compliance with the laws of the State of South Da-
kota, have acquired a right to the use of water must not be injuriously affected by this appropriation.

6th. The amount of the appropriation herein granted shall not exceed 2
cubic feet per second; neither shall it exceed the capacity of the above described system
of diversion works, nor the least amount of water that experience may hereafter indicate as neces-
sary for the production of crops in the exercise of the best husbandry; and further, said appropria-
tion must be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of
time for each acre of land to which water is actually and beneficially applied for irrigation on or
before May 21, 19 58 said water to be used during the following described an-
nual period: whenever needed for irrigation or domestic purposes.

Witness my hand this 21 day of May 19 53


DEAN W. LOUCKS, State Engineer.

Certificate of Construction issued APRIL 29, 19 70

Water License issued APRIL 29, 19 70

REMARKS BY STATE ENGINEER
Joseph Albrecht
Redfield, S. Dak.
May 21, 1953
Water Permit No. 96-3

On May 7, 1953, a letter was received from W. G. Dunker, City Attorney of Redfield, enclosing a resolution by the City of Redfield and a written protest by the City of Redfield to the application of Joseph Albrecht for 2 cu. ft. per second of water from Turtle Creek. The protest is qualified in the next to the last paragraph which reads in part as follows:

"Provided that if the granting of such water right to said applicant will not, in any way, interfere with the existing water rights of the City of Redfield or with the rights of the public to their use of said Lake Redfield and will not lower the level of the water of said Lake Redfield below the top of the spillway in said dam, then the said City of Redfield does not desire to enter protest to the granting of future rights to the water of Turtle Creek."

Parlin
On the date set for considering the application as advertised, there was no representative of the City present at the State Engineer's Office but the applicant appeared together with Engineer E. K. Mather of Mitchell and Attorney ~~Parlin~~ of Sioux Falls. The matter was quite thoroughly discussed by Engineer Mather. The matter of the vested rights of the applicant was stressed and the case of Mrs. Cole, the former owner, was referred to. This case involved the resistance of Mrs. Cole to the granting of an easement for the establishment of Lake Redfield and in which case Mrs. Cole was awarded \$2,347.65 for damages. The action of Mrs. Cole dates back to 1940 which was prior to the application of the City of Redfield.
Kalb

In granting the permit to Mr. Albrecht under procedure of the appropriative doctrine of water law as set up in our present State Code, ~~recognize~~ this Office recognizes the vested rights of the applicant which have been maintained at considerable expense and effort and which vested rights would take precedent over any appropriative rights granted either to the City of Redfield or to other applicants. In granting this permit it should be understood that the vested rights above referred to and as referred to in the application will not in any way be affected by the granting of this permit, and in granting such permit some is made in recognition of the action of the court in the 1940 case between Mrs. Cole and the City of Redfield. It is, however, the opinion of the State Engineer that the awarding of the permit will not interfere to any material or practical extent with the existing water rights of the City of Redfield or with rights of the public to the use of Lake Redfield, in which event the City has stated that they do not desire to enter protest to the granting of future rights to the waters of Turtle Lake. It is also the opinion of the State Engineer from information available and without the aid of any stream flow records above Lake Redfield, that there is adequate water available to satisfy the application of Mr. Albrecht for the use of 2 cu. ft. per second for irrigation and other purposes as granted.
Kalb

DWL:WJ:JMI

The applicant claims a vested right to two (2) second feet of water from Turtle Creek, stored on or flowing over the portion of the SW¹/₄ of Sec. 5 Twp 116 N, R 64 E of 5th PM, flooded by a dam across said Turtle Creek, built as a FWA project by the City of Redfield in 1935, more fully described and discussed in Circuit Court Proceedings Case No. 9433, "Josephine Kolb vs City of Redfield", of the records of the Clerk of Courts Office of Spink County, South Dakota, which clearly indicates that title to said SW¹/₄ of Sec. 5 and all riparian rights remain with the owner of said SW¹/₄ of Sec 5, who has paid taxes on said land annually prior and subsequent to the construction of said dam and lake.

Instead of requiring the City of Redfield to erect structures necessary to keep water off the said SW¹/₄ of Sec. 5, the owner collected damages incidental to the flooding of approximately 20 acres of land, which created a lake on and across a portion of said Quarter Section, and the owner thereof claims a vested right to use 2 second feet of stored or flowing water therefrom for irrigation of 140 acres of land on said Quarter Section. Said Quarter Section contains approximately 165.5 acres, on which taxes are paid annually and more fully described and discussed in Circuit Court Proceedings, Case No. 9951, "Clayton Newman vs Joseph Albracht".

Because the owner has continually claimed and successfully resisted a transfer of land or water to the City of Redfield or anyone else, claim is made of a vested right preceeding that of any water right of record and riparian rights of those lands in which transfer of rights to the City of Redfield, or State of South Dakota, has resulted in the owner escaping taxation of land now covered by water, or within a 12 ft public right of way along the margin of the lake or reservoir.

To maintain his right to priority in use of water, the applicant claims

1. A right to use Turtle Creek water flow as necessary to maintain a lake or stream flow of sufficient quantity to furnish 2 second feet of irrigation water supply for use on 140 acres of said SW¹/₄ of said Sec. 5.
2. A right to build and maintain a dam across Turtle Creek immediately west of the north-south quarter section line in Section 5, Twp 116 N 64 E, in case of failure of the concrete dam described in Water Right No. 21-3 granted to the City of Redfield with priority of "Ch. 6, 1940, or its repaired or rebuilt successor.
3. A right to build and maintain a dam across a draw draining into Turtle Creek from the north rear and east of the west line of the SW¹/₄ of said Sec. 5, for the purpose of holding and storing flood water in said draw that can be used for irrigation of 140 acres in the said SW¹/₄ of Sec. 5 at the rate of 2 second feet in case a succession of dry years results in water levels in the Turtle Creek lake being sufficiently below the crest to endanger the water supply for fire protection of the City of Redfield.

Form 15.

Permit No. 96-3

Water Diversion No. 3 JAMES RIVER Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That Joseph Albrecht

_____ the holder _____ of
Permit No. 96-3, issued upon Application No. 96-3, bearing date of priority of February 11,
1953 authorizing the diversion of 2.0 cu. ft. per second of the waters of _____
Turtle Creek County of Spink, State of South Dakota at _____
any point along the reservoir within the SW 1/4, Section 5, T116N, R64W

_____, for irrigation

_____ purposes, has 8 complied with the provisions of the laws of the State of South Dakota relating to proof of
completion of the works of diversion set out and described in said Permit; that said works are found in satisfactory
condition for diverting and conveying to the place of intended use 2.0 cu. ft. per second of water.

Date April 29, 1970

WATER RESOURCES COMMISSION

By:

J.W. GRIFFES, Executive Officer

WATER LICENSE NO. 96-3.

(1) WHEREAS, On the 11th day of February A. D. 19 53
Joseph Albrecht

made Water Right Application No. 96-3 for a permit to use 2.0 cubic feet per second of the waters of Turtle Creek
County of Spink, State of South Dakota, for irrigation purposes; and

(2) WHEREAS, On the 21st day of May A. D. 19 53
Permit No. 96-3, with a date of priority of February 11, 1953
was issued to said applicant for the diversion of said water, and provided for the completion of construction of the water supply system therein described on or before the 21st day of May A. D. 19 58 and for the application to beneficial use of said water on or before the 21st day of May A. D. 19 58

and:
(3) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to completion of the construction of the water supply system and is entitled to divert 2.0 cubic feet per second of water for beneficial use and,

(4) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to the application of water to beneficial use of the following extent:
for irrigating 140 acres in the SW¼, Section 5, T116N, R64W

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

_____ of Redfield, South Dakota

the holder _____ and owner _____ of said permit No. 96-3 a water right, dating from February 11, 1953

_____ to use of 2.0 cubic feet per second of the waters of Turtle Creek

in the County of Spink and State of South Dakota, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at any point along the reservoir in the SW $\frac{1}{4}$, Section 5, T116N, R64W

and conduct to and upon 140 acres in the SW $\frac{1}{4}$, Section 5, T116N, R64W

for the purpose of irrigation

Subject to any limitations listed in Water Right Permit No. 96-3 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota

this 29th day of April A. D.

Nineteen Hundred and Seventy

WATER RESOURCES COMMISSION

By:

Chief Engineer, Executive Officer, J.W. GRILES

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA } ss.
 County of Spink
Harold D. Jones being duly sworn, deposes and says the annexed printed copy of Notice of Intention to appropriate Water was taken from the Redfield Press a newspaper which during the whole time of publication of said notice herein-after stated, has been and is printed and published in the City of Redfield County of Spink and State of South Dakota; that the said notice was published in said newspaper on the following dates:
April 16, 23, 30 and May 7, 1953
 in each and every issue of the full number thereof, the first publication being made on the 16th day of April 1953 and the last publication on the 7th day of May 1953, upon which days or times of publication aforesaid the newspaper was regularly published, and that during the whole time of said publication he was Managing Editor the printer and publisher of the said newspaper.

APPROPRIATION OF WATER
 Office of State Engineer,
 Pierre, S. Dak., April 7, 1953
 Notice is hereby given that Joseph Albrecht whose postoffice address is Redfield, S. Dak., has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use 2.0 cubic feet of water per second of time from the Turtle Creek through the Turtle Irrigation Project No. 1, the point of diversion of which is to be located on either bank of said stream in the SW 1/4 of Section 5 Twp. 115N Range 64W. Said water to be used for the purpose of providing irrigation on the following described land: SW 1/4 Sec. 5, T. 115N., R. 64W.
 It is understood that this application will in no way prejudice any vested rights which the applicant or any other adjacent land owner may hold.
 This application will be taken up by the State Engineer at his office at Pierre for consideration upon the 20 day of May, 1953, at 2:00 P. M. All persons who believe that their prior rights would be injuriously affected, or that the allowance of the permit would be detrimental to the public welfare shall file such protest with the State Engineer in writing prior to the above date and may appear on the day above mentioned in person for the purpose of discussing further the information presented.
 Appropriate action will be taken by the State Engineer after suitable time

Subscribed and sworn to before me this 7 day of May A. D. 1953

Margaret E. Jones
 Notary Public Spink County, S. D.

(First Publication _____, 19____)

APPROPRIATION OF WATER

Office of State Engineer,

Pierre, S. Dak., April 7, 1953

Notice is hereby given that Joseph Albrecht whose postoffice address is Redfield, S. Dak., has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use 2.0 cubic feet of water per second of time from the Turtle Creek through the Turtle Irrigation Project No. 1, the point of diversion of which is to be located on ~~the~~ either bank of said stream in the SW ~~1/4 of the~~ of Section 5 Twp. 116N Range 6W. Said water to be used for the purpose of providing irrigation on the following described land:

SW 1/4 Sec. 5, T. 116N, R. 6W.

It is understood that this application will in no way prejudice any vested rights which
~~and for~~ the applicant or any other adjacent land owner may hold. ~~therein.~~

This application will be taken up by the State Engineer at his office at Pierre for consideration upon the 20 day of May, 1953, at 2:00 P. M. All persons who believe that their prior rights would be injuriously affected, or that the allowance of the permit would be detrimental to the public welfare shall file such protest with the State Engineer in writing prior to the above date and may appear on the day above mentioned in person for the purpose of discussing further, the information presented.

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

DEAN W. LOUCKS
State Engineer

7:10 A.M.

RESOLUTION

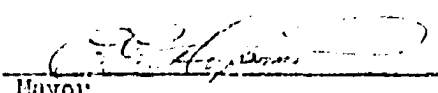
WHEREAS, certain persons owning farming land adjacent to Turtle Creek, namely, Albert F. Schmidt, Clarence Backer, and Redden Wiekum, have recently made application to the State Engineer of the State of South Dakota for the right to appropriate water for beneficial use from the waters of said Turtle Creek under the laws of the State of South Dakota, and it appears likely that still other persons will later apply for water rights from the said waters of Turtle Creek, if the present applications are granted.

AND WHEREAS, the prior water rights of the City of Redfield, South Dakota, to waters of Turtle Creek consist of the right to the annual use of 1563 acre-feet of water for the purpose of storage behind a 14 foot spillway and dam, the right to the use of such storage water for the purpose of municipal fire protection, and the right to .42 cubic feet of water per second of time for the purpose of irrigation.

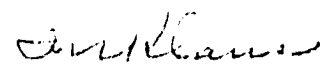
AND WHEREAS, the said City of Redfield has expended in excess of \$20,000 in the construction of said dam and has thereby created Lake Redfield, which serves a purpose long needed by the City of Redfield, as mentioned above.

THEREFORE, BE IT RESOLVED, that the City Council of the City of Redfield, South Dakota, at a regular meeting held on Monday, March 2, 1953, does hereby protest any such application or applications that will or may bring the level of the water of Lake Redfield below the top of the 14 foot spillway, or that will in any manner injuriously affect the prior water rights of the City of Redfield to the waters of Turtle Creek.

BE IT FURTHER RESOLVED, that the City Council of the City of Redfield, South Dakota, does not protest the granting of water rights to any waters of Turtle Creek over and above that needed by the City of Redfield, as was previously granted by the State Engineer of the State of South Dakota.


Mayor

ATTEST:


Auditor

9:00 A.M.

MAY 1 1953

BEFORE THE STATE ENGINEER OF THE STATE OF SOUTH DAKOTA
PIERRE, S. DAK.

In the Matter of the Application of
Joseph Albrecht for a Permit to appropriate
Water for Beneficial Use.

OF THE CITY OF REDFIELD

It appearing that on or about the 7th day of April, 1953, one Joseph Albrecht of Redfield, South Dakota, made his application in accordance with the provisions of the water laws of the State of South Dakota, for a permit to appropriate for beneficial use 2.0 cubic feet of water per second of time from the waters of Turtle Creek; and that pursuant to such application, Dean W. Weeks, State Engineer of the State of South Dakota, authorized the said applicant to cause notice to be published of such application, and of the time and place for hearing on such application, and for all persons who believe that their prior rights would be injuriously affected or that the allowance of the permit would be detrimental to the public welfare, to file protest with the said State Engineer in writing, prior to the date of such hearing on such application, which is set for the 20th day of May, 1953, at 2:00 P. M. at the office of the State Engineer at Pierre, South Dakota.

THEREFORE, pursuant to such above mentioned notice the City of Redfield, Spink County, South Dakota, desires to enter protest to the granting of such application by the State Engineer, for the following reasons:

11. That heretofore and on the 4th day of February, 1949, the City of Redfield was granted a water right dating from the 6th day of March, 1940, to appropriate water for annual beneficial use from the waters of said Turtle Creek in the amount of 1568 acre feet of water impounded by a dam for the purpose of storage for municipal use.

12. That heretofore and on the 4th day of February, 1949, the City of Redfield was granted a water right dating from the 6th day of March, 1940, to the use of water for fire protection from the waters of Turtle Creek, for the purpose of municipal fire protection.

13. That heretofore and on the 4th day of February, 1949, the City of Redfield was granted a water right dating from the 6th day of March, 1940, to the use of 0.42 cubic feet of water per second of time, from the waters of Turtle Creek for the purpose of irrigation.

14. That in May of 1940, the Cemetery Association of Redfield, South Dakota, was granted a water right to the use of .0015 cubic feet of water per second of time from the waters of Turtle Creek for the purpose of irrigation, and that said water right is now owned by the City of Redfield.

15. That heretofore and on the 29th day of June, 1940, pursuant to a law suit and trial thereon, a judgment was obtained by one Josephine Kolb in the Circuit Court, in and for Spink County, South Dakota, against the City of Redfield, in the amount of Two Thousand Three Hundred Forty Seven and 65/100 Dollars (\$2347.65) for total and permanent damages to her property by flooding caused by the construction of an artificial, now commonly known as Lake Redfield, and that the said Josephine Kolb was the predecessor in title to the Southwest Quarter of Section 5, Township 116, Range 64, which is now owned by the said Joseph Albrecht, and upon which said proposed irrigation works are to be constructed pursuant to this application, and water thereby diverted and appropriated for beneficial use, and which judgment is on file in the office of the Clerk of Courts of Spink County, South Dakota, file no. 9433, which is hereby referred to for further particulars, and by reference made a part hereof.

16. That the said City of Redfield has heretofore expended its money in the approximate amount of Twenty Thousand Dollars (\$20,000.00), in addition to its labor in the construction of the said dam, lake, and spillway, together with an expenditure in excess of Twenty Eight Thousand Dollars (\$28,000.00) by the Federal Government, and the said Lake Redfield was thereby created, and each year the City of Redfield continues to expend money and labor into the upkeep of said dam, lake, and spillway.

In addition to this the State Game, Fish, & Park Commission of the State of South Dakota has expended an excess of Eighty Thousand Dollars (\$80,000.00) on the same.

¶7. That the said City of Redfield has been maintaining the said Lake Redfield for swimming and fishing, in addition to the other uses stated herein, and for other recreation for the benefit of the public, and therefore the public has a beneficial interest in the continued existence of said Lake Redfield at its present size, form, and level. That the said State Game, Fish, & Park Commission has stocked the said lake several times with fish for the benefit of the public.

¶8. That the outlet through said dam is 6 feet below the top of the spillway, so that only the top 6 feet of water may be drawn off for use by the said City of Redfield for fire protection, and irrigation, and to flush the creek for sanitary purposes, including the liquid run-off from the Redfield State Hospital's sanitary sewer disposal plant, and to draw off water for irrigation purposes under the prior right of the Redfield State Hospital.

¶9. That the total evaporation during the course of a year is approximately 3 feet of water, which further reduces the amount of water available for use by the City of Redfield and any prior water rights.

¶10. That the only source of water supply for said Lake Redfield is the spring run-off, except for a very small amount of water from springs in the bed of said lake, therefore the only water available for city use is the water stored behind the said dam and spillway, which has been retained from the spring run-off.

¶11. That during a summer season of short rainfall, such as the summer of 1952, the waters of Turtle Creek will not provide sufficient water for the use of the City of Redfield and the Redfield State Hospital, whereas there should be water available over and above these requirements to occasionally flush the said Turtle Creek for sanitary purposes, which include the Redfield State Hospital's sanitary sewer run-off.

¶12. That the said City of Redfield requires a supply of water, so as to provide for a supply of 2200 gallons per minute for a period of 8 hours to retain the present fire insurance rates for a city of the 6th class, and that if such supply of water is not available the fire rates on property in said City of Redfield will be increased.

¶13. That the said City of Redfield plans to enlarge its pumping capacity at a future date, and will then require an additional amount of water from the waters of Turtle Creek for fire protection.

That the hereinbefore described water rights in paragraphs 1, 2, & 3 were granted under water licenses 21-3, 22-3, 23-3, together with the water right described in paragraph 4, are on file in the office of the State Engineer of the State of South Dakota at Pierre, South Dakota, and are hereby referred to for further particulars, and by reference made a part hereof.

That the City of Redfield, South Dakota, has made full beneficial use, and has appropriated all of the water heretofore allowed under the above described water rights for the purposes therein stated, from the 14th day of March, 1940, and at all time since that date, and fully expects to continue such beneficial use in the foreseeable future.

That the said City of Redfield, though its City Council believes that and were a water right of 2.0 cubic feet of water per second of time from the waters of Turtle Creek granted to the said applicant, Joseph Albrecht, that the prior water rights of the City of Redfield would be injuriously affected, and in addition, that the allowances of such would be detrimental to the public welfare.

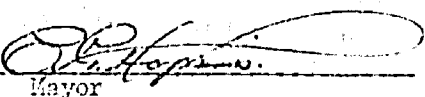
Therefore, the City of Redfield, South Dakota, acting by and through its City Council, in accordance with a resolution of the City Council, duly passed at a regular meeting on March 2, 1953, protests the granting of the application of the said applicant, Joseph Albrecht, for a water right to the waters of the said Turtle Creek, under the water laws of the State of South

Dakota, provided that if the granting of such water right to said applicant will not, in any way, interfere with the existing water rights of the City of Redfield, or with the rights of the public to their use of said Lake Redfield, and will not lower the level of the water of said Lake Redfield below the top of the spillway in said dam, then the said City of Redfield does not desire to enter protest to the granting of further rights to the voters of Turtle Creek.

That the City of Redfield, South Dakota, hereby reserves the right to appear on the date of hearing on such application May 20, 1953, through its City Attorney, W. G. Dunker, for the purpose of presenting further argument and evidence in regard to the above matter.

Dated this 4th day of May, 1953.

CITY OF REDFIELD

By 
Mayor

ATTEST:


Auditor

Permit No. 96-3Water Division 3 JAMES RIVER Water DistrictREPORT OF EXAMINATION OF WORKS
AND/OR APPLICATION OF WATER TO BENEFICIAL USE

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

I have this day made a thorough examination of the water use system constructed by JOSEPH ALBRECHT of REDFIELD holder of Permit No. 96-3, bearing date of priority of FEBRUARY 11, 1945 53 authorizing the diversion of 2.0 cu. ft. per second of the waters of TURTLE CREEK for IRRIGATION purposes, in SPINK County.

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

The Water Use System consists of,

A. Works used to divert the water:

TRAILER MOUNTED BYRON-JACKSON 5" PUMP, POWERED BY ALLIS CHALMERS PUMPER GASOLINE MOTOR.

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

880' OF 5" MAINLINE

C. Works used to apply water to beneficial use.

2220' OF 4" SPRINKLER LINE W/ 50 RAINGIRDS 40 SPRINKLER HEADS W/ 7/32 & 1/16 NOZZLES

The system is in the following condition: GOODThe point of diversion is located AS SHOWN ON WATER RIGHT MAP # 75-3The works are capable of diverting and conveying to the place of use 2.0cu. ft. per second of water which is to be used for IRRIGATIONWater has been put to beneficial use to the maximum extent as follows: A PORTION OF

SW 1/4 SECTION 5, T116N, R64W

comprising a total of 140 acres of land.Date APRIL 28, 1970

Burton Jones
(Signature)

WATER RIGHT SPECIALIST
WATER RESOURCES COMMISSION

A S S I G N M E N T

THE UNDERSIGNED HEREBY ASSIGN AND TRANSFER to Delvin C. Demmers and Georgia A. Demmers one certain Irrigation Permit #96-3, Division #3, James River District from Turtle Creek, Turtle Irrigation District #1, approved May 21, 1953, and recorded in Book 3, Page 42. Date of the Water Right, February 11, 1953.

Grantors further state that the assignee has purchased the property pertinent to said Irrigation Permit and described on Exhibit "A" attached hereto on a contract for deed, pursuant to public auction sale had May 8, 1976, and this Assignment is subject to said contract for deed. Copy of contract for deed attached hereto.

DATED this 5th day of June, 1976.

WITNESSES:

Edmee J. Deeb
Thomas H. Deeb

Joseph J. Albrecht

Elizabeth Albrecht



EXHIBIT "A"

Southwest Quarter (SW $\frac{1}{4}$) of Section Five (5), Township One Hundred Sixteen (116), Range Sixty-four (64), Spink County, South Dakota, and the property described as follows:

Commencing at a point on the South section line and equi-distant between the Southeast Quarter (SE $\frac{1}{4}$) and the Southwest Quarter (SW $\frac{1}{4}$) of Section Five (5), proceeding directly North on the quarter section line a distance of 2550.62 feet, thence Southeasterly on a straight line to a point on the section line 200 feet East of the point of beginning; thence due West along the section line 200 feet to the point of beginning, all in Section Five (5), Township One Hundred Sixteen (116), Range Sixty-four (64), Spink County, South Dakota, containing 165 acres more or less.

This property shall not include the following described realty: Commencing at a point on the North quarter line and equi-distant between the Southeast Quarter (SE $\frac{1}{4}$) and the Southwest Quarter (SW $\frac{1}{4}$) of Section Five (5); thence proceeding directly South 89.15 feet; thence Northwesterly to a point 7 feet due West of the place of beginning; thence directly East to the place of beginning all in Section Five (5), Township One Hundred Sixteen (116), Range Sixty-four (64), Spink County, South Dakota.



This Agreement, made and entered into this 5th day of June, 1976, by and between Joseph J. Albrecht and Elizabeth Albrecht

hereinafter described as party of the first part, and
Lelvin C. Lemmers and Georgia A. Lemmers, Husband and Wife,

hereinafter described as party of the second part,
witnesseth:

If the party of the second part shall first make the payments and perform the covenants herein-after mentioned on their part to be made and performed, the said party of the first part hereby covenants and agrees to convey and assure to the party of the second part, in fee simple, clear of all in-cumbrances, whatever, by a good and sufficient Warranty Deed, the real property situated in the County of Spink and State of South Dakota described as Southwest Quarter (SW $\frac{1}{4}$) of Section Five (5), Township One Hundred Sixteen (116), Range Sixty-four (64), Spink County, South Dakota, and the property described as follows:

Commencing at a point on the South section line and equi-distant between the Southeast Quarter (SE $\frac{1}{4}$) and the Southwest Quarter (SW $\frac{1}{4}$) of Section Five (5), proceeding directly North on the quarter section line a distance of 2550.62 feet, thence Southeasterly on a straight line to a point on the section line 200 feet East of the point of beginning; thence due West along the section line 200 feet to the point of beginning, all in Section Five (5), Township One Hundred Sixteen (116), Range Sixty-four (64), Spink County, South Dakota, containing 165 acres more or less.

This property shall not include the following described realty: Commencing at a point on the North quarter line and equi-distant between the Southeast Quarter (SE $\frac{1}{4}$) and the Southwest Quarter (SW $\frac{1}{4}$) of Section Five (5); thence proceeding directly South 89.15 feet; thence Northwesterly to a point 7 feet due West of the place of beginning; thence directly East to the place of beginning all in Section Five (5), Township One Hundred Sixteen (116), Range Sixty-four (64), Spink Co., South Dakota.

And as consideration therefor the said party of the second part hereby covenants and agrees to pay the said party of the first part the sum of Sixty-six Thousand Eight Hundred Twenty-five Dollars (\$66,825.00)

payable at
\$ Redfield South Dakota, in the manner following:

The sum of \$	19,378.00	at or before the execution of this contract;	
The sum of \$	2,500.00	on the 1st day of June	1977
The sum of \$	2,500.00	on the 1st day of June	1978
The sum of \$	2,500.00	on the 1st day of June	1979
The sum of \$	2,500.00	on the 1st day of June	1980
The sum of \$		on the day of June	19
The balance in full due on the 1st day of June, 1981,			

with interest at the rate of 7 1/2 per cent per annum payable annually on the whole sum remaining from time to time unpaid, and to pay all taxes, assessments, impositions that may be legally levied or imposed upon said land, subsequent to the year 1975.
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
due and payable in the year

In case of the failure of said party of the second part to make either of the payments or interest thereon or any part thereof, or perform any of the covenants on their part hereby made and entered into, then the whole of said payments and interest shall at the election of said first party become immediately due and payable, and this Contract shall at the option of the party of the first part be forfeited and determined by giving to said second party thirty days' notice in writing of the intention of said first party to cancel and determine this Contract, setting forth in said notice the amount due upon said Contract, and the time and place, when and where, payment can be made by said second party.

It is mutually understood and agreed by and between the parties to this Contract that thirty days is a reasonable and sufficient notice to be so given to said second party in case of failure to perform any of the covenants on their part hereby made and entered into, and shall be sufficient to cancel all obligations hereunto on the part of the said first party and fully reinvest them with all right, title and interest hereby agreed to be conveyed, and the party of the second part shall forfeit all pay-ments made by them on this Contract, and their right, title and interest in all buildings, fences and other improvements whatsoever, and such payments and improvements shall be retained by the said party of the first part in full satisfaction and in liquidation of all damages by them sus-tained, and they shall have the right to re-enter and take possession of the premises aforesaid.

The second party agrees to keep the buildings insured for the sum of at least \$40,000.00 against Fire, Lightning, Wind and Extended Coverage in a company or companies satisfactory to the first party, with loss payable as the interests of the parties shall appear.

The first party will deliver to the second party on or before final payment a duly certified abstract of title to said property for examination and will promptly take proper steps to overcome any legal and valid objections to the title, and upon payment of the balance of the purchase price will deliver to the second party a warranty deed as above provided together with an abstract of title to said property duly certified to date showing marketable title in the first party free and clear of all encumbrances.

The second party shall have possession of said property and the rents, issues and profits thereof ~~xxxx~~ as follows:
The crop land possession forthwith on the execution of this instrument.
The pasture and buildings possession August 8, 1976. This contract shall include the irrigation equipment and the assignment of an irrigation permit pertinent to the above property.

This contract shall not be assigned without the written permission of the First Parties.

This contract places in writing the terms of one public auction sale had May 8, 1976, at the Joseph J. Albrecht farm, Spink County, South Dakota, wherein Second Parties were the high bidders.

The 1976 real estate tax due January 1, 1977 shall be pro-rated and paid one-half by each party.

IT IS MUTUALLY AGREED by and between the parties hereto that the time of payment shall be an essential part of this Contract and that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

IN TESTIMONY WHEREOF, the parties have hereunto set their hands and seals the day and year hereinbefore written.

Signed, Sealed and Delivered in Presence of

Joseph J. Albrecht (SEAL)
Elizabeth Albrecht (SEAL)
Delvin C. Leumers (SEAL)
Georgia A. Leumers (SEAL)

STATE OF SOUTH DAKOTA, }
County of Spink } ss.

On this the 5th day of June, 1976

before me, Elmer J. Goetz, the undersigned officer, personally appeared Joseph J. Albrecht and Elizabeth Albrecht, and Delvin C. Leumers and Georgia A. Leumers

known to me or satisfactorily proven to be the person whose name are

subscribed to the within instrument and acknowledged that he y executed the same for the purposes therein contained.

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

Elmer J. Goetz
Notary Public South Dakota

Title of Officer.

My commission expires

CONTRACT FOR
DEED

Office of Register of Deeds
County of S. D.

I hereby certify that the within Instrument was filed in this office for record on the day of

A. D. 19 , at o'clock M., and was duly recorded in Book of on page

Register of Deeds.
By Deputy

ADDENDUM

It is further agreed that the following paragraph shall be added to the first paragraph of the second page of the attached contract and by this reference shall be a part thereof same apply to insurance coverage: "That in the event of loss or damage to the said buildings, second party shall be entitled to use the proceeds of insurance for the repair and/or replacement of any building damaged so covered, and in the event second party determines not to replace any such building, then the proceeds of the insurance for such building shall be paid to the first party and second party shall receive credit on the contract price for any proceeds applied to the benefit of the first party. Second party shall further be able to determine whether to apply the said proceeds for the repair or replacement of said buildings or payment of first parties at his sole discretion."

Dated this 5th day of June, 1976.

Joseph J. Bunker
Elizabeth Stewart
Adlai C. Dorman
Georgia A. Memmure



1

NATIONAL BANK

REDFIELD BRANCH

Redfield, So. Dak. 57469

June 7, 1976

State Engineer
Water Resources Division
Pierre, S. Dak. 57501

Dear Sir:

Enclosed is an assignment of an irrigation permit between Joseph Albrecht, Seller, and Delvin C. Demmers, Buyer.

Attached to the assignment is a copy of the contract for deed on the land, including an addendum as well as a copy of the original application.

We request the transfer be made and if any additional information is needed, please contact the undersigned. We will pay you for the charge to make the transfer and ask that you include a copy of the bill when returning the documents.

Sincerely,

Elmer.

Elmer J. Goetz
Vice President & Manager

EJG/aw

Encl.

11/16 Remmore called
and did not know anything about the subject
He kept it up until he was called home
and then he went to the police station
and made a statement





Department of Water & Natural Resources

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

March 23, 1987

DELVIN C DEMMERS
RR #1 BOX 357
REDFIELD, SD 57469

NOTICE

Re: Violation of Requirement To Submit 1986 Irrigation
Questionnaire

Our records indicate that the 1986 Irrigation Questionnaire has not been submitted for Permit No(s). 96-3. The request for the Questionnaire was dated November 3, 1986. The Water Management Board has directed that owners of water permits who have not submitted 1986 Irrigation Questionnaires be given notice of hearing(s) to be held by the Board to determine if any action is to be taken concerning the violation.

The hearings will be held at 2:00 pm, May 6, 1987 in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD.

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

1. Amend Permit No(s). 96-3 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action;
3. Take no action.

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

JOHN HATCH, Chief Engineer
Water Rights Division
605 713-3352

NOTE: If the questionnaire(s) is received in this office before the hearing date, your name will be deleted from the agenda for the hearing.



Department of Water & Natural Resources

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

May 11, 1987

96-3

Delvin C Demmers
RR #1 Box 357
Redfield, SD 57469

Dear Mr. Demmers:

This will acknowledge receipt of and thank you for the return of your 1986 Irrigation Questionnaire. A notice was sent to you March 23, 1987 regarding the Irrigation Questionnaire submittal violation of Water Right No. 96-3 and the date hearings were to be held before the Water Management Board to determine any action to be taken concerning the violation.

Your questionnaire was received prior to the May 6, 1987 Water Management Board Meeting and was no longer considered to be in violation. Your name was deleted from the agenda pertaining to these hearings.

If you have any questions, please contact us.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division
605 773-3252

96-3

**SOUTH DAKOTA Department of
Water & Natural Resources**

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

January 29, 1988

DELVIN C. DEMMERS
PO BOX 2
REDFIELD, SD 57469

NOTICE

**Re: Violation of Requirement To Submit 1987 Irrigation
Questionnaire**

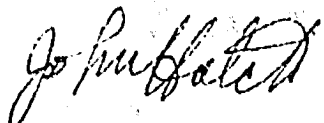
Our records indicate that the 1987 Irrigation Questionnaire has not been submitted for Permit No(s). 96-3. The request for the Questionnaire was dated October 8, 1987. The Water Management Board has directed that owners of water permits who have not submitted 1987 Irrigation Questionnaires be given notice of hearing(s) to be held by the Board to determine if any action is to be taken concerning the violation.

The hearings will be held at 9:00 am, March 2, 1988 in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD.

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

1. Amend Permit No(s). 96-3 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action;
3. Take no action.

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



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

NOTE: If the questionnaire(s) is received in this office before the March 2 hearing date, your name will be deleted from the agenda for the hearing.

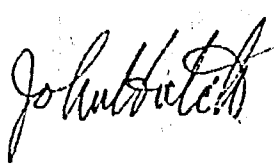
**South Dakota Department of
Water & Natural Resources**

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

March 14, 1988

NOTICE OF AMENDMENT TO WATER PERMIT(S)

TO: DELVIN C DEMMERS
PO BOX 208
REDFIELD, SD 57469

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

SUBJECT: Amendment to Water Permit No(s). 96-3

Pursuant to the provisions of the notice dated January 29, 1988 and following the Hearing March 2, 1988, the Water Management Board has amended Water Permit No(s). 96-3 to add the following qualification to each:

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

The addition of this qualification to your Permit(s) means that failure to submit the required irrigation questionnaire in the future could result in suspension of the water permit and no use of water for up to one year for the first violation. Please include the enclosed attachment with your permit.

SOUTH DAKOTA
Department of
Water & Natural Resources

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

Attachment to Water Permit No(s). 96-3

Pursuant to the provisions of the notice dated January 29, 1988 and following the Hearing March 2, 1988, the Water Management Board has amended Water Permit No(s). 96-3 to add the following qualification to each:

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

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested. 1. ☒ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery (Extra charge)	
DELVIN C DEMMERS PO BOX 208 REDFIELD, SD 57469	4. Article Number P501 739 037 Type of Service: ☐ Registered ☐ Insured ☒ Certified ☐ COD ☐ Express Mail
5. Signature - Addressee X <i>Delvin C Demmers</i>	Always obtain signature of addressee or agent NO DATE DELIVERED.
6. Signature - Agent X	B. Addressee's address (ONLY if requested and fee paid)
7. Date of Delivery 5-17-88	1988 USPS



Department of Water & Natural Resources

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

February 8, 1989

DELVIN C DEMMERS
PO BOX 208
REDFIELD, SD 57469

NOTICE

RE: Violation of Water Permit No(s). 96-3

Our records indicate that the 1988 Irrigation Questionnaire has not been submitted for Permit No(s). 96-3. The request for the Questionnaire was dated October 26, 1988. The Water Management Board had directed that owners of water permits who have not submitted the 1988 Irrigation Questionnaire be given notice of permit violation and a hearing to be held by the Board. The hearing will be held to determine action to be taken by the Board for violation of Water Permit No(s). 96-3 qualification:

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

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

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

1. Suspend Permit No(s). 96-3 until the 1988 Irrigation Water Use Questionnaire is submitted or for a period of up to one year;
2. Postpone any action;
3. Take no action.

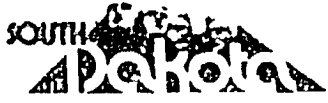
The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by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

If the questionnaire is received in this office before the March 1st hearing date, you will no longer be in violation of your permit and your name will be deleted from the agenda for the hearing.

Very truly yours,

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





Department of Water & Natural Resources

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

March 7, 1989

96-3

Delvin C Demmers
PO Box 208
Redfield, SD 57469

Dear Mr. Demmers:

I am writing to acknowledge receipt of your 1988 irrigation questionnaire for Water Permit No. 96-3. You may disregard the February 8, 1989, Notice of failure to submit the 1988 irrigation questionnaire. Your questionnaire was received prior to the March Water Management Board meeting and your name was deleted from the agenda pertaining to the hearing.

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

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division



January 9, 1998

96-3

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

NOTICE

TO: DELVIN C DEMMERS, PO BOX 208, REDFIELD, SD 57469 0208

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

SUBJECT: Reporting Requirement for 1997 Irrigation Questionnaire(s)

Our records indicate that the 1997 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 96-3. The request for the Questionnaire was dated October 17, 1997. The Water Management Board has directed that owners of water permits who have not submitted the 1997 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 96-3 qualification:

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

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

1. Suspend or cancel Permit No(s) 96-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

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

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

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

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
 2. ☐ Restricted Delivery
- Consult postmaster for fee.

3. Article Addressed to: **96-3**

DELVIN C DEMMERS
PO BOX 208
REDFIELD SD 57469 0208

4a. Article Number
119 141 206

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
1-12-98

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)
X *Delvin C Demmers*

Thank you for using Return Receipt service.

96-3



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 29, 1998

96-3

Delvin C Demmers
PO Box 208
Redfield SD 57469-0208

Dear Mr. Demmers:

I am writing to acknowledge receipt of your 1997 irrigation questionnaire. You may disregard the January 9, 1998, "Notice" concerning reporting requirements for Water Permit No. 96-3.

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

If you have any questions, please contact me.

Sincerely,

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

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

96-3

SENDER, COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DELVIN J. DEMMERS
PO BOX 208
REDFIELD SD 57469 0208

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

1/24/01

C. Signature

X *Delvin J. Demmers*

☐ Agent

☐ Addressee

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number (Copy from service label)

7000 0600 0026 9814 2591

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952



96-3
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 19, 2001

NOTICE

TO: DELVIN C DEMMERS, PO BOX 208, REDFIELD, SD 57469 0208

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2000 Irrigation Questionnaire(s)

Our records indicate that the 2000 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 96-3. The request for the Questionnaire was dated October 20, 2000. The Water Management Board has directed that owners of water permits who have not submitted the 2000 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 96-3 qualification:

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

The hearing will be held at 10:00 am, March 7, 2001 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 96-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

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

If the questionnaire(s) is(are) received in this office on/or before March 2, 2001, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 13, 2001

96-3

Delvin C Demmers
PO Box 208
Redfield, SD 57469-0208

Dear Mr. Demmers:

I am writing to acknowledge receipt of your 2000 irrigation questionnaire. You may disregard the January 19, 2001, "Notice" concerning reporting requirements for Water Right No. 96-3.

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

If you have any questions, please contact me.

Sincerely,

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



96-3
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 16, 2002

NOTICE

TO: DEL VIN C DEMMERS, PO BOX 208, REDFIELD, SD 57469 0208
FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2001 Irrigation Questionnaire(s)

Our records indicate that the 2001 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 96-3. The request for the Questionnaire was dated October 12, 2001. The Water Management Board has directed that owners of water permits who have not submitted the 2001 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 96-3 qualification:

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

The hearing will be held at 10:00 am, March 13, 2002 in the Visitor Center (west side of Capitol Lake), 650 E Capitol, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 96-3 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

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

If the questionnaire(s) is(are) received in this office on/or before March 8, 2002, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

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

SENDER COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ☒ Print your name and address on the reverse so that we can return the card to you. ☒ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Received by (Please Print Clearly) <u>Delvin C Demmers</u> B. Date of Delivery <u>1-11-00</u> C. Signature <u>[Signature]</u> ☐ Agent ☒ Addressee D. Is delivery address different from item 1? ☒ Yes If YES, enter delivery address below: ☐ No	
1. Article Addressed to: DELVIN C DEMMERS PO BOX 208 REDFIELD SD 57469 0208		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☒ Yes	

7001 2510 0004 4797 4449



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 12, 2002

96-3

Delvin C Demmers
PO Box 208
Redfield, SD 57469-0208

Dear Mr. Demmers:

I am writing to acknowledge receipt of your 2001 irrigation questionnaire. You may disregard the January 16, 2002, "Notice" concerning reporting requirements for Water Right No. 96-3.

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

If you have any questions, please contact me.

Sincerely,

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

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 8, 2003

96-3

Georgia A Demmers
PO Box 208
Redfield, SD 57469

Dear Mr. Demmers:

I am writing in regard to ownership of land described in Water Right No. 96-3. John Demmers has contacted our office and indicated that the water right should be listed solely in your name. I have included a copy of the water right in the event you do not have one.

In order to change the name on a water right, an ownership change must be filed with our office. Enclosed is a partially completed Notice of Transfer of Ownership form for filing an ownership change. Please review the form and make any necessary corrections or additions. Upon completion, please sign the form and return it to our office with a required filing fee of \$2.50. The check or money order for the fee can be made payable to the Water Rights Program.

For informational purposes, you should be aware that to maintain a water right, water must be placed to beneficial use for the purpose it was appropriated, at least once every three years. The three year period is waived if legal excuse exists for non-use. Legal excuse as defined in Water Management Board Rules includes, but is not limited to, the following: 1) unavailability of water to satisfy a permit or right; 2) legal proceedings which prevent the use of water; or 3) water use under existing climatic conditions would result in a waste of water.

Thank you in advance for taking the time to complete and return the transfer form and filing fee. If you have any questions, please get in touch with me.

Sincerely,

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

enclosures

NOTICE OF TRANSFER OF OWNERSHIP

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

No. 96-3

Date: 1-13-03

I/We request that Water Right No. 96-3

formerly owned by: Delvin D and Georgia A Demmers, PO Box 208, Redfield, SD 57469

be transferred to: (name & address) Georgia A Demmers

38329 Turtle Lane, Redfield, S.D. 57469

Telephone No. 605-472-0712

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

140 acres - SW 1/4 Section 5, T116N, R64W

I/We understand that the validity of Water Right No. 96-3 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

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

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

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

Georgia Demmers
(Signed by new owner)

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

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

RECEIVED
JAN 14 2003

WATER RIGHTS
PROGRAM

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date JANUARY 14, 20 03

RECEIVED OF Delvin Denmark, PO Box 208, Redfield, SD 57469

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	2	50
Fee for Application for Permit No. _____, to Appropriate Water for Future Use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>96-2</u>		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____	2	50
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	2.50

No.

000542

By

Michael E. Ebel

Chief Engineer

gm



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 17, 2003

96-3

Georgia A Demmers
38329 Turtle Lane
Redfield, SD 57469

Dear Ms. Demmers:

I am writing to acknowledge receipt of the Notice of Transfer of Ownership form and filing fee you sent in for changing ownership of Water Right No. 96-3. The transfer has been completed. The water right is now listed in your name.

Enclosed is Receipt No. 000542 in the amount of \$2.50 which you paid for filing the ownership change. You may keep this for your records.

If you have any questions, please get in touch with me.

Sincerely,

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

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

November 4, 2013

96-3

Georgia A Demmers
4314 Titan Dr
Rapid City SD 57701 4312

Dear Ms. Demmers:

Enclosed is a "Notice" dated October 18, 2013 concerning the 2013 irrigation questionnaire.

The notice was originally mailed to 38329 Turtle Lane, Redfield SD. 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

RECEIVED

SEP 26 2016

WATER RIGHTS
PROGRAM

SD EForm - 0495LD V2

NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

Mail to: PMB 2020
DENR - Water Rights Program
523 E Capitol Ave
Pierre, SD 57501-3182

Water Right/Permit No. 96-3

Date: 9.23.16

I/We request that Water Right/Permit No. 96-3 formerly owned by:
Georgia A. Demmers be transferred to:

New Owner Name: D&W Investments LLC

Address: 4314 Titan Drive

City, State, Zip Rapid City SD 57701 Telephone No. 605-390-9214

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

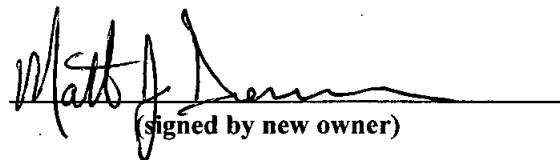
SW 1/4 Sec: 5 TWN: 116 N RNG: 64 W
Basin: James River Basin
Source: Turtle Creek

☒ I understand that the validity of Water Right/Permit No. 96-3 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below.)

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

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

I, D&W Investments LLC, the new owner, certify that the above information is true and correct. Matt Demmers - Manager


(signed by new owner)

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

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

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 9/26, 20 16

RECEIVED OF D & W Investments 4314 Titan Dr Rapid City SD 57701

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	50	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>96-3</u>		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____	50	00
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law) TOTAL	50	00

No. 07920

By Jeanne Headman
Chief Engineer



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

September 26, 2016

96-3

Matt J Demmers, Mgr
D & W Investments LLC
4314 Titan Dr
Rapid City SD 57701

Dear Mr. Demmers:

I am writing to acknowledge receipt of the transfer form and filing fee you submitted for changing ownership on Water Right No. 96-3. The ownership change has been completed. Water Right No. 96-3, formerly held by Georgia A Demmers, is now listed under D & W Investments LLC.

For informational purposes, under South Dakota Water Law, water must be placed to beneficial use for the purpose it was appropriated at least once every three years in order to maintain a water right. This three year period may be waived if legal excuse exists for the years of nonuse. Enclosed are excerpts of the water right laws and Water Management Board Rules dealing with these issues.

Enclosed for your records is Receipt No. 07920 in the amount of \$50 which you paid for filing the ownership change. If you have any questions, please contact me.

Sincerely,

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

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

enclosures



96-3

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

April 5, 2017

Matt Demmers, Manager
D & W Investments
4314 Titan Drive
Rapid City SD 57701

Dear Mr. Demmers:

D & W Investments holds Water Right No. 96-3 appropriating water from Turtle Creek to irrigate 140 acres near Redfield in Spink County. The Department of Environment and Natural Resources (DENR) received a petition requesting the Chief Engineer to investigate the water right to determine whether the right has been abandoned or forfeited. Enclosed is the petition.

South Dakota Codified Law 46-5-37.1 provides a process to petition the Chief Engineer to investigate whether or not a water permit or right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation of the water right for reason of abandonment or forfeiture.

This letter is to provide reasonable notice that the Chief Engineer will undertake an investigation of Water Right No. 96-3. In the near future a Water Rights staff person will contact you for access to the property to inspect the irrigation system.

If the Chief Engineer makes a recommendation that Water Right No. 96-3 be cancelled, a hearing will be scheduled before the Water Management Board. This Board is ultimately responsible for determining the status of a water right. The Water Management Board is a seven member citizen board whose function includes to regulate the allocation of the right to use the waters of the state.

Enclosed are state statutes and rules applicable to this issue.

DENR appreciates your cooperation.

Sincerely,

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

enclosures

RECEIVED

MAR 24 2017

WATER RIGHTS
PROGRAM

WILES & RYLANCE

ATTORNEYS AT LAW

3 East Kemp - Suite 200
P. O. Box 227
Watertown, South Dakota 57201-0227
(605) 886-5881

FACSIMILE

(605) 886-3934

E-MAIL:

rdr@wilesandrylance.com

John C. Wiles, P.C.
Raymond D. Rylance, P.C.
Amanda M. Jenson

March 21, 2017

Jeanne Goodman
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501

Re: Petition

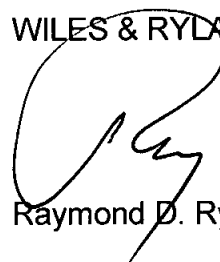
Dear Ms. Goodman:

Please find enclosed our Petition to investigate permit #96.3.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

WILES & RYLANCE

A handwritten signature in black ink, appearing to be 'Rylance', is written over the printed name.

Raymond D. Rylance

RDR/jls
Enclosure

Jeanne Goodman
Chief Engineer
DWNR
523 East Capitol Ave.
Pierre, SD 57501

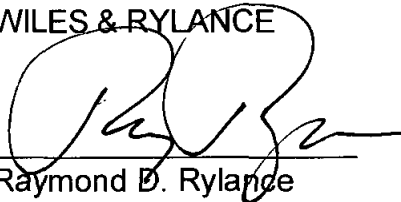
PETITION

Dear Jeanne,

Pursuant to SDCL 46-5-37.1 Lenny Peterson requests that the Chief Engineer investigates water permit #96-3 to determine whether the permit holder has abandoned or forfeited the permit.

Dated this 21 day of March, 2017.

WILES & RYLAND

A handwritten signature in black ink, appearing to read 'Raymond D. Ryland', is written over a horizontal line.

Raymond D. Ryland
Attorney for Petitioner
3 East Kemp, Suite 200
PO Box 227
Watertown, SD 57201-0227
(605) 886-5881

Statutes:

46-5-36. Abandonment of use of water appurtenant to land - Public water subject to general appropriation. If the owner of the land to which water has become appurtenant abandons the use of such water upon such land, such water shall become public water, subject to general appropriation.

46-5-37. Failure to use beneficially appropriated water - Forfeiture for nonuse - Reversion to public. When any person entitled to the use of appropriated water fails to use beneficially all or any part of such water for the purpose for which it was appropriated, for a period of three years, such unused water shall revert to the public and shall be regarded as unappropriated public water.

46-5-37.1. Abandonment or forfeiture of permits or rights - Recommendation of chief engineer for cancellation. Upon the initiative of the chief engineer or upon petition by any interested person and after reasonable notice to the holder of the right or permit, if he can be located, the chief engineer may investigate whether or not a water permit or right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation of the permit or right for reason of abandonment or forfeiture. The recommendation, notice and hearing shall be conducted pursuant to the procedure contained in chapter 46-2A.

46-5-37.2. Exceptions to forfeiture for nonuse. The provisions of SDCL 46-5-37 notwithstanding, no water right or permit may be forfeited for nonuse if land authorized for irrigation by a permit or right is placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal program, if the water source is not fully appropriated, if the withdrawal from use does not prevent approval of new permits from the same source, and if the appropriated water has been applied to beneficial irrigation use prior to participation in a federal program.

Rules:

74:02:01:36. Board authorized to cancel invalid water permits, rights, or vested rights. The board may cancel a water permit, right, or vested right which has become invalid and file a record of the cancellation in the water permit, right, or vested right record.

74:02:01:37. Invalid water permit, right, or vested right defined. A water permit, right, or vested right is invalid if it meets one or more of the following conditions:

- (1) The necessary works were not constructed or the water put to beneficial use within the time limits as provided by statute;
- (2) Use of water has been abandoned as specified in SDCL 46-5-36;
- (3) Use of water has been forfeited for nonuse as specified in SDCL 46-5-37.

74:02:01:37.01. Legal excuse for nonuse of water. Legal excuse for nonuse of water suspends the period of nonuse specified in SDCL 46-5-37. Legal excuses for nonuse of water include but are not limited to the following:

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

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME: Mary Williams (partner with Matt Demmers in D & W Investments)
Scott Bebo, Renter

ADDRESS: Redfield SD

PHONE: Mary Williams 555.367.4446 mobile; Scott Bebo (renter) 605.460.0123 mobile; Matt Demmers 605.390.9214

RE: Water Right No. 96-3

COMMENTS:

May 4, 2017: I spoke with Scott Bebo who is the renter of the property on the east and north side of Turtle Creek in the SW1/4 section 5-T116N-R64W. Mr. Bebo indicated that he has rented the property the last 4 years and cropping has been alternating between corn and beans. Mr. Bebo indicated that there is some pipe on the farm site south of the home in some trees located in the SW1/4. Also, Mr. Bebo didn't know whether there was any pumping equipment on the farm site. Mr. Bebo indicated that he did not have access to the property and arrangements should be made with Mr. Demmers.

May 5, 2017: I spoke to Mary Williams who is a partner with Matt Demmers and she is his sister. Ms. Williams indicated that Matt is on vacation and returns on Saturday, May 6. Ms. Williams also noted that Mr. Demmer would like to be present during an on-site inspection of the site. According to Ms. Williams she will text Mr. Demmers and advise him of our conversation and he will be contacting me.

May 9, 2017: I spoke to Matt Demmers regarding a site visit which Mr. Demmers was in agreement with doing. Mr. Demmers thought he would be able to do a site visit in June on a Friday or Monday. Mr. Demmers also discussed investigating placing the land in the Conservation Reserve Program. I informed Mr. Demmers doing so will not change the history of use/nonuse of water and told him he should investigate any past instances when the land was in a federal set aside program such as CRP or prevent plant. I asked Mr. Demmers about cropping patterns and he indicated recent history has been alternating between corn and soybeans. A portion of the acreage was also in grass but has become tilled under the tenure of the current renter. Mr. Demmers also indicated that there is pipeline and sprinklers on the site but the pump was vandalized and is currently being inspected to see whether it can be repaired.

June 5, 2017: I left a follow-up message for Matt Demmers to contact me with a time to meet at the site covered by the irrigation permit.



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

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME: Janet Kegler (Rice)

ADDRESS: Redfield SD

DATE: May 4, 2017

PHONE: Mobile 605.460.2139; Country Classics Florist Shoppe 877.772.1125

RE: Water Right No. 96-3

COMMENTS:

I contacted the Spink County Director of Equalization regarding ownership of the SW1/4 section 5-T116N-R64W and found that the property in the quarter south and West of Turtle Creek is owned by Janet Kegler (Rice). I contacted Ms. Kegler regarding the water right which is currently in the name of D & W Investments. Ms. Kegler was aware of the water right and confirmed ownership of the property south and west of Turtle Creek. I informed Ms. Kegler I was calling to investigate the history of water use on the property to determine whether the water right has been abandoned or forfeited due to nonuse as the result of a petition being filed with the chief engineer calling for the investigation. I also told Ms. Kegler that the water right goes with the land and a portion of the water right can be transferred to her for the property she owns. I told Ms. Kegler how a portion of the water right could be transferred to her and advised that she may want to wait until the validity of the water right is determined. Ms. Kegler requested the transfer of ownership form be sent which I did via email.

I asked Ms. Kegler when she acquired the water right and whether any irrigation has occurred. Ms. Kegler indicated that she has owned the property since 1994 and some irrigation of trees has occurred. The property is maintained as grass but work is being done to raise a high point for purposes of a building site and having a commercial garden area. The area was rezoned approximately 10 years ago to allow for commercial use. Design work was done by Clark Engineering. This area is located north of the Kegler home site in the SW1/4.

Ms. Kegler was willing to provide an inspection of the site which will be arranged for a future date.



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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 12, 2017

Raymond D. Rylance
Wiles & Rylance
PO Box 227
Watertown SD 57201-0227

Mr. Rylance:

I am writing concerning your petition to investigate Water Right No. 96-3 to determine whether the permit holder has abandoned or forfeited the water right.

As requested by your petition, an investigation of Water Right No. 96-3 has been completed. A report containing the results of the investigation is enclosed. I agree with the report conclusion that insufficient evidence exists for the state to prove the water right has been abandoned or forfeited. In fact, evidence exists showing it likely has not been abandoned or forfeited. Consequently, I choose to not recommend cancellation of the water right to the Water Management Board and will not be scheduling the matter for board consideration pursuant to South Dakota Codified Law 46-5-37.1.

Please contact me if you have any questions. I can be reached at 605.773.3352.

Sincerely,

Jeanne Goodman, Chief Engineer
SD DENR, Water Rights Program

enclosures

c: D & W Investments LLC
Janet Kegler
Ann F. Mines Bailey, Assistant Attorney General

**Report concerning Petition for Chief Engineer to Investigate Status of
Water Right No. 96-3, D & W Investments LLC**

Petition. On March 24, 2017, a petition (see Appendix A – pp. 1 & 2) was received from Raymond D. Rylance, representing Lenny Peterson, requesting the chief engineer to investigate whether Water Right No. 96-3 has been abandoned or forfeited. South Dakota Codified Law (SDCL) 46-5-37.1 provides that any interested person may petition the chief engineer to investigate whether or not a water permit or right has been abandoned or forfeited. Following the investigation, the chief engineer may recommend to the Water Management Board that the permit or right be cancelled due to either abandonment or forfeiture, or both, or take no action.

Legal Citations. A list of statutes and rules pertinent to this matter can be found in Appendix A pages 3 through 5.

Background. Water Right No. 96-3 appropriates 2.00 cubic feet of water per second (cfs) from Turtle Creek in Spink County to irrigate 140 acres in the SW1/4 section 5-T116N-R64W (Figure 1). The acreage covered by the water right is located adjacent to the reservoir created by the Redfield Lake dam located just west of the city of Redfield.

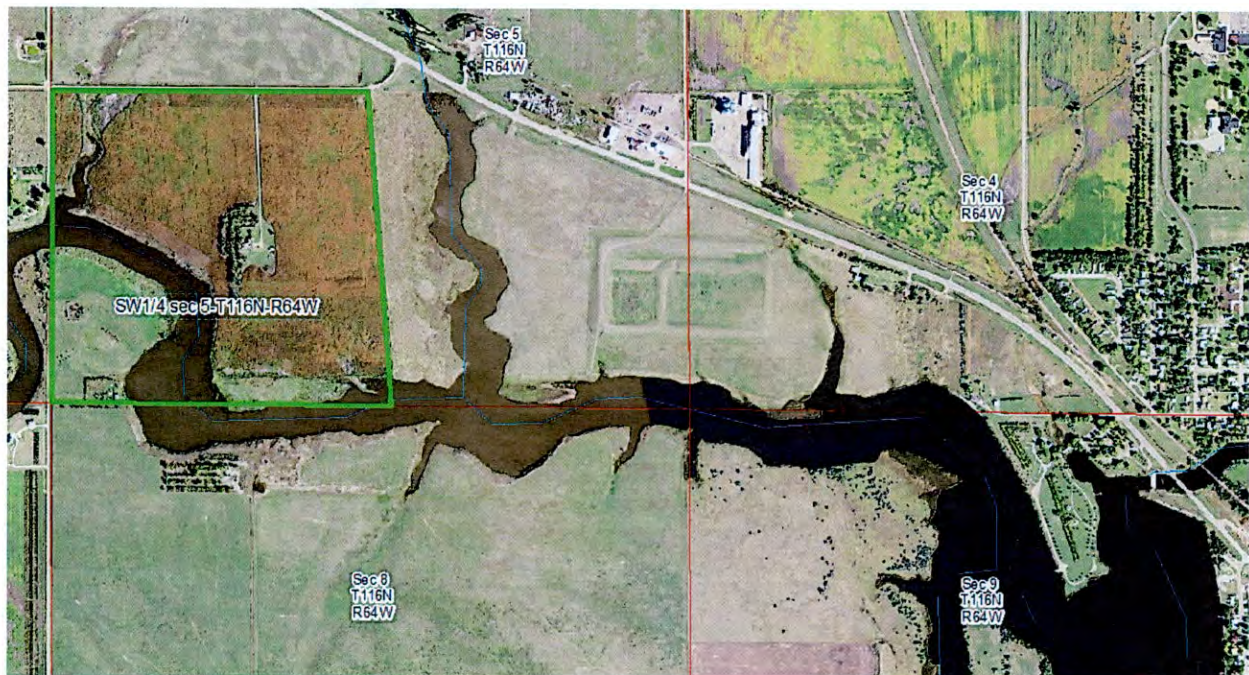


Figure 1

An inspection of the permit in 1970 found that the system was constructed and water put to beneficial use. The equipment used to irrigate at the time of the inspection was a trailer mounted motor and pump, 880 feet of 5-inch mainline, and 2,220 feet of 4-inch sprinkler line with 50 Rainbird sprinkler heads. Based on the inspection findings, the water license was issued April 29, 1970.

Currently, Water Right No. 96-3 is in the name of D & W Investments LLC, 4314 Titan Drive, Rapid City SD. However, this investigation found that a portion of the acreage covered by the water right on the south side of the reservoir is owned by Janet Kegler. Ms. Kegler indicated she has owned the property since 1994. A transfer of ownership has been filed by Ms. Kegler to place that portion of the covered acreage under her name. Figure 2 shows the names that have been on Water Right No. 96-3.

Holder of Water Right No. 96-3	Years
Joseph Albrecht	1953 - 1976
Delvin C. & Georgia A. Demmers	1976 - 2003
Georgia A. Demmers	2003 - 2016
D & W Investments LLC (Registered agent - Matt Demmers)	2016 - present

Figure 2

Site Inspection – D & W Investments, LLC Acreage. An inspection of the site on August 4, 2017, found that the acreage held by D & W Investments LLC is being used to grow soybeans excluding some shelterbelt areas. Matt Demmers, present during the inspection, indicated that a portion of the acreage had been in grass (50 to 60 acres) but was converted to crop ground by the current renter. Currently, approximately 100 acres are crop ground including the previous acres that were in grass. Both Mr. Demmers and Scott Bebo (not present during the inspection), the renter for the last 4 years, indicated that the acreage is planted to soybeans and corn on a rotating basis. Mr. Demmers indicated the property had not been in a federal set aside program, such as the Conservation Reserve Program.

Prior to the on-site inspection, Mr. Demmers provided photos of his irrigation pipeline and equipment as well as a video showing a tractor operating a power take off driven pump to run a stationary Nelson big gun. The photos were provided by email on July 7, 2017, and are found in the Appendix A, pages 6 through 10. During the inspection Mr. Demmers also pointed out another motor and pump that are currently not operable due to the motor being vandalized – that photo and others taken of the Demmer property during the site inspection are in Appendix A, pages 11 and 12. Currently, Mr. Demmers is investigating options for placement of a center pivot on the property.

Site Inspection – Kegler Acreage. An inspection of the site on August 4, 2017, found that the acreage held by Janet Kegler is used for a home site, hay and some trees. The area is about 22.5 acres and is mostly in hay. Ms. Kegler acquired the property in 1994 and at one time approximately 500 to 600 trees were watered for commercial purposes. The trees were watered using a plastic tank filled from the creek. Some trees remaining on the property are still watered, and the property has been rezoned to allow commercial development. Ms. Kegler indicated site work has been completed to raise an area where a building will be located with the surrounding area to be irrigated gardens. Ms. Kegler indicated, to her knowledge, the area had never been in a federal set aside program. Photos of the property taken during the site inspection are found in Appendix A, pages 13 and 14.

Historical Water Use – Water Right No. 96-3. Annual irrigation questionnaires first began being filed for Water Right No. 96-3 in 1977 and were consistently received from 1983 to present when submission of the questionnaire became mandatory. During the period from 1983 through 2005 there was no instance of a 3-year period during which water was not used.

During an 11-year period from 2006 through 2016 no water use was reported on the annual irrigation questionnaires (see Appendix B). Table 1 shows reasons for not irrigating and comments provided on each irrigation questionnaire.

Table 1 SM = sufficient moisture SNC = system not constructed

Year	Irrigated	Reasons	Comments on Irrigation Questionnaire
2006	No	SM, SNC	Upon the death of son that ran and was putting together the system, we could not finish for the year this year. Would like to keep permit intact.
2007	No	SM	
2008	No	SM	
2009	No		
2010	No	SM	
2011	No	SM	Too much rain & lower ground flooding. High water levels.
2012	No	SM, SNC	Irrigation motor blew up & pump froze up. Have not been able to finish repair yet. Got timely rains, sufficient to make a good crop.
2013	No	SM	
2014	No	SM	
2015	No	SM	
2016	No	SM	

Note: Annual water use reporting was presumably only for Demmers acreage, not the Kegler acreage.

Prior to 2006, the reported number of acres irrigated varied from year-to-year (it is unknown which specific acres were irrigated) and the irrigated acres were identified as either grass, hay, pasture, trees, or alfalfa. The method of irrigation was identified as hand-move sprinklers, towlines, or flood.

Historical Water Use – Neighboring Irrigation Water Rights. As part of the investigation, the irrigation questionnaires of neighboring crop land water rights were also reviewed concerning water usage from 2006 through 2016. The area immediately surrounding Water Right No. 96-3 lacks other crop land irrigation permits. The nearest crop land water right is No. 408-3, held by Timber Creek Land and Cattle LLC. The water right is located approximately 3.5 miles downstream and is licensed to use water from Turtle Creek for irrigation. The other closest water rights are permitted to use ground water for irrigation and are located approximately 6 to 10 miles from Water Right No. 96-3. Table 2 identifies each water right, the distance from No. 96-3, and whether or not water was used during the period from 2006 through 2016.

Table 2 -- Irrigation History for Water Rights near Water Right No. 96-3

X – irrigation was reported

“blank” – no irrigation reported

Year	No. 96-3	No. 408-3	No. 4553-3	No. 3861-3	No. 2440-3
2006		X	X	X	X
2007		X	X	X	X
2008		X		X	X
2009		X		X	X
2010		X		X	X
2011			X	X	
2012		X	X	X	X
2013			X	X	
2014		X		X	X
2015		X	X	X	X
2016		X	X	X	X
96-3 D & W Investment LLC – Turtle Creek 408-3 Timber Creek Land & Cattle LLC – Turtle Creek downstream approx. 3.5 miles 4553-3 William & Deborah St. Clair – ground water approx. 6 miles northwest 3861-3 William & Deborah St. Clair – ground water approx. 9 miles south 2440-3 James Frankenstein – ground water approx. 10 miles south, southeast					

Investigation Discussion

Pursuant to the petition filed by Mr. Rylance under SDCL 46-5-37.1:

“...the chief engineer may investigate whether or not a water permit or right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation of the permit or right for reason of abandonment or forfeiture...”

If the chief engineer chooses to pursue cancellation, then the burden of proof is upon the state to show that Water Right No. 96-3 is subject to abandonment or forfeiture based upon the evidence.

Abandonment. Matt Demmers and Janet Kegler both indicated that they want the water right to remain intact. Ms. Kegler confirmed that desire by filing a transfer of ownership on the portion of the property she owns. Mr. Demmers also has equipment on site that can be used to divert water and irrigate (Appendix A pp. 6 – 11) while Ms. Kegler indicated a portable pump was used to fill a plastic tank but was not onsite during the inspection. Comments regarding “system not constructed” on the 2006 and 2012 irrigation questionnaires (see Table 1) do not indicate abandonment was intended based on the comments provided on each questionnaire.

Forfeiture. Pursuant to SDCL 46-5-37:

“If any person entitled to the use of appropriated water fails to use beneficially any part of the water for the purpose for which it was appropriated, for a period of three years, the unused water shall revert to the public and shall be regarded as unappropriated public water.”

This statute indicates a water right may be forfeited due to nonuse provided the appropriated water is not used for a period of three years. Other provisions of state law and the Administrative Rules of South Dakota (ARSD) provide legal excuse for not using water.

- **SDCL 46-5-37.2 (Appendix A p. 3)** provides that a permit may not be forfeited if the acreage is placed in a federal reserve or production quota program such as the Conservation Reserve Program. The property covered by Water Right No. 96-3 has not been in a federal set aside program from 2006 through 2016 so no legal excuse is provided for not using water.
- **ARSD 74:02:01:37.02 (Appendix A p. 4 & 5)** provides that a water supply maintained for either fire protection or standby purposes is not nonuse of water. This provision typically pertains to nonirrigation water uses but may apply to irrigation if more than one water source is available for use. There are no other permitted water sources so Turtle Creek is not a standby water source. The irrigation equipment being suitable for fighting fire is questionable both in capability and need for acreage planted to corn or soybeans. The portable pump used on the Kegler property was not seen during the inspection but likely is not sufficient to fight a grass fire. In regard to No. 96-3, legal excuse for not using water is not provided under this rule.
- **ARSD 74:02:01:37.01** reads as follows:
Legal excuse for nonuse of water suspends the period of nonuse specified in SDCL 46-5-37. Legal excuses for nonuse of water include but are not limited to the following:
 - (1) Unavailability of water to satisfy a permit, right, or vested right;
 - (2) Legal proceedings which prevent the use of water;
 - (3) Water use under existing climatic conditions would result in a waste of water.

Regarding subsection No. 2 (legal proceedings preventing use of water). There have been legal proceedings on the Demmers acreage. Mr. Demmers had power of attorney for 5 years while his mother was suffering from dementia with the water right ultimately getting transferred to D & W Investments LLC. During this time the property was leased out and continues to be leased. Assuming there is not some legal aspect in the granting of power of attorney which would preclude irrigating; subsection No. 2 does not provide legal excuse for not irrigating.

Regarding subsection No. 3 (climatic conditions resulting in waste of water). During the period from 2006 through 2016, the irrigation questionnaires (see Appendix B) filed for Water Right No. 96-3 indicate that sufficient moisture was available every year except for 2009 (see Table 1). A review of the nearest other water rights indicate that water was used the majority of the years between 2006 and 2016 (see Table 2). However, the nearest of these water rights is approximately 3.5 miles away with the furthest being about 10 miles away. Precipitation can vary significantly over short distances. Sufficient moisture is a valid legal excuse for not using water pursuant to ARSD 74:02:01:37.01(2) since use of water under those conditions results in a waste of water (i.e. irrigating crops that don't need water).

Regarding subsection No. 1 (unavailability of water). Another potential legal excuse is the unavailability of water to satisfy Water Right No. 96-3 even though the water right is situated along the pool of water impounded by Redfield Lake dam. Two discontinued USGS gaging stations were located on Turtle Creek – one gage was upstream (USGS 06474000 – Turtle Creek near Tulare SD) and one was downstream (USGS 06474500 – Turtle Creek at Redfield SD) of No. 96-3. Depending on the gage, the historical records show daily median flows dropping significantly from the period of May or from July to mid-July through the remaining irrigation season. The upstream gage approaches zero flow and the downstream gage was around 2 cfs (approximately 900 gallons per minute) in mid-July then drops off quickly to less than 1 cfs. Since these are median flow figures, half the time during the period of record (25 years - upstream gage; 27 years - downstream gage) flows were higher and the other half lower.

The license issued in Water Right No. 96-3 provides a priority date of February 11, 1953, which is junior to the priority date established under Water Right No. 21-3, City of Redfield, which is March 6, 1940. Water Right No. 21-3 authorizes the Redfield Lake dam impoundment which may be used to satisfy Water Right Nos. 22-3 and 23-3 also held by the City of Redfield. However, in issuing the permit for No. 96-3 the state engineer included in his remarks (see Appendix C) attached to the permit that No. 96-3 was considered a vested right and takes precedence over the City of Redfield's water rights. The reasoning for this involved a court case (Case No. 9433 "Josephine Kolb vs. City of Redfield) regarding the property included on No. 96-3. The Spink county clerk of courts had record of the case but was unable to locate a copy of the decision. The state engineer also noted in his remarks that the applicant for No. 96-3 claims a vested right for 2.0 cfs from Turtle Creek, stored or flowing, over the property covered by No. 96-3 and that riparian rights remained with the property owner based on the court decision.

I interpret this to mean the holder of No. 96-3 is entitled to divert water stored in Redfield Lake dam provided there are inflows into the reservoir matching or exceeding the pump rate authorized by No. 96-3. If there is no flow in the creek, then the holder of No. 96-3 is not entitled to pump water that would not exist without the presence of Redfield Lake dam. Any pumping prior to construction of Redfield Lake dam was dependent on stream flow and construction of the dam should not change that condition. In addition, a portion of the water impounded by Redfield Lake dam is due to tributaries entering Turtle Creek below No. 96-3 and would also be unavailable without the existence of the dam.

Conclusion

I advise the chief engineer to not recommend cancellation of Water Right No. 96-3 pursuant to SDCL 46-5-37.1 for the following reasons:

1. The property owners have all expressed an interest in Water Right No. 96-3 remaining intact. No one expressed intent to abandon the water right.
2. Forfeiture of all or part of Water Right No. 96-3 is a consideration given the history provided by the annual irrigation questionnaires which indicates an 11 year period of no use from 2006 through 2016. Forfeiture can occur following a 3-year period of nonuse pursuant to SDCL 46-5-37. ARSD 74:02:01:37.01 provides for certain legal excuses that suspend the 3-year period of nonuse. Subsections 1 and 3 of this rule are pertinent to this matter – unavailability of water and use of water under climatic conditions resulting in a waste of water. The record provided by the annual irrigation questionnaires indicates “sufficient moisture” every year except for one. This claim of sufficient moisture is questionable for an entire irrigation season given that the nearest other crop irrigation water rights indicate use during most years. The difficulty in using other water rights as indicators that water use was warranted is the proximity of the other water rights to No. 96-3. The nearest other water right is about 3.5 miles away and precipitation can vary considerably over short distances. Regardless, the assertion of sufficient moisture when combined with the unavailability of water has merit in providing legal excuse for nonuse of water. Sufficient moisture may have been the case in the spring and early summer while the lack of water available in mid to late summer and fall also provides legal excuse. Historic stream flow records show greatly reduced stream flows beginning from either mid-May or mid-July on through fall depending on the gage. The only evidence available to the chief engineer concerning stream flows is the historic USGS stream gage records on Turtle Creek. By 2006, the stream gages no longer existed so no flow records exist for the 11-year period of nonuse. However, the existing flow records suggest that during the mid to latter part of the irrigation season, typically when the need is greatest, water was unavailable during some years.

The burden is on the state to prove that Water Right No. 96-3 is subject to cancellation due to either abandonment or forfeiture, or both. There is not sufficient evidence of abandonment or forfeiture for the chief engineer to recommend cancellation of Water Right No. 96-3 with any expectation of prevailing before the Water Management Board.



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

APPENDIX A

Petition to Chief Engineer

(Pages 1 and 2)

WILES & RYLANCE
ATTORNEYS AT LAW

3 East Kemp - Suite 200
P. O. Box 227
Watertown, South Dakota 57201-0227
(605) 886-5881

FACSIMILE
(605) 886-3934

E-MAIL:
rdr@wilesandrylance.com

RECEIVED

MAR 24 2017

**WATER RIGHTS
PROGRAM**

John C. Wiles, P.C.
Raymond D. Rylance, P.C.
Amanda M. Jensen

March 21, 2017

Jeanne Goodman
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501

Re: Petition

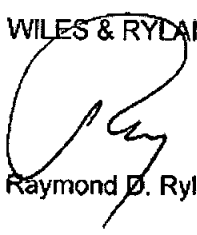
Dear Ms. Goodman:

Please find enclosed our Petition to investigate permit #96.3.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

WILES & RYLANCE


Raymond D. Rylance

RDR/jls
Enclosure

Jeanne Goodman
Chief Engineer
DWNR
523 East Capitol Ave.
Pierre, SD 57501

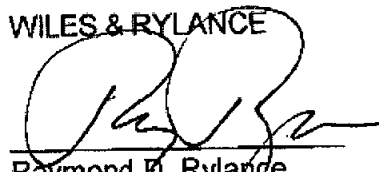
PETITION

Dear Jeanne,

Pursuant to SDCL 46-5-37.1 Lenny Peterson requests that the Chief Engineer investigates water permit #96-3 to determine whether the permit holder has abandoned or forfeited the permit.

Dated this 21 day of March, 2017.

WILES & RYLAND



Raymond D. Ryland
Attorney for Petitioner
3 East Kemp, Suite 200
PO Box 227
Watertown, SD 57201-0227
(605) 886-5881

Legal Citations

(Pages 3 through 5)

South Dakota Codified Laws (SDCL)

46-5-36. Abandonment of use of water appurtenant to land--Public water subject to general appropriation. If the owner of the land to which water has become appurtenant abandons the use of such water upon such land, such water shall become public water, subject to general appropriation.

Source: SDC 1939, § 61.0141; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0128.

46-5-37. Failure to use beneficially appropriated water--Forfeiture for nonuse--Reversion to public. If any person entitled to the use of appropriated water fails to use beneficially any part of the water for the purpose for which it was appropriated, for a period of three years, the unused water shall revert to the public and shall be regarded as unappropriated public water.

Source: SDC 1939, § 61.0139; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0125; SL 2011, ch 165, § 269.

46-5-37.1. Abandonment or forfeiture of permits or rights--Recommendation of chief engineer for cancellation. Upon the initiative of the chief engineer or upon petition by any interested person and after reasonable notice to the holder of the right or permit, if the holder can be located, the chief engineer may investigate whether or not a water permit or right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation of the permit or right for reason of abandonment or forfeiture. The recommendation, notice, and hearing shall be conducted pursuant to the procedure contained in chapter 46-2A.

Source: SL 1983, ch 314, § 69; SL 2011, ch 165, § 270.

46-5-37.2. Exceptions to forfeiture for nonuse. The provisions of § 46-5-37 notwithstanding, no water right or permit may be forfeited for nonuse if land authorized for irrigation by a permit or right is placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal program, if the water source is not fully appropriated, if the withdrawal from use does not prevent approval of new permits from the same source, and if the appropriated water has been applied to beneficial irrigation use prior to participation in a federal program.

Source: SL 1989, ch 384.

Administrative Rules of South Dakota (ARSD)

74:02:01:36. Board authorized to cancel invalid water permits, rights, or vested rights. The board may cancel a water permit, right, or vested right which has become invalid and file a record of the cancellation in the water permit, right, or vested right record.

Source: SL 1975, ch 16, § 1; transferred from § 52:01:01:34, effective July 1, 1979; 9 SDR 96, effective January 30, 1983; 10 SDR 27, effective September 26, 1983; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 24 SDR 90, effective January 4, 1998.

General Authority: SDCL 46-2-5.

Law Implemented: SDCL 46-2-9, 46-2A-8, 46-5-36, 46-5-37, 46-5-37.1.

74:02:01:37. Invalid water permit, right, or vested right defined. A water permit, right, or vested right is invalid if it meets one or more of the following conditions:

- (1) The necessary works were not constructed or the water put to beneficial use within the time limits as provided by statute;
- (2) Use of water has been abandoned as specified in SDCL 46-5-36;
- (3) Use of water has been forfeited for nonuse as specified in SDCL 46-5-37.

Source: SL 1975, ch 16, § 1; transferred from § 52:01:01:35, effective July 1, 1979; 9 SDR 96, effective January 30, 1983; 10 SDR 27, effective September 26, 1983; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 15 SDR 158, effective April 23, 1989; 17 SDR 40, effective September 19, 1990; 24 SDR 90, effective January 4, 1998.

General Authority: SDCL 46-2-5.

Law Implemented: SDCL 46-2-9, 46-2A-8, 46-5-36, 46-5-37, 46-5-37.1.

74:02:01:37.01. Legal excuse for nonuse of water. Legal excuse for nonuse of water suspends the period of nonuse specified in SDCL 46-5-37. Legal excuses for nonuse of water include but are not limited to the following:

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

Source: 13 SDR 49, effective October 27, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 15 SDR 158, effective April 23, 1989; 24 SDR 90, effective January 4, 1998.

General Authority: SDCL 46-2-5.

Law Implemented: SDCL 46-2-9, 46-5-37, 46-5-37.1.

74:02:01:37.02. Exceptions to nonuse of water. A water supply maintained for either fire protection or standby purposes, or both, is not nonuse of a water permit, right, or vested right if the water diversion works are maintained in working condition for immediate use upon demand. Works to

divert appropriated water must include wells equipped with functional motors, pumps, and appurtenances to convey water or functional motors, pumps, and appurtenances to convey water from a surface source, as applicable. Wells that are capped, sealed, or plugged are not standby or fire protection works.

Source: 17 SDR 40, effective September 19, 1990; 24 SDR 90, effective January 4, 1998.

General Authority: SDCL 46-2-5.

Law Implemented: SDCL 46-2-9, 46-2-11, 46-5-37, 46-5-37.1.

74:02:01:38. Procedure for consideration of water permit, right, or vested right cancellations -
- Contents of notice. If investigation by the chief engineer indicates a water permit, right, or vested right is invalid pursuant to § 74:02:01:37, the chief engineer shall prepare a recommendation to cancel. If the holder of an invalid permit, right, or vested right is not known following examination of known records, the chief engineer shall publish a notice of cancellation pursuant to SDCL 46-2A-4(1) to (9), as applicable, and SDCL 1-26-17.

The chief engineer shall send the notice of cancellation by first class mail to the holder of the invalid permit, right, or vested right, if known, at least 27 days before the scheduled hearing.

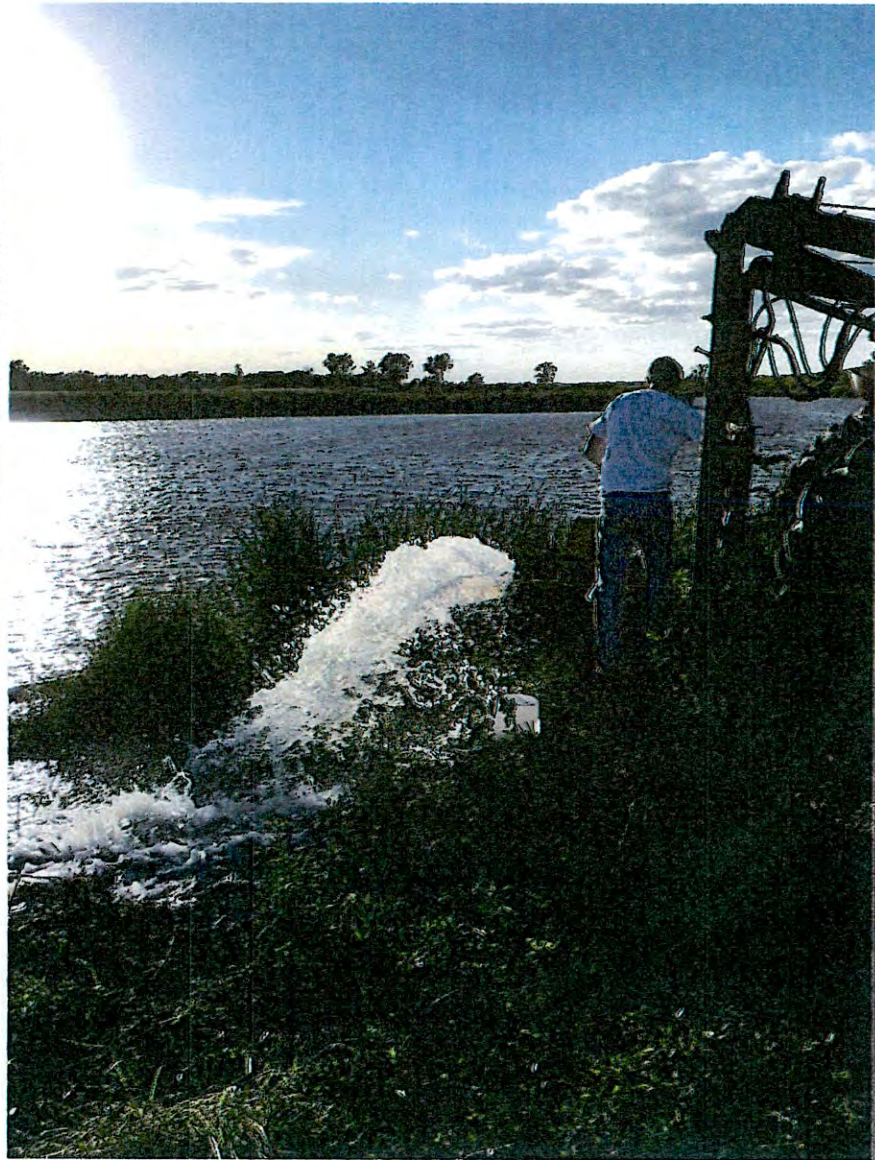
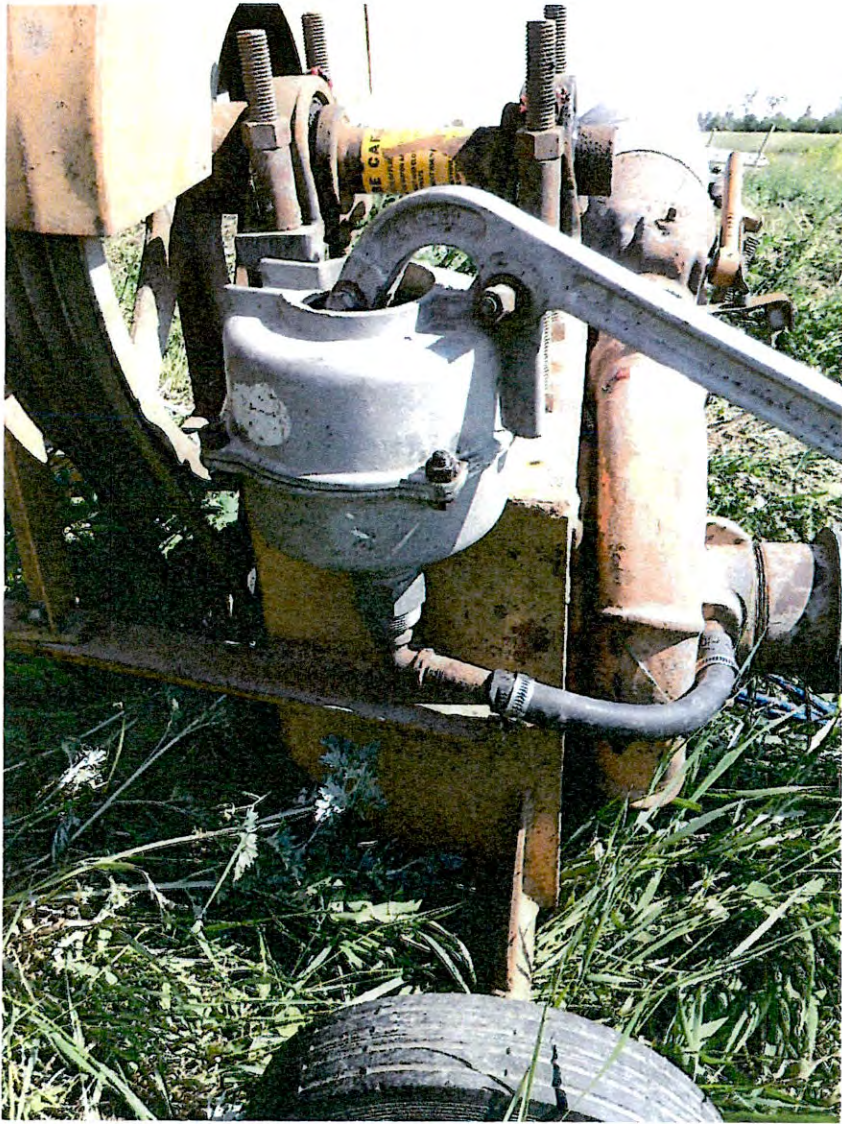
Source: SL 1975, ch 16, § 1; transferred from § 52:01:01:36, effective July 1, 1979; 9 SDR 96, effective January 30, 1983; 10 SDR 27, effective September 26, 1983; 13 SDR 49, effective October 27, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 15 SDR 158, effective April 23, 1989; 24 SDR 90, effective January 4, 1998.

General Authority: SDCL 46-2-5.

Law Implemented: SDCL 46-2-9, 46-2-17, 46-2A-2, 46-2A-4, 46-2A-5, 46-5-36, 46-5-37, 46-5-37.1.

Pictures provided by Matt Demmers via email on July 7, 2017 (Pages 6 through 10)







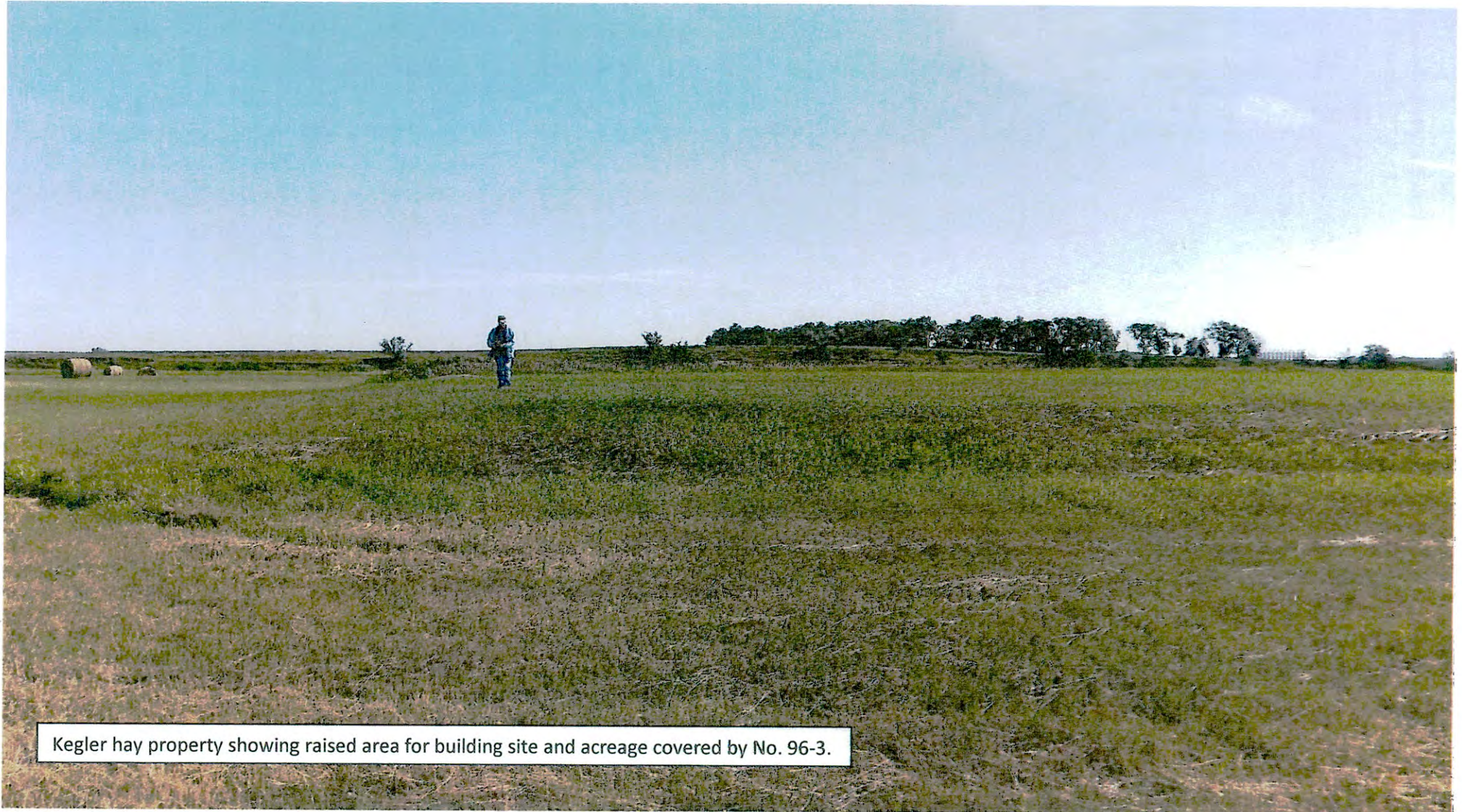








D & W Investments LLC property planted to soybeans





Kegler home site with trees and hay area in foreground.

APPENDIX B

Irrigation Questionnaires from 2006 through 2016

For Water Right No. 96-3, D & W Investments LLC

2006 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 1, 2006**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.

Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501-3181 (605) 773-3352 or send your form(s) electronically over the internet at <https://www.state.sd.us/eforms/secure/eforms/E0455V5-IQ.pdf>

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

Any address/ownership corrections?

Telephone No. _____

1. Did you irrigate in 2006? *yes ☐ **no ☒
*If yes, _____ acres were irrigated out of
the 140.00 acres covered by Permit No. 96-3

**If no, check reason(s) for not irrigating:

sufficient moisture ☒ no water available ☐
system not constructed ☒ use abandoned ☐
enrolled in CRP ☐ through what year? _____
other ☒ please explain in the comment box:

2. If your answer to question No. 1 is "no," you are done!
If you answered "yes," please complete Nos. 3, 4 & 5.

3. Did you apply chemicals or fertilizer through the
system in 2006? yes ☐ no ☐

4. If more than one water source is listed below, circle
each source used. A. TURTLE CREEK

5. Provide your water use on the back of this form.

Comment Box

Upon the Death of Son that ran
& was putting together the system
we could not finish for
the year this year
would like to keep permit
in tact.



NWNW	NENW	NWNE	NENE
☒ NW		☒ NE	
SWNW	SENW	SWNE	SENE
NWSW	NESW	NWSE	NESE
☒ SW		☒ SE	
SWSW	SESW	SWSE	SESE

1 square mile

Office use only

RECEIVED

NOV 14 2006

WATER RIGHTS
PROGRAM

Acreage permitted for irrigation under No. 96-3

(see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2006 water use to irrigate the above acreage on the REVERSE side of this form.

MONTH IRRIGATED	CROP TYPE	NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
-----------------	-----------	---------------------------------	---------------------------------------	--	--------------------------

MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

IF MORE ROOM IS NEEDED, PLEASE INCLUDE THE INFORMATION ON A BLANK SHEET OF PAPER

2007 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 3, 2007**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.

Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501-3181 (605) 773-3352 or send your form(s) electronically over the internet at <https://www.state.sd.us/eforms/secure/eforms/E0455V6-IQ.pdf>

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

Any address/ownership corrections?

Telephone No. 605-472-0712

1. Did you irrigate in 2007? *yes ☐ **no ☒
*If yes, _____ acres were irrigated out of
the 140.00 acres covered by Permit No. 96-3

2. If your answer to question No. 1 is "no," you are done!
If you answered "yes," please complete Nos. 3, 4 & 5.

3. Did you apply chemicals or fertilizer through the
system in 2007? yes ☐ no ☐

4. If more than one water source is listed below, circle
each source used. **A. TURTLE CREEK**

**If no, check reason(s) for not irrigating:
sufficient moisture ☒ no water available ☐
system not constructed ☐ use abandoned ☐
enrolled in CRP ☐, through what year? _____
other ☐, please explain in the Comment Box:

5. Provide your water use on the back of this form.

Comment Box



NWNW	NENW	NWNE	NENE
NW		NE	
SWNW	SENW	SWNE	SENE
NWSW	NESW	NWSE	NESE
SW		SE	
SWSW	SESW	SWSE	SESE

1 square mile

Office use only

RECEIVED

NOV - 7 2007

WATER RIGHTS
PROGRAM

Acreage permitted for irrigation under No. 96-3

(see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2007 water use to irrigate the above acreage on the REVERSE side of this form.

For an example of a completed questionnaire, please refer to the reverse side of your cover letter.

Type of system used: center pivot ☐ towline ☐ big gun ☐ flood ☐ sprinklers ☐ other _____
(check all that apply)

If more room is needed, copies of this page may be made or complete blank pages and attach to this form.

MONTH IRRIGATED	CROP TYPE	*NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

*Total number of acres irrigated should be the same as your answer in question No. 1 on reverse side of this form.

2008 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 1, 2008**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.

Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 (605) 773-3352 or send your form(s) electronically over the internet at <https://www.state.sd.us/eforms/secure/eforms/E0455V7-IQ.pdf>

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

Any address/ownership corrections?

Telephone No. 605-472-0712

1. Did you irrigate in 2008? *yes ☐ **no ☒
*If yes, _____ acres were irrigated out of
the 140.00 acres covered by Permit No. 96-3

**If no, check reason(s) for not irrigating:
sufficient moisture ☒ no water available ☐
system not constructed ☐ use abandoned ☐
enrolled in CRP ☐, through what year? _____
other ☐, please explain in the Comment Box:

Comment Box

2. If your answer to question No. 1 is "no," you are done!
If you answered "yes," please complete Nos. 3, 4 & 5.
3. Did you apply chemicals or fertilizer through the
system in 2008? yes ☐ no ☐
4. If more than one water source is listed below, circle
each source used. A. TURTLE CREEK
5. Provide your water use on the back of this form.



NWNW	NENW	NWNE	NENE
NW		NE	
SWNW	SENW	SWNE	SENE
NWSW	NESW	NWSE	NESE
SW		SE	
SWSW	SESW	SWSE	SESE

1 square mile

Office use only

Acreage permitted for irrigation under No. 96-3

(see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2008 water use to irrigate the above acreage on the REVERSE side of this form.

For an example of a completed questionnaire, please refer to the reverse side of your cover letter.

Type of system used: center pivot ☐ towline ☐ big gun ☐ flood ☐ sprinklers ☐ other _____
(check all that apply)

If more room is needed, copies of this page may be made or complete blank pages and attach to this form.

MONTH IRRIGATED	CROP TYPE	*NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

*Total number of acres irrigated should be the same as your answer in question No. 1 on reverse side of this form.

2009 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 1, 2009**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.

Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352 or send your form(s) electronically over the internet at <http://denr.sd.gov/iq.aspx>

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

Any address/ownership corrections?

Telephone No. _____

1. Did you irrigate in 2009? *yes ☐ **no ☒
*If yes, _____ acres were irrigated out of
the 140.00 acres covered by Permit No. 96-3

**If no, check reason(s) for not irrigating:
sufficient moisture ☐ no water available ☐
system not constructed ☐ use abandoned ☐
enrolled in CRP ☐, through what year? _____
other ☐, please explain in the Comment Box:

Comment Box

2. If your answer to question No. 1 is "no," you are done!
If you answered "yes," please complete Nos. 3, 4 & 5.

3. Did you apply chemicals or fertilizer through the
system in 2009? yes ☐ no ☐

4. If more than one water source is listed below, circle
each source used. A. TURTLE CREEK

5. Provide your water use on the back of this form.



NWNW	NENW	NWNE	NENE
NW			NE
SWNW	SENW	SWNE	SENE
NWSW	NESW	NWSE	NESE
SW			SE
SWSW	SESW	SWSE	SESE

1 square mile

Office use only

RECEIVED

OCT 20 2009

WATER RIGHTS
PROGRAM

Acreage permitted for irrigation under No. 96-3

(see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2009 water use to irrigate the above acreage on the REVERSE side of this form.

Type of system used: center pivot ☐ towline ☐ big gun ☐ . flood ☐ sprinklers ☐ other _____
(check all that apply)

If more room is needed, copies of this page may be made or complete blank pages and attach to this form.

MONTH IRRIGATED	CROP TYPE	*NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

*Total number of acres irrigated should be the same as your answer in question No. 1 on reverse side of this form.

2010 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 3, 2010**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.

Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352 or send your form(s) electronically over the internet at <http://denr.sd.gov/iq.aspx>

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

Any address/ownership corrections?

Email _____

Phone _____

1. Did you irrigate in 2010? *yes ☐ **no ☒
*If yes, _____ acres were irrigated out of
the 140.00 acres covered by Permit No. 96-3

**If no, check reason(s) for not irrigating:
sufficient moisture ☒ no water available ☐
system not constructed ☐ use abandoned ☐
enrolled in CRP ☐, through what year? _____
other ☐, please explain in the Comment Box:

Comment Box

2. If your answer to question No. 1 is "no," you are done!
If you answered "yes," please complete Nos. 3, 4 & 5.
3. Did you apply chemicals or fertilizer through the
system in 2010? yes ☐ no ☐
4. If more than one water source is listed below, circle
each source used. A. TURTLE CREEK
5. Provide your water use on the back of this form.



NWNW	NENW	NWNE	NENE
NW			NE
SWNW	SENW	SWNE	SENE
NWSW	NESW	NWSE	NESE
SW			SE
SWSW	SESW	SWSE	SESE

1 square mile

Office use only

RECEIVED

OCT 20 2010

**WATER RIGHTS
PROGRAM**

Acreage permitted for irrigation under No. 96-3

(see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2010 water use to irrigate the above acreage on the REVERSE side of this form.

For an example of a completed questionnaire, please refer to the reverse side of your cover letter.

Type of system used: center pivot ☐ towline ☐ big gun ☐ flood ☐ sprinklers ☐ other _____
(check all that apply)

If more room is needed, copies of this page may be made or complete blank pages and attach to this form.

MONTH IRRIGATED	CROP TYPE	*NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

*Total number of acres irrigated should be the same as your answer in question No. 1 on reverse side of this form.

2011 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 2, 2011**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.

Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352 or send your form(s) electronically over the internet at <http://denr.sd.gov/iq.aspx>

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

Any address/ownership corrections?

Email

Phone

605-472-0712

1. Did you irrigate in 2011? *yes ☐ **no ☒
*If yes, _____ acres were irrigated out of
the 140 acres covered by Permit No. 96-3

**If no, check reason(s) for not irrigating:
sufficient moisture ☒ no water available ☐
system not constructed ☐ use abandoned ☐
enrolled in CRP ☐, through what year? 2011
other ☐, please explain in the Comment Box:

Comment Box

*To much rain & lower ground
flooding.
High water levels*

2. If your answer to question No. 1 is "no," you are done!
If you answered "yes," please complete Nos. 3, 4 & 5.

3. Did you apply chemicals or fertilizer through the
system in 2011? yes ☐ no ☐

4. If more than one water source is listed below, circle
each source used. A. TURTLE CREEK

5. Provide your water use on the back of this form.



NWNW	NENW	NWNE	NENE
NW		NE	
SWNW	SENW	SWNE	SENE
NWSW	NESW	NWSE	NESE
SW		SE	
SWSW	SESW	SWSE	SESE

1 square mile

Office use only

RECEIVED

OCT 18 2011

**WATER RIGHTS
PROGRAM**

Acreage permitted for irrigation under No. 96-3

(see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2011 water use to irrigate the above acreage on the REVERSE side of this form.

Type of system used: center pivot ☐ towline ☐ big gun ☐ flood ☐ sprinklers ☐ other _____
(check all that apply)

If more room is needed, copies of this page may be made or complete blank pages and attach to this form.

MONTH IRRIGATED	CROP TYPE	*NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

*Total number of acres irrigated should be the same as your answer in question No. 1 on reverse side of this form.

2012 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 3, 2012**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.

Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352 or send your form(s) electronically over the internet at <http://denr.sd.gov/iq.aspx>

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

Any address/ownership corrections? no

Email _____

Phone _____

1. Did you irrigate in 2012? *yes ☐ **no ☒
*If yes, _____ acres were irrigated out of
the 140 acres covered by Permit No. 96-3

**If no, check reason(s) for not irrigating:

sufficient moisture ☒ no water available ☐

system not constructed ☒ use abandoned ☐

enrolled in CRP ☐, through what year? 2012

other ☐, please explain in the Comment Box:

Comment Box Irrigation motor blew
up & pump froze up. Have not
been able to finish repair
yet. - Got timely rains, sufficient
to make a good crop.

2. If your answer to question No. 1 is "no," you are done!
If you answered "yes," please complete Nos. 3, 4 & 5.

3. Did you apply chemicals or fertilizer through the
system in 2012? yes ☐ no ☒

4. If more than one water source is listed below, circle
each source used. A. TURTLE CREEK

5. Provide your water use on the back of this form.



NWNW	NENW	NWNE	NENE
NW			NE
SWNW	SENW	SWNE	SENE
NWSW	NESW	NWSE	NESE
SW			SE
SWSW	SESW	SWSE	SESE

— 1 square mile —

Office use only

RECEIVED

DEC 18 2012

WATER RIGHTS
PROGRAM

Acreage permitted for irrigation under No. 96-3

(see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2012 water use to irrigate the above acreage on the **REVERSE** side of this form.

For an example of a completed questionnaire, please refer to the reverse side of your cover letter.

Type of system used: center pivot ☐ towline ☐ big gun ☐ flood ☒ sprinklers ☒ other _____
 (check all that apply)

If more room is needed, copies of this page may be made or complete blank pages and attach to this form.

MONTH IRRIGATED	CROP TYPE	*NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

*Total number of acres irrigated should be the same as your answer in question No. 1 on reverse side of this form.

2013 Water Management Board Irrigation Questionnaire

Please fill out and return before December 2, 2013

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.

Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352 or send your form(s) electronically over the internet at <http://denr.sd.gov/iq.aspx>

Permit No. 96-3

GEORGIA A DEMMERS
38329 TURTLE LANE
REDFIELD SD 57469 0208

1. Did you irrigate in 2013? *yes ☐ **no ☒

*If yes, number of acres irrigated? _____

**If no, check reason(s) for not irrigating acres covered by Permit No. 96-3

sufficient moisture ☒ no water available ☐

system not constructed ☐ use abandoned ☐

enrolled in CRP ☐, through what year? _____

other ☐, please explain in the Comment Box:

Comment Box

Any address/ownership corrections?

Email _____

Phone _____

2. If your answer to question No. 1 is "no," you are done!
If you answered "yes," please complete Nos. 3, 4 & 5.

3. Did you apply chemicals or fertilizer through the system in 2013? yes ☐ no ☐

4. If more than one water source is listed below, circle each source used. A. TURTLE CREEK

5. Provide your water use on the back of this form.



NWNW	NENW	NUNE	NENE
NW		NE	
SWNW	SENW	SWNE	SENE
NWSW	NESW	NWSE	NESE
SW		SE	
SWSW	SESW	SWSE	SESE

1 square mile

Office use only

RECEIVED

NOV 12 2013

WATER RIGHTS
PROGRAM

Acres permitted for irrigation under No. 96-3

(see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

2014 Water Management Board Irrigation QuestionnairePlease fill out and return before **December 1, 2014****REMEMBER!** Return of this questionnaire is required whether or not you irrigated this year.Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352 or send your form(s) electronically over the internet at <http://denr.sd.gov/iq.aspx>**Permit No. 96-3**GEORGIA A DEMMERS
4314 TITAN DR
RAPID CITY SD 57701 43121. Did you irrigate in 2014? *yes ☐ **no ☒

*If yes, number of acres irrigated? _____

**If no, check reason(s) for not irrigating acres covered by Permit No. 96-3

sufficient moisture ☒ no water available ☐system not constructed ☐ use abandoned ☐enrolled in CRP ☐, through what year? _____other ☐, please explain in the Comment Box:**Comment Box****Any address/ownership corrections?**

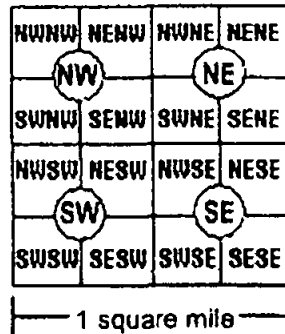
Email _____

Phone _____

2. If your answer to question No. 1 is "no," you are done!
If you answered "yes," please complete Nos. 3, 4 & 5.3. Did you apply chemicals or fertilizer through the system in 2014? yes ☐ no ☐

4. If more than one water source is listed below, circle each source used. A. TURTLE CREEK

5. Provide your water use on the back of this form.



Office use only

RECEIVED**NOV 13 2014****WATER RIGHTS
PROGRAM****Acreage permitted for Irrigation under No. 96-3**

(see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

2015 Water Management Board Irrigation Questionnaire

Please fill out and return before December 1, 2015

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.

Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352 or send your form(s) electronically over the internet at <http://denr.sd.gov/iq.aspx>

Permit No. 96-3

GEORGIA A DEMMERS
4314 TITAN DR
RAPID CITY SD 57701 4312

1. Did you irrigate in 2015? *yes ☐ **no ☒

*If yes, number of acres irrigated? _____

**If no, check reason(s) for not irrigating acres covered by Permit No. 96-3

sufficient moisture ☒ no water available ☐

system not constructed ☐ use abandoned ☐

enrolled in CRP ☐, through what year? _____

other ☐, please explain in the Comment Box:

Comment Box

Any address/ownership corrections?

Email _____

Phone _____

2. If your answer to question No. 1 is "no," you are done!
If you answered "yes," please complete Nos. 3, 4 & 5.

3. Did you apply chemicals or fertilizer through the system in 2015? yes ☐ no ☐

4. If more than one water source is listed below, circle each source used. A. TURTLE CREEK

5. Provide your water use on the back of this form.



NWNW	NENW	NWNE	NENE
NW			NE
SWNW	SENW	SWNE	SENE
NWSW	NESW	NWSE	NESE
SW			SE
SWSW	SESW	SWSE	SESE

1 square mile

Office use only

RECEIVED

NOV 23 2015

WATER RIGHTS
PROGRAM

Acreage permitted for irrigation under No. 96-3

(see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2015 water use to irrigate the above acreage on the REVERSE side of this form.

For an example of a completed questionnaire, please refer to the reverse side of your cover letter.

Type of system used: center pivot ☐ towline ☐ big gun ☐ flood ☐ sprinklers ☐ other _____
 (check all that apply) If center pivot, how many? ____ **Please note, pivots need end gun stops to prevent overspray!**

If more room is needed, copies of this page may be made or complete blank pages and attach to this form.

MONTH IRRIGATED	CROP TYPE	*NUMBER OF ACRES IRRIGATED	PUMP RATE IN GALLONS PER MINUTE	DAYS PER MONTH WATER WAS APPLIED	AVERAGE HOURS PER DAY
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
OCTOBER					

*Total number of acres irrigated should be the same as your answer in question No. 1 on reverse side of this form.

2016 Water Management Board Irrigation Questionnaire

Please fill out and return before **December 1, 2016**

REMEMBER! Return of this questionnaire is required whether or not you irrigated this year.

Return the completed form(s) to the Water Rights Program at 523 E Capitol, Pierre, SD 57501 3181 ph. (605) 773 3352 or send your form(s) electronically over the internet at <http://denr.sd.gov/iq.aspx>

Permit No. 96-3

MATT J DEMMERS
D & W INVESTMENTS LLC
4314 TITAN DR
RAPID CITY SD 57701 4312

Any address/ownership corrections?

Email mdemmers660@msn.com

Phone 605-390-9214

1. Did you irrigate in 2016? *yes ☐ **no ☒

*If yes, number of acres irrigated? _____

**If no, check reason(s) for not irrigating acres covered by Permit No. 96-3

sufficient moisture ☒ no water available ☐

system not constructed ☐ use abandoned ☐

enrolled in CRP ☐, through what year? _____

other ☐, please explain in the Comment Box:

Comment Box

2. If your answer to question No. 1 is "no," you are done! If you answered "yes," please complete Nos. 3, 4 & 5.

3. Did you apply chemicals or fertilizer through the system in 2016? yes ☐ no ☐

4. If more than one water source is listed below, circle each source used. A. TURTLE CREEK

5. Provide your water use on the back of this form.



NW	NE	SW	SE
NW	NE	SW	SE
NW	NE	SW	SE
NW	NE	SW	SE

1 square mile

Office use only

RECEIVED

DEC - 5 2016

WATER RIGHTS
PROGRAM

Acreage permitted for irrigation under No. 96-3

(see above section map for help reading legal descriptions)

sec 05-T116N-R64W, SW1/4 - 140.0 acres

Please provide your 2016 water use to irrigate the above acreage on the REVERSE side of this form.

For an example of a completed questionnaire, please refer to the reverse side of your cover letter.

APPENDIX C

Remarks of State Engineer Attached to Issued Permit For Water Right No. 96-3

Entire file for No. 96-3 is available at
http://denr.sd.gov/wrimage/wrinfo/wr_div3/96-3.pdf

REMARKS BY STATE ENGINEER

Joseph Albrecht

Redfield, S. Dak.

May 21, 1953

Water Permit No. 96-3

On May 7, 1953, a letter was received from W. G. Dunker, City Attorney of Redfield, enclosing a resolution by the City of Redfield and a written protest by the City of Redfield to the application of Joseph Albrecht for 2 cu. ft. per second of water from Turtle Creek. The protest is qualified in the next to the last paragraph which reads in part as follows:

"Provided that if the granting of such water right to said applicant will not, in any way, interfere with the existing water rights of the City of Redfield or with the rights of the public to their use of said Lake Redfield and will not lower the level of the water of said Lake Redfield below the top of the spillway in said dam, then the said City of Redfield does not desire to enter protest to the granting of future rights to the water of Turtle Creek."

Pauline
On the date set for considering the application as advertised, there was no representative of the City present at the State Engineer's Office but the applicant appeared together with Engineer E. K. Mather of Mitchell and Attorney ~~James~~ of Sioux Falls. The matter was quite thoroughly discussed by Engineer Mather. The matter of the vested rights of the applicant was stressed and the case of Mrs. ~~Gale~~, the former owner, was referred to. This case involved the resistance of Mrs. ~~Gale~~ to the granting of an easement for the establishment of Lake Redfield and in which case Mrs. ~~Gale~~ was awarded \$2,347.65 for damages. The action of Mrs. ~~Gale~~ dates back to 1940 which was prior to the application of the City of Redfield.
Kalb

In granting the permit to Mr. Albrecht under procedure of the appropriative doctrine of water law as set up in our present State Code, ~~respects~~ this Office recognizes the vested rights of the applicant which have been maintained at considerable expense and effort and which vested rights would take precedent over any appropriative rights granted either to the City of Redfield or to other applicants. In granting this permit it should be understood that the vested rights above referred to and as referred to in the application will not in any way be affected by the granting of this permit, and in granting such permit some is made in recognition of the action of the court in the 1946 case between Mrs. ~~Gale~~ *Kalb* and the City of Redfield. It is, however, the opinion of the State Engineer that the awarding of the permit will not interfere to any material or practical extent with the existing water rights of the City of Redfield or with rights of the public to the use of Lake Redfield, in which event the City has stated that they do not desire to enter protest to the granting of future rights to the waters of Turtle Lake. It is also the opinion of the State Engineer from information available and without the aid of any stream flow records above Lake Redfield, that there is adequate water available to satisfy the application of Mr. Albrecht for the use of 2 cu. ft. per second for irrigation and other purposes as granted.

The applicant claims a vested right to two (2) second feet of water from Turtle Creek, stored on or flowing over the portion of the NW¹/₄ of Sec. 5 Twp 116 N, R 64 W of 5th M, flooded by a dam across said Turtle Creek, built as a FWA project by the City of Redfield in 1935, more fully described and discussed in Circuit Court Proceedings Case No. 9433, "Josephine Kolb vs City of Redfield", of the records of the Clerk of Courts Office of Spink County, South Dakota, which clearly indicates that title to said NW¹/₄ of Sec. 5 and all riparian rights remain with the owner of said NW¹/₄ of Sec. 5, who has paid taxes on said land annually prior and subsequent to the construction of said dam and lake.

Instead of requiring the City of Redfield to erect structures necessary to keep water off the said NW¹/₄ of Sec. 5, the owner collected damages incidental to the flooding of approximately 20 acres of land, which created a lake on and across a portion of said Quarter Section, and the owner thereof claims a vested right to use 2 second feet of stored or flowing water therefrom for irrigation of 140 acres of land on said Quarter Section. Said Quarter Section contains approximately 165.5 acres, on which taxes are paid annually and more fully described and discussed in Circuit Court Proceedings, Case No. 9951, "Clayton Newman vs Joseph Albrecht".

Because the owner has continually claimed and successfully resisted a transfer of land or water to the City of Redfield or anyone else, claim is made of a vested right preceeding that of any water right of record and riparian rights of those lands in which transfer of rights to the City of Redfield, or State of South Dakota, has resulted in the owner escaping taxation of land now covered by water, or within a 12 ft public right of way along the margin of the lake or reservoir.

To maintain his right to priority in use of water, the applicant claims

1. A right to use Turtle Creek water flow as necessary to maintain a lake or stream flow of sufficient quantity to furnish 2 second feet of irrigation water supply for use on 140 acres of said NW¹/₄ of said Sec. 5.
2. A right to build and maintain a dam across Turtle Creek immediately west of the north-south quarter section line in Section 5, Twp 116 N 64 W, in case of failure of the concrete dam described in Water Right No. 21-3 granted to the City of Redfield with priority of "Ch. 6, 1940, or its repaired or rebuilt successor.
3. A right to build and maintain a dam across a draw draining into Turtle Creek from the north east and east of the west line of the NW¹/₄ of said Sec. 5, for the purpose of holding and storing flood water in said draw that can be used for irrigation of 140 acres in the said NW¹/₄ of Sec. 5 at the rate of 2 second feet in case a succession of dry years results in water levels in the Turtle Creek lake being sufficiently below the crest to endanger the water supply for fire protection of the City of Redfield.

FILE DOCUMENTATION FOR WATER RIGHT NO. 96-3

Water Right No. 96-3 authorizes diversion of 2.00 cubic feet of water per second (cfs) from Turtle Creek in the SW ¼ Section 5 to irrigate 140 acres in the SW ¼ Section 5, T116N, R64W in Spink County.

On August 4, 2017, Janet M Kegler filed an ownership change for a portion of the land described in the water right. Based on the ownership change, Water Right No. 96-3 was divided and reissued to reflect separate ownership as follows:

- **No. 96A-3, D & W Investments LLC, 4314 Titan Drive, Rapid City SD 57701** authorizing diversion of 1.68 cfs from Turtle Creek located in the SW ¼ Section 5 to irrigate 117.5 acres within the SW ¼ Section 5, (north and east of the creek) all in T116N, R64W;
- **No. 96B-3, Janet M Kegler, 17302 383rd Ave., Redfield SD 57469** authorizing diversion of 0.32 cfs from Turtle Creek located in the SW ¼ Section 5 to irrigate 22.5 acres within the SW ¼ Section 5 (south and west of the creek), all in T116N, R64W.