

470-3

1. Considered 7-11, 1962
2. Name of Applicant Wm F H Clair
3. Post Office Address Indiantown
4. Amount of water claimed 5.58 (3 wells)
5. Source of water supply ground water
6. Water to be used for irrigation
Acres to be irrigated 391
7. Water to be diverted and used in Spink County
SW 1 N miles of Indiantown
8. Proof of Publication Received 1st
 Not Received _____
9. Application Approved _____
 Subject to _____
 Not Approved _____
 Action deferred _____

10. Remarks:

No. 970-3Water Division No. 3 JAMES RIVER District
(Blanks to be filled by the Engineer for the W. R. C.)

APPLICATION FOR PERMIT To Appropriative Water within the State of South Dakota

(NOTE—Draw a line through items not applicable.)

1. Name of applicant WM F ST CLAIR
Postoffice address TULARE, County HAND, State S.D.

- 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 addresses 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)

CONTRACT

(b) Cash on hand, \$ ADEQUATE (c) Treasury stock, \$ _____

(d) Bonds to be issued, \$ _____ (e) Other resources, \$ _____

2. Name of diversion work ST. CLAIR IRRIGATION PROJECT #2

3. Amount of water claimed 5.58 cubic feet per second

4. Source of water supply GROUND WATER

5. Location of point of diversion SEE ATTACHMENT

_____ on _____ bank SPINK County.

6. Annual period or periods during which water is to be used APRIL THRU OCTOBER

7. To be used for:

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

(a) Number of acres to be irrigated 391 acres.

(b) Legal subdivisions to be irrigated SEE ATTACHMENT

(NOTE—A list of lands to be irrigated, giving each subdivision and fraction with acreage thereof, 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.) _____

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

(a) Nature of use _____
Name any of the above uses claimed

(b) Amount of power to be generated _____ 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 _____

MAP NO. 620

2. Estimated cost of work:

(a) Head Gates, \$-----

(b) Pumping plant, \$15,000⁰⁰

(c) Fluming, \$-----

(d) Canal-earth, \$-----

Rock, \$-----

(e) Other structures -----

Total, \$20,000⁰⁰

3. Description of diversion works:

I. Nature of works: (Reservoir, dam, ditch, flume, pumping plant, etc.)

II. Dimensions of works.

- (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 at back face ----- material used in construction -----
- (b) Reservoir: Capacity when filled ----- acre feet. Surface area at highwater mark ----- acres.

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

- (c)* Head gate: Width ----- feet; height ----- feet; Material -----
- (d) Canal: Total length ----- miles.

LOCATION BELOW HEADGATE	DEPTH	BOTTOM WIDTH	WIDTH AT WATER-LINE	GRADE PER MILE
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet

(Give dimensions where reductions in size are made.)

10. Time required for completion of work ----- 5 ----- years.
11. Time required for complete application of water to the proposed beneficial use ----- 5 ----- years.
12. Choice of newspaper for publication of notice of intention to appropriate -----
REDFIELD PRESS

STATE OF SOUTH DAKOTA

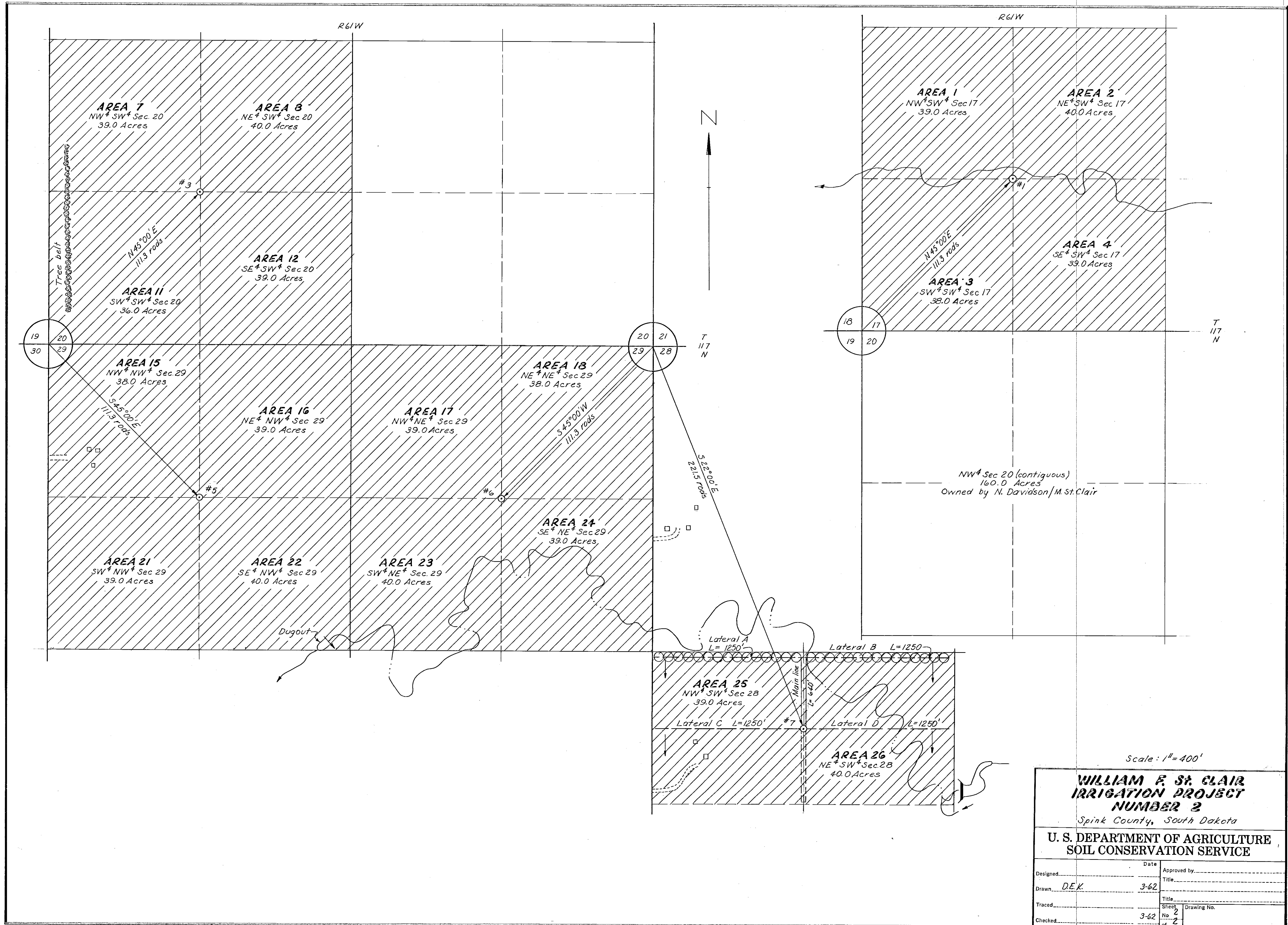
County of ----- HUGHES ----- ss.

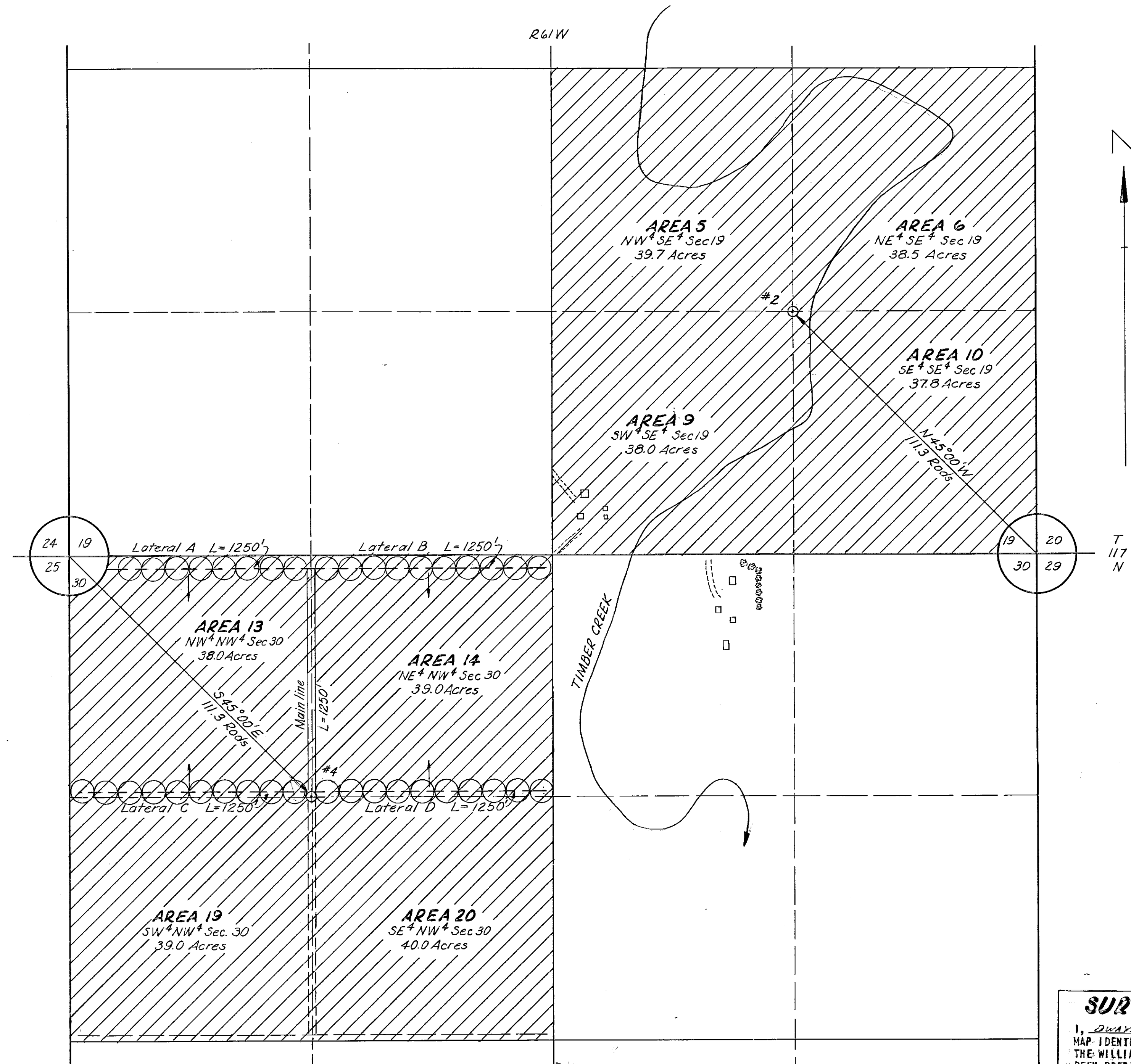
I, ----- WM F. ST. CLAIR -----, being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of owner, that I have read the above foregoing statement, examined the map accompanying the same, and that I know of my own personal knowledge that the matters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

Signed -----

Subscribed and sworn to before me this ----- 24 ----- day of ----- 1922 -----

Notary Public (or other qualified officer.)





AREA 5
NW 1/4 SE 1/4 Sec 19
39.7 Acres

AREA 6
NE 1/4 SE 1/4 Sec 19
38.5 Acres

AREA 10
SE 1/4 SE 1/4 Sec 19
37.8 Acres

AREA 9
SW 1/4 SE 1/4 Sec 19
38.0 Acres

AREA 13
NW 1/4 NW 1/4 Sec 30
38.0 Acres

AREA 14
NE 1/4 NW 1/4 Sec 30
39.0 Acres

AREA 19
SW 1/4 NW 1/4 Sec 30
39.0 Acres

AREA 20
SE 1/4 NW 1/4 Sec 30
40.0 Acres

All lands described are owned by
Norma Davidson and Marion St. Clair

LOCATION OF LANDS TO BE IRRIGATED					
AREA	LOCATION	SECTION	TOWNSHIP	RANGE	ACRES
1	NW 1/4 SW 1/4	17	117N	61W	39.0
2	NE 1/4 SW 1/4	17	117N	61W	40.0
3	SW 1/4 SW 1/4	17	117N	61W	38.0
4	SE 1/4 SW 1/4	17	117N	61W	39.0
5	NW 1/4 SE 1/4	19	117N	61W	39.7
6	NE 1/4 SE 1/4	19	117N	61W	38.5
7	NW 1/4 SE 1/4	20	117N	61W	39.0
8	NE 1/4 SE 1/4	20	117N	61W	40.0
9	SW 1/4 SE 1/4	19	117N	61W	38.0
10	SE 1/4 SE 1/4	19	117N	61W	37.8
11	SW 1/4 SE 1/4	20	117N	61W	36.0
12	SE 1/4 SE 1/4	20	117N	61W	39.0
13	NW 1/4 NW 1/4	30	117N	61W	38.0
14	NE 1/4 NW 1/4	30	117N	61W	39.0
15	NW 1/4 NW 1/4	29	117N	61W	38.0
16	NE 1/4 NW 1/4	29	117N	61W	39.0
17	NW 1/4 NE 1/4	29	117N	61W	39.0
18	NE 1/4 NE 1/4	29	117N	61W	38.0
19	SW 1/4 NW 1/4	30	117N	61W	39.0
20	SE 1/4 NW 1/4	30	117N	61W	40.0
21	SW 1/4 NW 1/4	29	117N	61W	39.0
22	SE 1/4 NW 1/4	29	117N	61W	40.0
23	SW 1/4 NE 1/4	29	117N	61W	40.0
24	SE 1/4 NE 1/4	29	117N	61W	39.0
25	NW 1/4 SW 1/4	28	117N	61W	39.0
26	NE 1/4 SW 1/4	28	117N	61W	40.0
TOTAL					1,011.0

Land to be irrigated
Perennial stream
Intermittent stream
Irrigation well
#2

Note: All wells located to serve 160 Acres.
Sprinkler layout similar to that
shown in NW 1/4 Sec 30. (8" main
line - 1250' and 4-4" laterals - 1250'
each.)

Scale: 1" = 400'

SURVEYOR'S CERTIFICATE

I, DWAYNE E. KONRAD, DO HEREBY CERTIFY THAT THIS
MAP IDENTIFIES A REASONABLY ACCURATE RECORD OF THE LAND OF
THE WILLIAM F. ST. CLAIR IRRIGATION PROJECT NO. 2 AND HAS
BEEN PREPARED BY THE SOIL CONSERVATION SERVICE FOR THE
SPINK COUNTY SOIL AND WATER CONSERVATION DISTRICT.

SIGNATURE: Dwayne E. Konrad

TITLE: AGRIC. ENGINEER
U. S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

SUBSCRIBED AND SWORN TO BEFORE ME THIS 3rd DAY OF
April, 1962, A. D. Bertie M. Theil
NOTARY PUBLIC

MY COMMISSION EXPIRES June, 1968.

WILLIAM F. ST. CLAIR IRRIGATION PROJECT NUMBER 2

Spink County, South Dakota

U. S. DEPARTMENT OF AGRICULTURE SOIL CONSERVATION SERVICE

Designed	Date	Approved by
Drawn <u>DEK</u>	<u>3-62</u>	Title
Traced		Title
Checked	<u>3-62</u>	Sheet No. <u>1</u> of <u>2</u>
		Drawing No.

Remarks by State Water Resources Commission:

--- The well granted under this Permit is located near domestic wells and other
--- irrigation wells which may obtain water from the same aquifer. If the well
--- covered by this Permit depletes the domestic supplies or interferes with prior
--- water rights, restrictions, to the extent necessary, of the capacity of the well
--- or periods of operation or other arrangements may be required to protect these
--- water supplies.

STATE OF SOUTH DAKOTA
County of HUGHES ss.

Pierre, South Dakota, JULY 18, 1962

This is to certify that the foregoing application was received by the Commission at 1:20 o'clock
P. m. on the 7th day of MARCH, 1962

State Water Resources Commission

By:

for Chief Engineer, Executive Officer

Number of permit 970-3

Date of first receipt of application MARCH 7, 1962

Date of return to applicant for correction, amendments or changes required as follows: MARCH 9, 1962

Date of receipt of corrected application APRIL 4, 1962

Date from which applicant may claim right MARCH 7, 1962

Approved JULY 11, 1962, Recorded in Book 7 Page 148

This is to certify that we have examined the foregoing application for a permit to appropriate water of the State of South Dakota, and we 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

JANUARY 11, 1965

2nd. The whole of said work is to be completed on or before JULY 11, 1967

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is

JULY 11, 1967

4th. The water appropriated shall be used for the purpose of irrigation

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

6th. The amount of the appropriation herein granted shall not exceed 5.58 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 necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation 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 JULY 11, 1967; said water to be used during the following described annual period:

APRIL THRU OCTOBER
18th day of JULY, 1962

Witness my hand this

State Water Resources Commission

By:

for Chief Engineer, Executive Officer

Certificate of Construction Issued

APRIL 10, 1973

Water License issued

APRIL 10, 1973

9. (Continued)

III. Well Specifications

COMPOSITE FOR 3 WELLS

(a) Hole and casing

Size of drill hole or excavation 36", Depth 52'Type of casing concrete
(wood, concrete, steel, etc.)Size of casing 18", Thickness of casing 2"Length of casing 52' If collection gallery, length, size and depth of gallery

(b) Screens

Type of perforated screen perforous concrete

Size of perforated screen (diameter) (length)

Thickness of gravel pack 4", length of gravel pack 50'

(c) Water Bearing Materials

Distance to water 3' Character of water bearing materials
COARSE SAND & gravelThickness of water bearing material 50'

(d) Pump and Motor

Type of pump turbine
(centrifugal, propeller, mixed flow, etc.)Name of pump FARBANKS Motse, size 8"Kind of motor ELECTRIC
(gasoline, electric, diesel, etc.)Horsepower 40, Name of Motor

(e) Complete well

Capacity 1500 at drawdown of ? Estimated cost(f) Owner of land upon which well is located Mrs. MARINO St. Gertrude
NameMrs. C. S. Dwyer, 148 Interlaken Rd., Hopkins, Minn.
Address

(g) Distance to nearest existing wells

On same owner's property 1/2 mile rods. On property owned by others 2 1/2 miles rods

POINT OF DIVERSION

- #1 S45°00'E 111.3 rods from the NW corner Sec 29, T117N R61W
- #2 S45°00'W 111.3 rods from the NE corner Sec 29, T117N R61W
- #3 S 22°00'E 221.5 rods from the NW corner Sec 28, T117N R61W

LANDS TO BE IRRIGATED:

(15600) (15600)
NW¹/₄ & NE¹/₄ Section 29 T117N R61W
(19200)
N¹/₂ NW¹/₄ SECTION 28 T117N R61W

Permit No. 970-3

Water Diversion No. 3 JAMES RIVER Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That William F. St. Clair

_____ the holder _____ of
Permit No. 970-3, issued upon Application No. 970-3, bearing date of priority of March 7,
1962 authorizing the diversion of 5.58 cu. ft. per second of the waters of _____
ground water County of Spink, State of South Dakota at _____
Well #1, South 45° East, 111.3 rods from the NW Corner, and Well #2,
South 45° West, 111.3 rods from the NE Corner, Section 29, T117N, R61W
_____, for irrigation

purposes, has ■ 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 3.88 cu. ft. per second of water.

Date April 10, 1973

WATER RESOURCES COMMISSION

By:

J.W. GRIMES, Executive Officer

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 970-3

(1) WHEREAS, On the 7th day of March A. D. 1962
William F. St. Clair

made Water Right Application No. 970-3 for a permit to use 5.58 cubic feet per second of the waters
of ground water

County of Spink, State of South Dakota, for irrigation

purposes; and
(2) WHEREAS, On the 18th day of July A. D. 1962
Permit No. 970-3, with a date of priority of March 7, 1962

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 11th day of July A. D. 1967 and for the
application to beneficial use of said water on or before the 11th day of July A. D. 1967

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 3.88 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 the following land in Section 29, T117N, R61W

NW $\frac{1}{4}$ 156 acres

NE $\frac{1}{4}$ 156 acres

Total 312 Acres

(3) 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 William F. St. Clair

_____ of Tulare, S.D.

the holder _____ and owner _____ of said permit No. 970-3 a water right, dating from March 7, 1962

_____ to use of 3.88 cubic feet per second of the waters of ground water

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 Well #1, South 45° East, 111.3 rods from the NW Corner, and Well #2, South 45° West, 111.3 rods from the NE Corner,

Section 29, T117N, R61W

and conduct to and upon the N½ Section 29, T117N, R61W

for the purpose of irrigation

Subject to any limitations listed in Water Right Permit No. 970-3 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 10th day of April A. D.

Nineteen Hundred and Seventy-three

WATER RESOURCES COMMISSION

By:

Chief Engineer, Executive Officer J.W. GRIMES

(First Publication **on or before June 14**, 19**62**)**APPROPRIATION OF WATER**

Office of State Water Resources Commission,

Pierre, S. Dak., **May 21**, 19**62**

Notice is hereby given that **William F. St. Clair** whose postoffice address is **Tulsa** 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 **5.58** cubic feet of water per second of time from ~~xxx~~ **ground water** through the **St. Clair Irrigation Project #2** ~~are~~ the point of diversion of which ~~is~~ to be located ~~xxxx~~ **S. 1/4 NW 1/4 and NE 1/4 NE 1/4 Section 29, and** ~~xxxxxxx~~ in the **NW** 1/4 of the **SW** 1/4 of Section **28** Twp. **117N** Range **61W** Said water to be used for the purpose of providing irrigation on the fol-

described land:

NW 1/4 and NE 1/4, Section 29; NW 1/4 SW 1/4, Section 28, all in T117N, R61W~~xxxxxx~~~~xxxxxx~~

This application will be taken up by the State Water Resources Commission at their office at Pierre for consideration upon the **11th** day of **July**, 19**62**, at **2 P.** M. All interested persons may appear and be heard.

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

State Water Resources Commission

By:

~~xxxxxxxxxxxxxxxxxxxxxxxx~~**BURTON F. JONES**
Water Right Specialist**CC: Mr. Harold Jones**
Publisher
Redfield Press
Redfield, S. Dak.

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA }
County Spink } SS.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 theCity of Redfield County of Spink

and State of South Dakota;

that the said notice was published in said newspaper on the following dates:

June 7, 14, 21, 28in each and every issue of the full number thereof, the first publication being made on the 7th day of June1962 and the last publication on the 28th day ofJune 1962, upon which days or times of publication aforesaid the newspaper was regularly published, and that during the whole time of said publication he was Editor the printer and publisher of the said newspaper.Harold D. JonesSubscribed and sworn to before me this 28th day of June A. D. 1962

Notary Public _____ County, S. D.

No. 33

No. 970-3

APPROPRIATION OF WATER
Office of State Water Resources

Commissioner, Pierre, S. Dak., May 21, 1962

Notice is hereby given that William F. St. Clair, whose postoffice address is Tulare, 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 5.58 cubic feet of water per second of time from ground water through the St. Clair Irrigation Project No. 2, the points of diversion of which are to be located in the SE $\frac{1}{4}$, NW $\frac{1}{4}$ and NE $\frac{1}{4}$ of Section 20, and NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 20, Twp. 117N Range 61W. Said water to be used for the purpose of providing irrigation on the following described land:NW $\frac{1}{4}$ and NE $\frac{1}{4}$, Section 20;
N $\frac{1}{2}$ SW $\frac{1}{4}$, Section 20,
all in T. 117N. R. 61W.

This application will be taken up by the State Water Resources Commission at their office at Pierre for consideration upon the 11th day of July, 1962, at 2 P.M. All interested persons may appear and be heard.

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

State Water Resources Commission
By: BURTON F. JONES
Water Right Specialist
(June 7, 14, 21, 28)

Permit No. _____

Water Division No. _____ Water District _____

Certificate of Examination of Works

Report of Examining Engineer

To the State Water Resources Commission, Pierre, South Dakota:

Dear Sirs: I hereby certify that in accordance with your letter of authorization dated _____
19____, I have this day made a thorough examination of the diversion works constructed by _____
_____ of _____
_____ County, South Dakota, holder of Permit No. _____, issued
upon Application No. _____, bearing date of priority of _____, 19____, authorizing the
diversion of _____ cu. ft. per second of the waters of _____ for
purposes. I have to report on the condition of the same as follows:

The diversion works comprise: *Berkley Model #1004-5, Powered by*
U.S. 70 HP Electric Motor @ 1800 RPM
With - 1900' 6" 150' 8" 5280 4" Lateral
1764 128 Round Nozzles
+ 1/4 mile pipeline
80 x 8" pipe
and the system is in the following condition: _____

The point of diversion is located _____

The works are capable of diverting and conveying to the place of use *1750 GPM*
1000 GPM cu. ft. per second of water,
which is to be used for _____

The legal sub-divisions to be irrigated are: _____

_____ comprising a total of _____ acres of land.

The domestic use intended comprises _____

The utilization for power, mining, or other beneficial uses comprises: _____

Witness my hand, this _____ day of _____, A. D. 19____.

---SEAL---

Examining Engineer.

Permit No. 970-3Water Division 3 JAMES RIVER Water District

REPORT OF EXAMINATION OF WORKS AND/OR APPLICATION OF WATER TO BENEFICIAL USE

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

I have this day made a thorough examination of the water use system constructed by WILLIAM F. ST. CLAIR of TULARE holder of Permit No. 970-3, bearing date of priority of MARCH 7, 1962 authorizing the diversion of 5.58 cu. ft. per second of the waters of GROUND WATER 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:

WELL #1 90' DEEP - 18" CONCRETE CASING (1,000 G.P.M.)
WELL #2 85' DEEP - 18" CONCRETE CASING (750 G.P.M.)
BOTH WITH BERKELEY MODEL #1004-5, 8" PUMP, POWERED BY
70 H.P., U.S. ELECTRIC MOTOR #405U @ 1800 R.P.M.

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

2300' OF 8" MAINLINE
1900' OF 6" MAINLINE

C. Works used to apply water to beneficial use.

4 - 1/4 MILE 4" TOWNLINES WITH RAINBIRD #30 SPRINKLER HEADS
WITH 3/16" ORIFICE @ 40' SPACINGS
80 RODS OF 8" GATED PIPE FOR APPROX 100 ACRES OF LEVELLED LAND

The system is in the following condition: GOOD

The point of diversion is located #1, S45°E, 111.3 RODS FROM THE NW CORNER, AND #2, S45°W
111.3 RODS FROM THE NE CORNER, SECTION 29, T117N, R61W

The works are capable of diverting and conveying to the place of use 4.11 3.88cu. ft. per second of water which is to be used for IRRIGATIONWater has been put to beneficial use to the maximum extent as follows: ALL IN SECTION 29, T117N, R61W

NW⁴ 156 AC
NE⁴ 156 AC

comprising a total of 312 acres of land.Date MARCH 29, 1973

Sutton Jones
(Signature)

WATER RIGHT SPECIALIST
WATER RESOURCES COMMISSION



970-3
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

July 15, 2002

William St Clair
37644 184th Street
Tulare SD 57476-7007

Dear Mr. St. Clair:

Last Friday, we contacted you to discuss the irrigation center pivot in the NE ¼ of Section 29, T117N, R61W. It was brought to our attention that a well and this pivot were recently constructed to irrigate a portion of this quarter section. It is our understanding that irrigation has not taken place in the NE ¼ of Section 29 for a number of years. We informed you that state water rights law provides that irrigation rights are forfeited for nonuse if water fails to be beneficially used for periods greater than three years.

I am enclosing the following information regarding water rights from the Tulare:East James Aquifer that we discussed.

- Table from search of water right held under the name of St. Clair (water rights from the Tulare:East James Aquifer highlighted).
- Copies of Water Right Nos. 970-3, 978-3, 4158-3 and 4586-3.
- Copy of statutes regarding forfeiture for nonuse.
- Copy of statute providing for transfer of irrigation rights to new lands.
- Water right permit application forms

I have sent a copy of all your water rights from the Tulare:East James Aquifer. You discussed the possibility of transferring of water and irrigated lands held under one of these existing rights to the NE ¼ of Section 29.

Please feel free to contact Jim Goodman or myself to discuss this water right permitting issue.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures

Water Right No. 970-3, William St. Clair

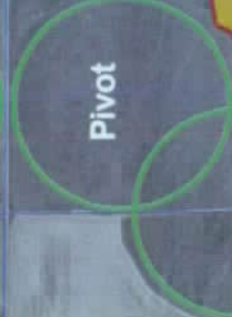
Year	Number of Acres	Pump Rate (gpm)	Comment
1978	160	1000	
1979	No irrigation		Well must be redrilled
1980			
1981			
1982			
1983			Form blank
1984	132	750	
1985	270	1600	
1986	130	1000	
1987	No irrigation		Not currently used
1988	130	1000	
1989	132	1000	
1990	132	1000	Conventional ground ??? lots of rain
1991	132	1000	?Furadan? by tractor 12.28 inches pumped NW 29
1992	132	1000	NW 29
1993	132	1000	NW 29
1994	132	1000	NW 29
1995	132	1000	NW 29
1996	132	1000	NW 29
1997	132	800	NW 29
1998	132	800	NW 29 PC
1999	132	800	NW 29 PC
2000	132	800	NW 29 PC
2001	312	900	

T117N R61W

William St. Clair
970-3, 971-3, 839-3, 987-3,
1725-3, 4158-3, & 4586-3

21

20



28

29

Pivot

Not Irrigated

Not Irrigated

Pivot

Pivot

Pivot

Pivot

Pivot

Pivot

Pivot

Pivot

33

32

Not Irrigated

Pivot

Pivot

Not Irrigated

Cancellation of a Portion of Water Right No. 970-3, William St. Clair

The Water Right Program conducted an investigation of whether a portion of Water Right No. 970-3 has been forfeited for nonuse. The water right is located approximately 4 miles west and two miles north of Doland in Spink County.

The Water Rights Program received three telephone complaints in July regarding a recently constructed irrigation system in the NE¼ of Section 29, T117N, R61W.

Background

Water Permit Application No. 970-3 was filed on March 3, 1962 to appropriate 5.58 cubic feet of water per second (cfs) from three wells to irrigate a total of 391 acres located in the N½ Section 29 and the N½ SW¼ of Section 28, T117N, R61W. The water source is the East James Management Unit of the Tulare Aquifer.

Burton Jones, a Water Rights Specialist, conducted a licensing investigation in 1973. This investigation found two wells located in the N½ of Section 29 had been developed to irrigate 312 acres in the N½ of Section 29. The irrigation in Section 28 was not developed. The works were capable of placing to beneficial use 3.88 cfs. The report of examination of works states that the system used to apply water to beneficial use were 4 – one quarter of a mile long tow lines. Also, 80 rods (1,320 feet) of gated pipe were used to irrigate approximately 100 acres of leveled land.

Water License No. 970-3 was issued April 10, 1973 for 3.88 cfs from two wells to irrigate 312 acres in the N½ Section 29, T117N, R61W. The water right specified 156 acres being irrigated in each quarter. A copy of the water right is attached.

Investigation

Don Stroup drove to the area on July 10, 2002 to verify that a pivot was located on the NE ¼ of Section 29, T117N, R61W. He found that a pivot was located in the NE¼ of Section 29 and also made note of other irrigation systems in the same vicinity.

On July 12, 2002, Garland Erbele, Jim Goodman and Eric Gronlund called Mr. St. Clair to discuss the water right. Mr. St. Clair stated that he had constructed a new well and installed a pivot on the NE ¼ of Section 29. Mr. St. Clair lives and farms 40 miles away and leases this property to Kevin Dettler. Mr. St. Clair stated the land had been leased for a number of years to Jim Freeburg who is now deceased. Water Rights Program staff informed Mr. St. Clair of the statutes regarding forfeiture for nonuse.

The orthographic map of Section 29 was reviewed to see if irrigation was taking place. This map is based on a 1997 flight and shows that center pivot irrigation was not occurring. A copy of this map is attached.

Finally, the annual irrigation questionnaires submitted by Mr. St. Clair were reviewed. The table shows the irrigation history and comments submitted on the questionnaire.

Year	Number of Acres	Pump Rate (gpm)	Comment
1978	160	1000	
1979	No irrigation		Well must be redrilled
1980			
1981			
1982			
1983			Form blank
1984	132	750	
1985	270	1600	
1986	130	1000	
1987	No irrigation		Not currently used
1988	130	1000	
1989	132	1000	
1990	132	1000	Conventional ground ??? lots of rain
1991	132	1000	Furadan by tractor 12.28 inches pumped NW 29
1992	132	1000	NW 29
1993	132	1000	NW 29
1994	132	1000	NW 29
1995	132	1000	NW 29
1996	132	1000	NW 29
1997	132	800	NW 29
1998	132	800	NW 29 PC
1999	132	800	NW 29 PC
2000	132	800	NW 29 PC
2001	312	900	

Based on the review of the irrigation questionnaire, irrigation has not taken place on the NE¼ of Section 29 since 1985. Irrigation has taken place on the NW¼ of this section.

Water Source

The water source in this area is the Tulare:East James Aquifer. The Water Management Board has determined that the Tulare:East James aquifer is fully appropriated based upon water use from the aquifer. The Water Management Board most recently denied Water Permit Application No. 6287-3 in March of 2002.

Statutory Authority

South Dakota Codified Law 46-5-37 reads:

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.

Further, Administrative Rule 74:02:01:37 states that 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.

Hearing Process

Notice of Hearing on the cancellation of a portion of Water Right No. 970-3 was sent to Mr. St. Clair and Mr. Dettler on August 26, 2002. This notice scheduled a September 25th hearing before the Board.

In response to this notice, Mr. St. Clair submitted a letter stating he intended to oppose the cancellation and requested delay of the hearing due to a schedule conflict. A notice was sent to Mr. St. Clair rescheduling the hearing for December 4th.

Conclusions

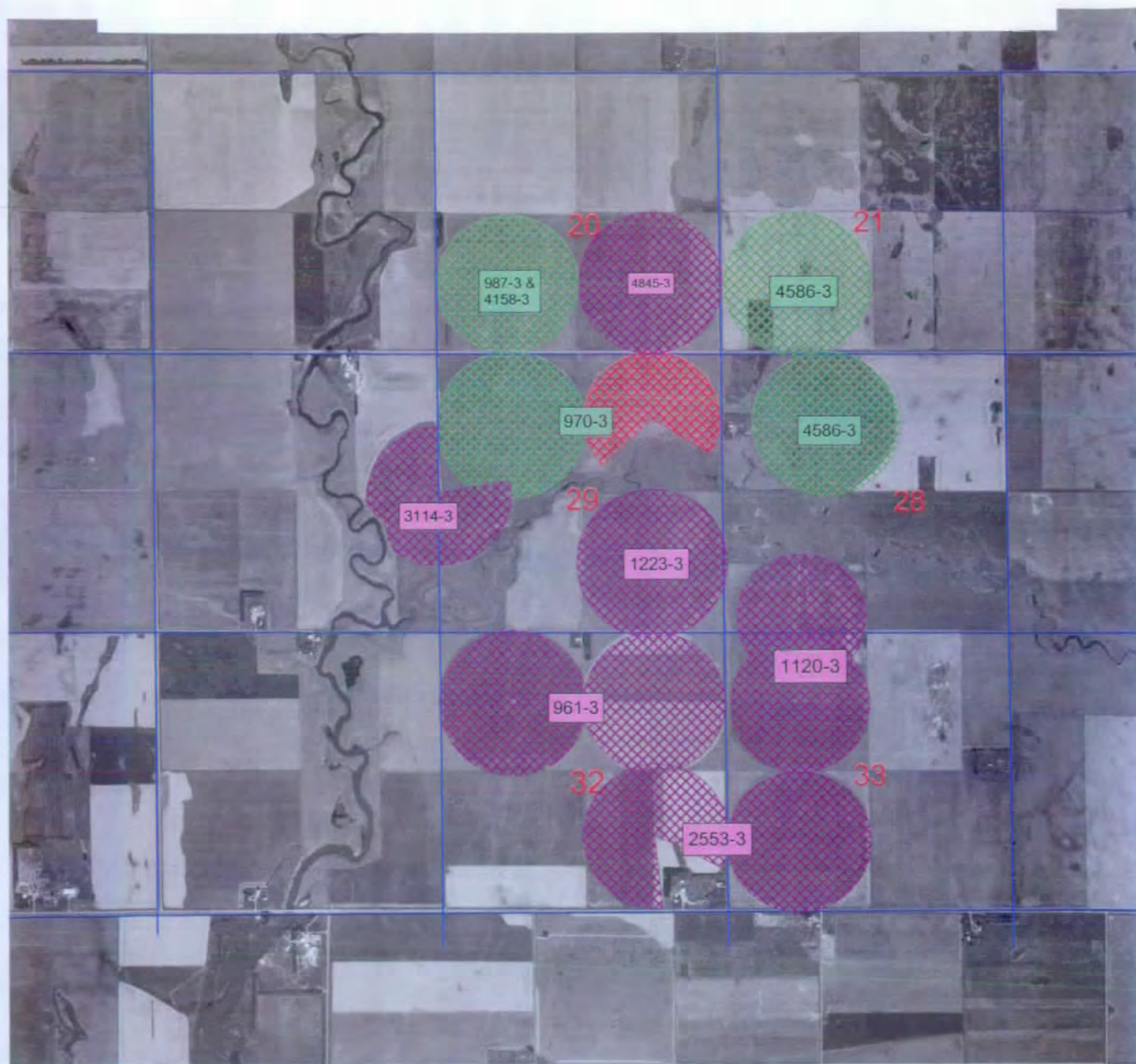
1. Water Permit No. 970-3 was approved in 1962.
2. Water License No. 970-3 was issued in 1973 based on a staff investigation for 3.88 cfs for irrigation of 312 acres located in the N½ of Section 29, T117N, R61W.
3. The Water Rights Program received three telephone inquiries on a new irrigation system constructed in the NE ¼ Section 29, T117N, R61W.
4. A review of all available information found that the NE ¼ of Section 29, T117N, R61W has not been irrigated for period of 14 years.
5. State law provides that 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.
6. The irrigation of the NE¼ of Section 29 should be cancelled from Water Right No. 970-3 and this water right reissued for the amount beneficially used to irrigate the NW ¼ of Section 29.



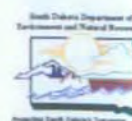
Eric Gronlund
Water Right Engineering Specialist
Water Rights Program, DENR

IRRIGATION WATER RIGHTS IN THE VICINITY OF WATER RIGHT NO. 970-3

LOCATED IN T117N, R61W



2000 0 2000 4000 6000 8000 10000 Feet





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

RECOMMENDATION OF CHIEF ENGINEER

FOR WATER RIGHT NO. 970-3, WILLIAM ST. CLAIR

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Right No. 970-3, William St. Clair, 37644 184th Street, Tulare SD 57476-7007.

The Chief Engineer is recommending that Water Right No. 970-3 be reissued to reflect the irrigation system in the NW ¼ of Section 29, T117N, R61W. The well and irrigation of the NE ¼ of Section 29 and the non-irrigated lands in the NW ¼ of Section 29 are cancelled and deleted from Water Right No. 970-3 based on forfeiture for nonuse.

Garland Erbele, Chief Engineer
Water Rights Program
August 22, 2002

NOTE: If the Water Management Board adopts this recommendation, Water Right No. 970-3 will be reissued to appropriate 1.78 cubic feet of water per second (800 gpm) from one well located near the center of the NW ¼ Section 29 to irrigate 132 acres located in the NW ¼ Section 29; all in T117N, R61W.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 26, 2002

NOTICE

TO: William St Clair
37644 184th Street
Tulare SD 57476-7007

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Cancellation for Forfeiture for Nonuse of a Portion of Water Right No. 970-3

The Chief Engineer has conducted an investigation of whether or not a portion of Water Right No. 970-3 has been forfeited for nonuse. This investigation was initiated after phone calls were received that a well and center pivot were recently constructed on land located in the NE ¼ of Section 29, T117N, R61W of Spink County.

In 1962, Water Permit No. 970-3 was obtained to construct and place to beneficial use water from the East James Management Unit of the Tulare Aquifer to irrigate 391 acres the N ½ of Section 29, T117N, R61W. The water right was licensed in 1973 for 3.88 cubic feet of water per second from two wells to irrigate 312 acres located in the N ½ of Section 29, T117N, R61W.

South Dakota Codified Law 46-5- 37 states "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".

The Chief Engineer concludes that portions of Water Right No. 970-3 have not been irrigated for a period greater than 3 years and that legal excuse as defined by Administrative Rules of South Dakota 74:02:01:37.01 does not exist for the nonuse of water for irrigation. The Chief Engineer bases this conclusion on telephone inquiries from area irrigators, a telephone discussion with Mr. St. Clair and a review of water rights records. Therefore, Water Right No. 970-3 should be reissued to reflect only the well and center pivot located in the NW ¼ of Section 29, T117N, R61W.

The Water Management Board will consider forfeiture for nonuse of a portion of Water Right No. 970-3 at 10:30 AM, September 25, 2002, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre SD.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) defer action, or 4) take no action on Water Right No. 970-3 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by this water permit. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by September 16, 2002. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation and your signature and mailing address or your legal counsel if legal counsel is obtained.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:0:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

This hearing may be an adversarial proceeding. Any party 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 State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board meeting. Any request for extension must be filed with the Chief Engineer by September 16, 2002.

Prior to September 16, 2002, contact the Water Rights Program, Joe Foss Building, 523 E. Capitol, Pierre, SD (605 773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

C: Diane Best, Assistant Attorney General
Kevin Dettler

CERTIFICATION

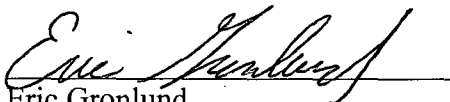
I hereby certify that on August 26, 2002 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated August 26, 2002 regarding Notice of Cancellation for Forfeiture of Nonuse of Water Right No. 970-3 addressed as stated below:

William St. Clair
37644 184th Street
Tulare SD 57476-7007

Kevin Dettler
40168 173 St.
Doland SD 57436

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

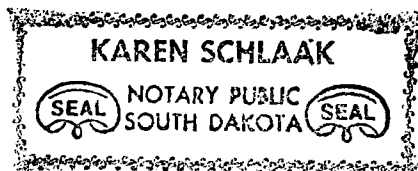
Diane Best, Assistant Attorney General, Capitol Building


Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 28th day of August, 2002.


Karen Schlaak
Notary Public
My Commission expires April 1, 2007



9/1/2002

Garland Erbele
Dept. of Environment &
Natural Resources
Joe Foss Bldg.
523 East Capitol
Pierre, SD.
57501-3182

RECEIVED
SEP 05 2002
WATER RIGHTS
PROGRAM

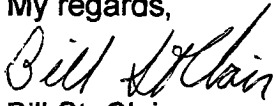
Dear Mr. Erbele,

I do intend to oppose the cancellation, and appear with counsel at the hearing.

I beg your indulgence to consider hearing this matter at a later date. My attorney is out of his office until 9/16/02, and I have a long planned and financed event out of state from 9/20/02 until 10/1/02.

Without the advice of counsel and his review of the law I should not even attempt to describe the reason for my opposition to this action against us.

My regards,


Bill St. Clair
37644 184th Street
Tulare, SD. 57476
605-596-4262



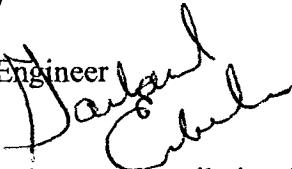
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

September 6, 2002

NOTICE

TO: William St Clair
37644 184th Street
Tulare SD 57476-7007

FROM: Garland Erbele, Chief Engineer
Water Rights Program 

SUBJECT: Automatic Delay of Hearing on Cancellation for Forfeiture for Nonuse of a
Portion of Water Right No. 970-3

Mr. St Clair has filed a petition opposing the Chief Engineer's recommendation to cancel a portion of Water Right No. 970-3. This petition was filed in response to a notice sent August 26th which scheduled a September 25, 2002 hearing before the Water Management Board on cancellation. Mr. St. Clair has requested an automatic delay of the September 25, 2002, hearing before the Water Management Board. Therefore, the hearing is automatically delayed and will not be held on September 25, 2002.

The hearing to consider cancellation of a portion of Water Right No. 970-3 will now be scheduled for the December 4 - 5, 2002, Water Management Board meeting. Future notice of the exact date, time and place of the hearing will be provided to you.

Please contact Eric Gronlund at (605) 773-3352, if you have any questions.

C: Diane Best, Assistant Attorney General
Kevin Dettler

CERTIFICATION

I hereby certify that on September 6, 2002 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 6, 2002 regarding Automatic Delay of Hearing on Cancellation for Nonuse of a Portion of Water Right No. 970-3 addressed as stated below:

William St Clair	Kevin Dettler
37644 184 th Street	40168 173 St
Tulare SD 57476-7007	Doland SD 57436

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

Diane Best, Assistant Attorney General, Capitol Building



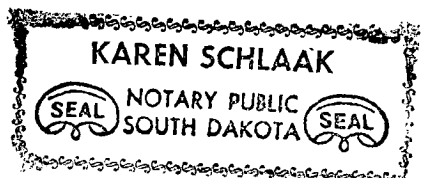
Eric Gronlund
Natural Resource Engineer
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 10th day of September, 2002.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

November 1, 2002

NOTICE

TO: William St Clair
37644 184th Street
Tulare SD 57476-7007

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Schedule Hearing on Cancellation of a Portion of Water Right No. 970-3 due to
Forfeiture for Nonuse

A notice was sent on August 26, 2002 to Mr. St. Clair scheduling a hearing for September 25th on the cancellation of a portion of Water Right No. 970-3. The Chief Engineer scheduled this hearing after concluding that portions of Water Right No. 970-3 had not been irrigated for a period greater than 3 years and that legal excuse did not exist for the nonuse of water. Mr. St. Clair requested postponement of the September hearing.

The Water Management Board will now consider cancellation of a portion of Water Right No. 970-3 on December 4, 2002, at 11:00 AM, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre SD. The hearing time is an estimate and may be delayed due to prior agenda items.

Applicable provisions of the Notice sent to parties on August 26, 2002 will still apply at the December 4, 2002 hearing before the Water Management Board. This hearing may be an adversarial proceeding. Any party of record has the right to be present and 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 State Supreme Court as provided by law.

Please contact Eric Gronlund or Jim Goodman at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General
Kevin Dettler

CERTIFICATION

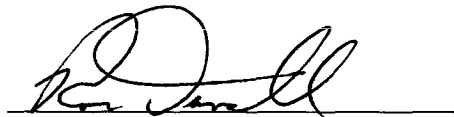
I hereby certify that on November 1, 2002 , I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated November 1, 2002 regarding Schedule a Hearing on Cancellation of a Portion of Water Right No. 970-3 due to Forfeiture for Nonuse addressed as stated below:

William St. Clair
37644 184th Street
Tulare SD 57476-7007

Kevin Dettler
40168 173 St.
Doland SD 57436

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

Diane Best, Assistant Attorney General, Capitol Building



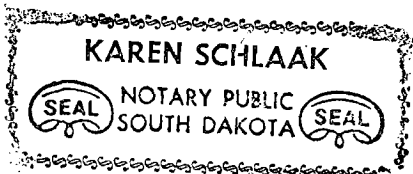
Ron Duvall
Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 4th day of November, 2002.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 10, 2002

NOTICE

TO: James Hare, Attorney
Gillette, Battey & Gillette
PO Box 60
Redfield SD 57469

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Preparation of Findings of Fact, Conclusions of Law and Final Decision

The Water Management Board directed John Guhin, the Board's attorney, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of cancellation of a portion of Water Right No. 970-3. The Board will consider the proposed Findings, Conclusions and Final Decision at 1:00 PM, on March 5, 2003, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and Mr. Hare by February 13, 2003. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed) by February 24, 2003.

Oral arguments by parties who timely filed written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision may be made on March 5, 2003. The public hearing was completed December 4, 2002. No additional testimony will be received on March 5, 2003.

Enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
William St. Clair, 37644 184th Street, Tulare SD 57476-7007
Kevin Dettler, 40168 173rd Street, Doland SD 57436

2002/ 2003 WATER MANAGEMENT BOARD MEMBERS

Francis E. Brink
1214 South Wells Street
Aberdeen, SD 57401-7351

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

Rodney Freeman, Jr,
P.O. Box 176
Huron, SD 57350-0176

Bernita Loucks
219 42nd Street
Rapid City, SD 57702-0240

Marian Gunderson
811 West 3rd
Yankton, SD 57078-3702

Dwayne Rollag Chairman
320 Lincoln Lane S
Brookings SD 57006-2741

BOARD ATTORNEY

John Guhin, Deputy Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

WATER RIGHTS PROGRAM

Department of Environment and
Natural Resources

Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

STAFF ATTORNEY

Diane Best
Assistant Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

CERTIFICATION

I hereby certify that on December 10, 2002, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated December 10, 2002, regarding preparation of findings of fact, conclusions of law and final decision on cancellation of a portion of Water Right No. 970-3, William St. Clair, addressed as stated below.

James Hare, PO Box 60, Redfield SD 57469
William St. Clair, 37644 184th Street, Tulare SD 57476-7007
Kevin Dettler, 40168 173rd Street, Doland SD 57436

A copy of the Notice was sent Inter-office to:

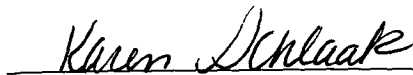
John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General



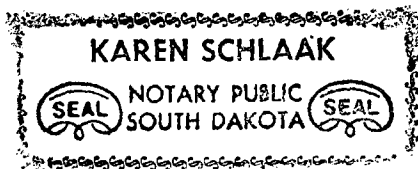
Eric Gronlund
Natural Resource Engineer
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 11th day of December, 2002.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 19, 2002

William St. Clair
37644 184th Street
Tulare SD 57476-7007

Kevin Dettler
40168 173rd Street
Doland SD 57436

Dear Mr. St. Clair and Mr. Dettler:

After the Board meeting on December 4th, you stopped down to obtain application forms to transfer existing rights to the well and irrigation system located in the NE ¼ of Section 29, T117N, R61W. I offered to provide you information on the laws regarding transfers. Enclosed are the statutes that I believe are applicable to transfers.

South Dakota Codified Law 46-5-34 allows the severing of a water right from the land to which it is appurtenant and simultaneously transferring to other lands if it is impracticable to use all or part of the water beneficially or economically for irrigation of the present lands. In the past few years, we have processed and approved two applications in the Tulare:East James Aquifer to transfer to new lands. To allow transfer to the 70 acres in the NE ¼ of Section 29, an equal number of acres would need to be retired under an existing water right and the corresponding diversion rate diminished by an equal amount under the same existing right. This assumes the existing water right has been continually used and is not subject to forfeiture for nonuse.

The other approach you were investigating is claiming that water conserved by changing to low pressure systems can be transferred to irrigate the 70 acres in the NE ¼ of Section 29. The transferring of conserved water for the purpose of irrigating new acreage has not occurred in South Dakota. Water Right staff and our staff attorney have met to discuss if this is permissible under existing water rights law. The last sentence of SDCL 46-5-34 states that there may be no increase in total acres irrigated. This sentence appears to preclude any transfer that will increase total acres. We would be very interested in a different legal analysis of the water rights law that may accommodate a transfer of conserved water to new acreage.

You certainly have the right to file an application whichever approach you decide to pursue. Upon receiving an application we will review it for the purpose of the Chief Engineer making a recommendation to the Water Management Board. Any application will be public notice for a hearing before the Board.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Eric Gronlund".

Eric Gronlund
Water Rights Program
605 773-3352

enclosure

c: James Hare, PO Box 60, Redfield SD 57469
Diane Best, Assistant Attorney General

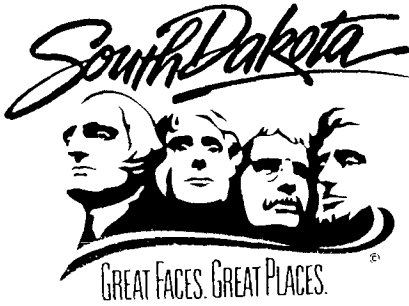
46-2A-12. Amendment of permit or license -- When granted. An amendment of an existing permit or license may be granted for a change in use, a change in point of diversion or other change only if the change does not unlawfully impair existing rights and is for a beneficial use and in the public interest.

46-5-30.4. Amendment of permits or rights. Subject to the limitations in § § 46-5-33 and 46-5-34 governing changes in irrigation rights from one parcel of land to another, any water permit or right holder may apply for a change of use of the water, a change of location of the use or other amendment to the permit or right. Permits or rights may be amended pursuant to the procedure contained in chapter 46-2A. Priority shall be retained upon amendment. An amendment of a water permit or right may not increase the rate of diversion or increase the volume of water to be appropriated under the original water permit or right. The amendment may not impair existing rights.

46-5-31. Change of use or place of diversion. Any appropriator of water may use the water for purposes other than for which it was appropriated, or may change the place of diversion, storage or use, in a manner and under conditions approved by the water management board, except that changes in irrigation permits shall be as prescribed by § § 46-5-34 to 46-5-36, inclusive

46-5-33. Irrigation permit or right not assignable apart from land -- Transfer of title to land. No permit or right to appropriate water for irrigation purposes may be assigned, nor may the ownership of a permit or right in any manner be transferred, apart from the land to which it is appurtenant, except in the manner provided by law. A transfer of title to land shall carry with it all rights to the use of water appurtenant to the land for irrigation purposes.

46-5-34. Irrigation rights appurtenant to land -- Amendment of permit required for severance and transfer. All water used in this state for irrigation purposes shall remain appurtenant to the land upon which it is used. However, if for any reason it should become impracticable to use all or any part of the water beneficially or economically for irrigation of any land to which the right of its use is appurtenant, all or any part of the right may be severed from the land and simultaneously transferred and become appurtenant to other land without losing priority of right previously established, subject to existing rights, upon approval of an application for an amended permit. No increase in total acres irrigated may be allowed under this section.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 6, 2003

James Hare
PO Box 60
Redfield SD 57469

Dear Mr. Hare:

As per your request, I am enclosing a copy of water rights held by Mr. St. Clair from the Tulare:East James Aquifer. On the attached table I have highlighted the water rights Mr. St. Clair holds from the Tulare:East James Aquifer.

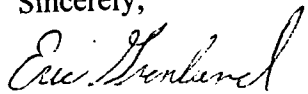
I believe that No. 4586-3 is the water right we discussed on the telephone.

Please note that Water Right Nos. 987-3 and 4158-3 are both for the irrigation of the SW $\frac{1}{4}$ of Section 20, T117N, R61W. So this appears to be a duplication of irrigated acres that at some time needs to be cleaned up. I am not sure of the entire history of how this occurred. Since only the one quarter has been irrigated, I don't believe this provides Mr. St. Clair an extra water right that can now be transferred to the NE $\frac{1}{4}$ of Section 29.

Finally, we discussed on the telephone a lot of different possible options that Mr. St. Clair may want to investigate. Since this is a situation involving a fully appropriated aquifer I am not certain if any of our brainstorming options will work. The only clear way of transferring is following SDCL 46-5-34 where irrigated acreage and its accompanying diversion are permanently severed from one parcel and simultaneously transferred to the NE $\frac{1}{4}$ of Section 29.

Please feel free to contact me if you have questions. I will need to rely on our staff attorney, Diane Best, if any legal analysis of the water rights law is necessary.

Sincerely,


Eric Gronlund
Water Rights Program
605 773-3352

enclosure



OFFICE OF ATTORNEY GENERAL

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX (605) 773-4106
www.state.sd.us/atg

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FEB 12 2003

WATER RIGHTS
PROGRAM

LARRY LONG
ATTORNEY GENERAL

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

February 11, 2003

MEMORANDUM

TO: MEMBERS OF THE WATER MANAGEMENT BOARD AND INTERESTED PARTIES

FROM: John P. Guhin, Deputy Attorney General *John Guhin*

RE: Proposed Findings of Fact, Conclusions of Law, and Final Decision In the Matter of the Petition for Cancellation of a Portion of Water Right No. 970-3, William St. Clair.

In accordance with the direction of the Board, I am herewith enclosing proposed Findings of Fact, Conclusions of Law, and a Final Decision in the above-entitled case.

Please see the Notice of the Chief Engineer of December 10, 2002, for further information.

cc/enc: James Hare
William St. Clair
Kevin Dettler
Francis E. Brink
Rodney Freeman, Jr.
Marian Gunderson
Leo Holzbauer
Bernita Loucks
Dwayne Rollag
Garland Erbele
Diane Best

j-WMB.jpg William St. Clair

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE PETITION	)	FINDINGS OF FACT,
FOR CANCELLATION OF A PORTION OF	)	CONCLUSIONS OF LAW
WATER RIGHT NO. 970-3,	)	AND FINAL DECISION
WILLIAM ST. CLAIR	)	

FINDINGS OF FACT

1. This action arises from a petition to cancel a portion of Water Permit No. 970-3, held by William St. Clair.
2. The Water Permit in question was granted on July 11, 1962, by the State Water Resources Commission.
3. Under the terms of the permit, Applicant was allowed to appropriate 5.58 cubic feet of water per second (CFS) from three wells to irrigate a total of 391 acres located in the N1/2 of Section 29 and the N1/2 SW1/4 of Section 28, T117N, R61W.
4. The designated water source is the East James Management Unit of the Tulare Aquifer.
5. The land under the permit has been in the St. Clair family for over 100 years.
6. Pursuant to the practice of the Department, a licensing investigation was conducted in 1973. The licensing investigation revealed that the irrigation in Section 28 had not been developed. The investigation also demonstrated that the wells located in the N1/2 Section 29 had been developed to irrigate 312 acres. The wells were capable of placing 3.88 CFS of water to beneficial use. The system used to apply water to beneficial use were for one-quarter of a mile long tow line. In addition, 1,320 feet of gated pipe were used to irrigate approximately 100 acres of leveled land.

7. Pursuant to the 1973 investigation, Water License No. 970-3 was issued. The license allowed two wells to irrigate 312 acres in the N1/2 of Section 29. This license specified 156 acres being irrigated in each quarter.

8. In the first part of 2002, the Water Rights Program received complaints alleging illegal use of water in the area.

9. The investigation centered the NW1/4 and the NE1/4 of Section 29 which together make up the N1/2 of Section 29.

10. There is no dispute that the water right holder, Mr. St. Clair, has consistently irrigated 132 acres located in the NW1/4 of Section 29.

11. The issue in this case arises because of the activity, or lack of it, with regard to the NE1/4 of 29. The evidence indicates, that the NE1/4 of 29 was not irrigated at least from 1985 to 2000. This evidence appears clearly from the irrigation questionnaires, and from Farm Service Agency maps showing no irrigation in the period of 1991-95 and 1997-2001. Likewise, an orthographic map of Section 29, taken during the 1997 flight, shows no center pivot irrigation on the NE1/4 during that year.

12. Mr. St. Clair, in addition, frankly acknowledges that no irrigation was applied on the NE1/4 from 1986 through 2001.

13. Mr. St. Clair explained that the original system used to irrigate the area was a gravity system. Such systems, as described by St. Clair, are archaic and essentially non-functional in this area of South Dakota.

14. As a result of the deficiencies of gravity systems, Mr. St. Clair discontinued using the gravity system in 1970 and

put a center pivot in the NW1/4 at that time. Mr. St. Clair states that irrigation in the NE1/4 through the gravity system was especially problematic and difficult. He did not, however, put in a center pivot in the NE1/4 in 1970 (when he put the center pivot in the NW1/4). According to St. Clair, the NE1/4 was not well suited for putting in a center pivot at that time.

15. Between 1970 and 2001, St. Clair occasionally attempted to get his renters to put in a partial pivot in the NE1/4, but it was too costly.

16. In the year 2002, St. Clair and his renter attempted to react to the prior dry summer by putting in the irrigation system in the NE1/4. Approximately \$40,000 was spent setting up the system. About \$23,000 was spent by St. Clair himself and approximately \$17,000 was spent by his renter.

17. The pivot in the NE1/4 is a partial pivot which can irrigate approximately 70-80 acres. The partial pivot was put together through the use of used equipment and the hard work of those involved.

18. St. Clair testified that before he took the action described in the previous two paragraphs, he recalled speaking on the telephone to Water Rights Programs representatives in Pierre. He is unsure as to who he had spoken with. He acknowledged, to that person, that he had not irrigated the NE1/4 in the recent history. He stated that he told the representative in Pierre that he tried to squirt water on seven or eight acres and that the person in Pierre said that that likely would not constitute irrigation.

19. St. Clair testified that he recalls a statement from the Water Rights Program representative in Pierre that "if no one complains, there probably would not be a problem."

20. The Board has considered the responsive testimony of the Division of Water Rights Program with regard to the conversation identified in the paragraph immediately above. Eric Gronlund testified as to a "standard dialogue" that he uses in handling inquiries about water rights. Gronlund testified that the "standard dialogue" would not allow him to speak to the validity of any permit. He stated that in such conversations he identified the pertinent statutes, and the doctrine that South Dakota was a "use it or lose it" state in which three years of non-use can result in loss of a water right. Gronlund referred specifically to his knowledge of the Stabio Ditch case, which he testified does not allow a member of the staff to comment on the validity of a water right.

21. The Board also considered the testimony of Jim Goodman, the supervisor of the ground water component of the Water Rights Program. Goodman made it clear that the regular policy of the ground water program was not to opine on the validity of any water right.

22. The Board determines, based on its analysis of the testimony, that the Water Rights Program did not give Mr. St. Clair or the renter any assurance that his water right in the NE1/4 was still valid or that the water right would be valid unless "somebody complained."

23. The Water Right questionnaires returned by Mr. St. Clair from 1988 through 1996, recorded a pumping rate of 1,000 gallons per minute. It recorded a pumping rate of 800 gallons per minute for 1997 through 2000, and a 900 gallons per minute rate in the year 2001.

24. Mr. St. Clair now argues that the pumping rate submitted on the irrigation questionnaire was essentially a gross estimate and was very probably an underestimate. He now estimates that the actual pump rate was approximately 1200 gallons per minute.

25. Mr. St. Clair proposes that the 1200 gallon per minute rate, which he now claims be separated into two components. 800 gallons per minute could be applied on the NW1/4 because a more efficient system is now being used on the NW1/4. 400 gallons per minute could be put on the NE1/4 because only half of that quarter will be irrigated, and 400 gallons per minute would be sufficient.

26. Mr. St. Clair thus argues that because the total rate applied will be the same--1200 gallons per minute--the spirit of the permit is being honored.

27. The Water Rights Program argues, to the contrary, that if twelve inches of water per year are put on the NW1/4 at present, and if an additional twelve inches of water are put on the NE1/4, that there will, in fact, be additional water used.

28. The Board finds that the NE1/4 of Section 29, T117N, R61W has not been irrigated for a period of at least fourteen years.

29. The Board finds further that the failure to irrigate the NE1/4 for that extended period of time was a result of the fact that use of the gravity system on that area was extremely inefficient; and that it was also too costly to Mr. St. Clair to install half of a center pivot on the NE1/4 in 1970, at the same time as it was in the same time as a full pivot was installed on the NW1/4.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter.
2. All notices required by the constitution and statutes have been given.
3. Pursuant to SDCL 46-5-37, when a person fails to use unappropriated water for a period of three years, without legal excuse the water shall revert to the public. ARSD 47:02:01:37 sets forth the conditions for legal excuse.
4. The Board concludes that St. Clair failed to beneficially use water on the NE1/4 for a period well in excess of three years.
5. The Board further finds that St. Clair has been unable to show legal excuse. As in prior decisions, the Board concludes that the failure to put the water to use in this case was essentially for an economic reason and that such a reason does not constitute a legal excuse under SDCL 46-5-37. See In the Matter of the Petition for Cancellation of Water Permit

No. 1963-2, City of Custer (March 18, 2002, Water Management Board) .

6. The Board rejects the contention that legal excuse for not putting the water to use on the NE1/4 was established because of "climatic conditions." Water was able to be applied on the adjoining quarter during all that period.

7. The Board also rejects the argument that legal excuse can be found somehow in the fact that, by putting the water to use now, in a more efficient and economical manner than would have been previously possible is beneficial and that because it is beneficial, the water right should not be found to be forfeited for three years of non-use. While the Board is sympathetic to the ideals underlying this proposal, the Board concludes that the proposal does not embody an allowable construction of South Dakota law. South Dakota law provides that a irrigator must use his water consistently. South Dakota law does not allow an irrigator to discontinue use of water until an unknown time in the future when it might be more ecologically or economically appropriate to use the water.

FINAL DECISION

Water Right No. 970-3 is declared to be forfeited in part for nonuse.

1. Water Right No. 970-3 is ordered to be reissued to reflect the irrigation system in the NW1/4 of Section 29, T117N, R61W.

2. The well and irrigation of the NE1/4 of Section 29 and the non-irrigated lands in the NW1/4 of Section 29 are cancelled

and deleted from Water Right No. 970-3 based on a forfeiture for non-use.

3. Water Right No. 970-3 is directed to be reissued to appropriate 1.88 cubic feet of water per second from one well located near the center of the NW1/4 of Section 29 to irrigate 132 acres located in the NW1/4 of Section 29, all in T117N, R61W

Dated this _____ day of February, 2003.

BY THE BOARD:

Chairman

j-WMB.jpg St. Clair

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of Findings of Fact, Conclusions of Law, and Final Decision In the Matter of the Petition for Cancellation of a Portion of Water Right No. 970-3, William St. Clair were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 11th day of February, 2003.

James Hare
Post Office Box 60
Redfield, SD 57469-0060

William St. Clair
37644 184th Street
Tulare, SD 57476-7007

Kevin Dettler
40168 173rd Street
Doland, SD 57436

Francis E. Brink
1214 South Wells Street
Aberdeen, SD 57401-7351

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Marian Gunderson
811 West 3rd
Yankton, SD 57078-3702

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

Bernita Loucks
219 42nd Street
Rapid City, SD 57702-0240

Dwyane Rollag, Chairman
320 Lincoln Lane S
Brookings, SD 57006-2741

by interoffice mail to:

Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

by hand-delivery to:

Diane Best, Assistant Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070



John P. Guhin
Deputy Attorney General
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone: (605) 773-3215

j-cert:jpg William St. Clair



OFFICE OF ATTORNEY GENERAL

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
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www.state.sd.us/atg

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FEB 24 2003

WATER RIGHTS
PROGRAM

LARRY LONG
ATTORNEY GENERAL

MARK BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

February 21, 2003

MEMORNADUM

TO: MEMBERS OF THE WATER MANAGEMENT BOARD AND INTERESTED PARTIES

FROM: Diane Best, Assistant Attorney General *OB*

RE: Response to Proposed Findings of Fact, Conclusions of Law, and Final Decision In the Matter of the Petition for Cancellation of a Portion of Water Right No. 970-3, William St. Clair.

In accordance with the direction of the Board, I am herewith enclosing the Response to Board counsel's Proposed Findings of Fact, Conclusions of Law, in the above-entitled case.

cc/enc: James Hare
William St. Clair
Kevin Dettler
Francis E. Brink
Rodney Freeman, Jr.
Marian Gunderson
Leo Holzbauer
Bernita Loucks
Dwayne Rollag
Garland Erbele
John P. Guhin

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE PETITION)	RESPONSE TO PROPOSED
FOR CANCELLATION OF A PORTION OF)	FINDINGS OF FACT,
WATER RIGHT NO. 970-3,)	CONCLUSIONS OF LAW
WILLIAM ST. CLAIR)	AND FINAL DECISION

COMES NOW, the Department of Environment and Natural Resources, Water Rights Program, and makes its Response to the Proposed Findings of Fact, Conclusions of Law and Final Decision in the above-entitled matter.

1. The DENR asks that a Finding of Fact (9) be replaced with the following finding:

The DENR investigation centered on the recently constructed irrigation system located in the Northeast Quarter (NE $\frac{1}{4}$) of Section Twenty-nine (29). During the course of this examination the DENR also reviewed the use of water in the Northwest Quarter (NW $\frac{1}{4}$) of Section twenty-nine (29).

The forgoing proposal is designed simply to clarify that the DENR's investigation was focused mainly on the Northeast Quarter (NE $\frac{1}{4}$) of Section twenty-nine (29). The DENR never really had any serious questions about the irrigation use in the Northwest quarter (NW $\frac{1}{4}$) of Section twenty-nine (29).

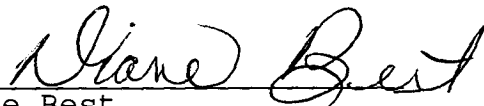
2. The DENR proposes that Finding of Fact 29 be changed to read as follows:

The Board further finds that the failure to irrigate the Northeast Quarter (NE $\frac{1}{4}$) for that extended period of time was a result of the fact that the gravity system on that area was extremely inefficient; and that it was also too costly to Mr. St. Clair to install half of a center pivot on the Northeast Quarter (NE $\frac{1}{4}$) in 1970. Yet, at the same time, Mr. St. Clair did install a full center pivot on the Northwest Quarter (NW $\frac{1}{4}$) of the same section. Thus, if this matter involved a question of efficiencies and costs, the installation in the Northwest Quarter (NW $\frac{1}{4}$) would weigh against Mr. St. Clair's argument. The Board finds, however,

that such issue need not be fully addressed because this claim is rejected on the legal basis set forth in Conclusion of Law 7.

The DENR has reviewed the rest of the Proposed Findings of Fact, Conclusions of Law and submits that they should be approved by the Board.

Respectfully submitted,

A handwritten signature in cursive script, reading "Diane Best", written over a horizontal line.

Diane Best
Assistant Attorney General
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone (605) 773-3215

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of Response to Proposed Findings of Fact, Conclusions of Law, and Final Decision In the Matter of the Petition for Cancellation of a Portion of Water Right No. 970-3, William St. Clair were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 21st day of February, 2003:

James Hare
Post Office Box 60
Redfield, SD 57469-0060

William St. Clair
37644 184th Street
Tulare, SD 57476-7007

Kevin Dettler
40168 173rd Street
Doland, SD 57436

Francis E. Brink
1214 South Wells Street
Aberdeen, SD 57401-7351

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Marian Gunderson
811 West 3rd
Yankton, SD 57078-3702

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

Bernita Loucks
219 42nd Street
Rapid City, SD 57702-0240

Dwyane Rollag, Chairman
320 Lincoln Lane S
Brookings, SD 57006-2741

by interoffice mail to:

Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

by hand-delivery to:

John P. Guhin, Deputy Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070

A handwritten signature in cursive script, reading "Diane Best", written over a horizontal line.

Diane Best
Assistant Attorney General
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone: (605) 773-3215

2/24/2003

To:

**John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Department of Environment & Natural Resources
Garland Erbele, Chief Engineer**

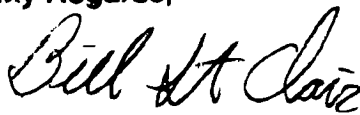
I must apologize to all of you for my overlooking the important date of Feb. 24, 2003, By that date I was supposed to have filed my objection to the Findings of Fact, Conclusions of Law and a Final decision in the matter of cancellation of a portion of water right # 970-3.

I thought that the matter would be furthered by discussions at the March 5 meeting in conjunction with my filing of a new application for the amendment to permit # 970-3. This application however did not arrive in time to be published for that March 5 meeting.

My attorney had informed me that he was in the National Guard and figured his unit was to be called to the gulf so communications with him have been slowed at best due to my reluctance and indecision as to whether to keep him on this project. The fault is all mine in the end and I beg you for a continuance on these Findings of Fact until the May meeting.

I happened to call Eric Gronland this morning and he brought my oversight to my attention, and that is the reason for this fax to beg for more time to correct this oversight on my end.

My Regards,

A handwritten signature in cursive script that reads "Bill St. Clair". The signature is written in black ink and is positioned above the printed name.

Bill St. Clair

Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: William St. Clair

ADDRESS: COUNTY: Spink

DATE: February 24, 2003 TELEPHONE:

RE: Discussion on pending findings and pending application

COMMENTS:

Mr. St. Clair called regarding the proposed findings and DENR's comments that he received on February 22, 2003. I informed him that the comments were to be submitted by today, February 24th. He planned to request a continuance of the findings process.

He also requested that his pending application be put on hold while he investigates his alternatives.

NAME: Eve Hankins



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 11, 2003

NOTICE

TO: William St. Clair
37644 184th Street
Tulare SD 57476-7007

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Consideration of Findings of Fact, Conclusions of Law and Final Decision

On March 5th, the Water Management Board granted Mr. St. Clair's request to defer consideration of Findings of Fact, Conclusions of Law and a Final Decision in the matter of cancellation of a portion of Water Right No. 970-3. The Board will now consider Findings, Conclusions and Final Decision at 1:00 PM on May 7, 2003 in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD.

Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney and the Water Rights Program (mailing list enclosed) by April 25, 2003. The public hearing was completed December 4, 2002. No additional testimony will be received on May 7, 2003.

Enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Kevin Dettler, 40168 173rd Street, Doland SD 57436

2002/ 2003 WATER MANAGEMENT BOARD MEMBERS

Francis E. Brink
1214 South Wells Street
Aberdeen, SD 57401-7351

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

Rodney Freeman, Jr,
P.O. Box 176
Huron, SD 57350-0176

Bernita Loucks
219 42nd Street
Rapid City, SD 57702-0240

Marian Gunderson
811 West 3rd
Yankton, SD 57078-3702

Dwayne Rollag Chairman
320 Lincoln Lane S
Brookings SD 57006-2741

BOARD ATTORNEY

John Guhin, Deputy Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

WATER RIGHTS PROGRAM

Department of Environment and
Natural Resources

Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

STAFF ATTORNEY

Diane Best
Assistant Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD 57501

CERTIFICATION

I hereby certify that on March 11, 2003, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated March 11, 2002, regarding consideration of findings of fact, conclusions of law and final decision in the matter of cancellation of a portion of Water Right No. 970-3, William St. Clair, addressed as stated below:

William St. Clair
37644 184th Street
Tulare SD 57476-7007

Kevin Dettler
40168 173rd Street
Doland SD 57436

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

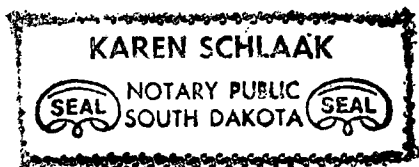
John Guhin, Deputy Attorney General, Capitol Building
Diane Best, Assistant Attorney General, Capitol Building


Eric S. Gronlund
Natural Resources Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 12th day of March 11, 2003.


Karen Schlaak
Notary Public



APRIL 10, 2003

RECEIVED

APR 11 2003

WATER RIGHTS
PROGRAM

COMMENTS ON THE PROPOSED AND FINAL FINDINGS OF FACT.

TO: MEMBERS OF THE WATER MANAGEMENT BOARD, DENR.,
BOARD, AND STAFF ATTORNEYS.

FROM: WILLIAM ST. CLAIR AND KEVIN DETTLER:

RE: PARTIES TO THE FINDING OF FACT, CONCLUSIONS OF LAW,
AND FINAL DECISION IN THE MATTER OF THE PETITION FOR
CANCELLATION OF A PORTION OF WATER RIGHT NO 970-3.

Dear Ladies and Gentlemen,

We regretfully agree with the "Proposed Finding Of Fact" and the "Finding of Fact" with the following exceptions.

RE: Paragraph 24, 25, 26, and 27 of the Proposed Finding of Fact:

Paragraph 24----Quote:

"Mr. St. Clair now argues that the pumping rate submitted on the irrigation questionnaire was essentially a gross estimate and was very probably an underestimate. He now estimates that the actual pumping rate was approximately 1200 gallons per minute".

I would like to substantiate at this time, to best of my knowledge, and to the extent of my research into the historical data I have on this pumping plant that had been in continuous use from 1963 until the spring of 2002, a period of 39 years! With the following material:

1. Exhibit A: Copy of the DENR map of water permits. Working on SEC. 29
2. Exhibit B: Copy of the original pump & motor order dated 6/19/63.
3. Exhibit C: Copy of the paid receipt for that pump and motor dated 7/15/63.
4. Exhibit D: Copy of the Bowl Chart for this pump -1004-H.
5. Exhibit E: Copy of conversion table from PSI to Head in feet. Located in the right hand margin of page 2.

This pump and motor were designed to irrigate the 160 acres in the NW 1/4 of section 29; and also to transfer water to the NE 1/4 of sec. 29. The latter was an event that never took place, but the fact of incorporating this ability into the pump was unalterable after delivery. The end result was to be somewhat undersized to do the whole 320 acres and grossly over sized to irrigate the 160 acres in the NW. 1/4 of 29.

Our distribution system ended up being 2500 FT. of 6 IN. mainline running down the middle of the NW. 1/4, and 5, 1250 FT. sprinkler laterals, which was reduced to 4, 1250 FT. laterals before the system was shipped from Nebraska. Note system in red lines on map "E".

In paragraph 6 of "Findings Of Fact", these 4 laterals were mistakenly recorded as "one-quarter of a mile long tow line." When they were actually a total of four 1/4 mile long laterals.

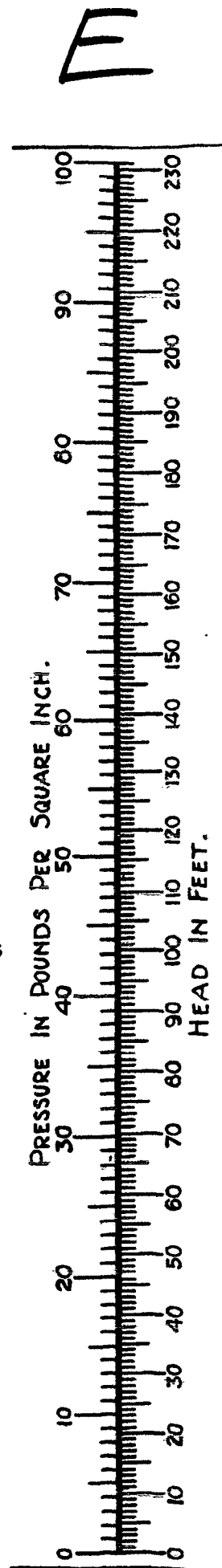
In the late 1970s & 1980s, Over the last 39 years there have 4 different irrigation systems applied to the NW, 1/4 of 29. The 1200 GPM. pump and motor remained in place until 2002. At this that time Kevin removed the old 75 HP. Pump, motor, and entire high pressure (75 PSI), high angle pivot and installed a new low pressure (30 PS.) pivot with drop nozzles, and a new 40 HP. 800 GPM. Pump and motor.

I wish to show that what I portray is based in fact as I attempt to establish our pumping history. I will try to analyze, and demonstrate that with the following evidence:

After one purchases a turbine pump, a Vertical Turbine Curves chart is available to you that quantifies the parameters of the units abilities. To figure backwards thru the process I started with the pivot pressure of 75 PSI. because in REALITY that is what the old system was doing during its last pumping season in 2001.

Going to the right side of this page, locate Exhibit "E": align 75 PSI with head feet (the yellow line), 75 PSI converts to 174 feet of head. Proceeding to Exhibit "D" (with the "BERKELEY" logo on top.) Compare the Model # in the lower right hand corner with the bowl # on Exhibit "C"---same bowl. Now divide the total head of 174 by the number of bowls on the pump:-- that equals 34.80 TDHIF (total dynamic head in feet) that is the performance of a SINGLE bowl on this five bowl pump, i.e.:-- each bowl will produce 34.80 feet of head or 15 psi @ 1200 GPM. and each bowl you add to the "stack" of bowls will not change the GPM. but will increase the PSI by 15 PDS.: go to the left side of the grid and find the point of 34.80, I have greenlined that point over to the intersection of the FULL DIA. impeller line, it is the line with the black arrow pointing to it. (this arrow was applied by the dealer to show what impeller - I have.) At that intersection I have yellow lined down to the 1200 GPM. point. That is what this pump will produce according to the figures.

You can plug in any pressure you chose and show very closely what your pump is doing. In checking with people who design any kind of surface system they really like to get a hold of these bowl charts, unfortunately the former operators never requested me for this data to apply to their designs.



There have been 4 complete surface systems changes on 970-3 since I have had to consider the effects of these changes.

PARAGRAPH 25, 26, AND 27:

If we are to use the Water Rights Programs logic it would stand to reason that by removing the 1200 GPM. Pump and 75 HP. Electric motor from the well on the NW. 1/4 of 29 and replacing this with a 40 HP. Electric motor and a 800 GPM. pump which will pump one third less water doesn't it then follow that I will have to pump water for one third more days in an irrigation season to achieve the same acre inches of application?

If however the days remain comparable in number from the original pumping unit to the new reduced pumping unit, would that not indicate a very large gain in the efficiency we are all talking about and investing in out here in the field?

Due to the age of this permit,----- (it must be on the short list of "old" Permits), and the fact that we have been pumping TWELVE HUNDRED REAL GALLONS PER MINUTE for over a generation, and we have voluntarily cut the production on this well by one third! It would seem to us that if anyone can use these savings of water, in all fairness the people who have created the savings by their considerable investment in years, monies, and pioneering effort should have a decent shot at using that water.

I request the Water Management Board Members to consider delaying the decision in the portion of the "Proposed Findings Of Fact" document, pertaining to the reduction of water permit 970-3 from our present pumping rate of 2.68 CFM. Down to 1.88 CFM. on the NW 1/4 of Sec. 29-117-61 until the July 2003 meeting.

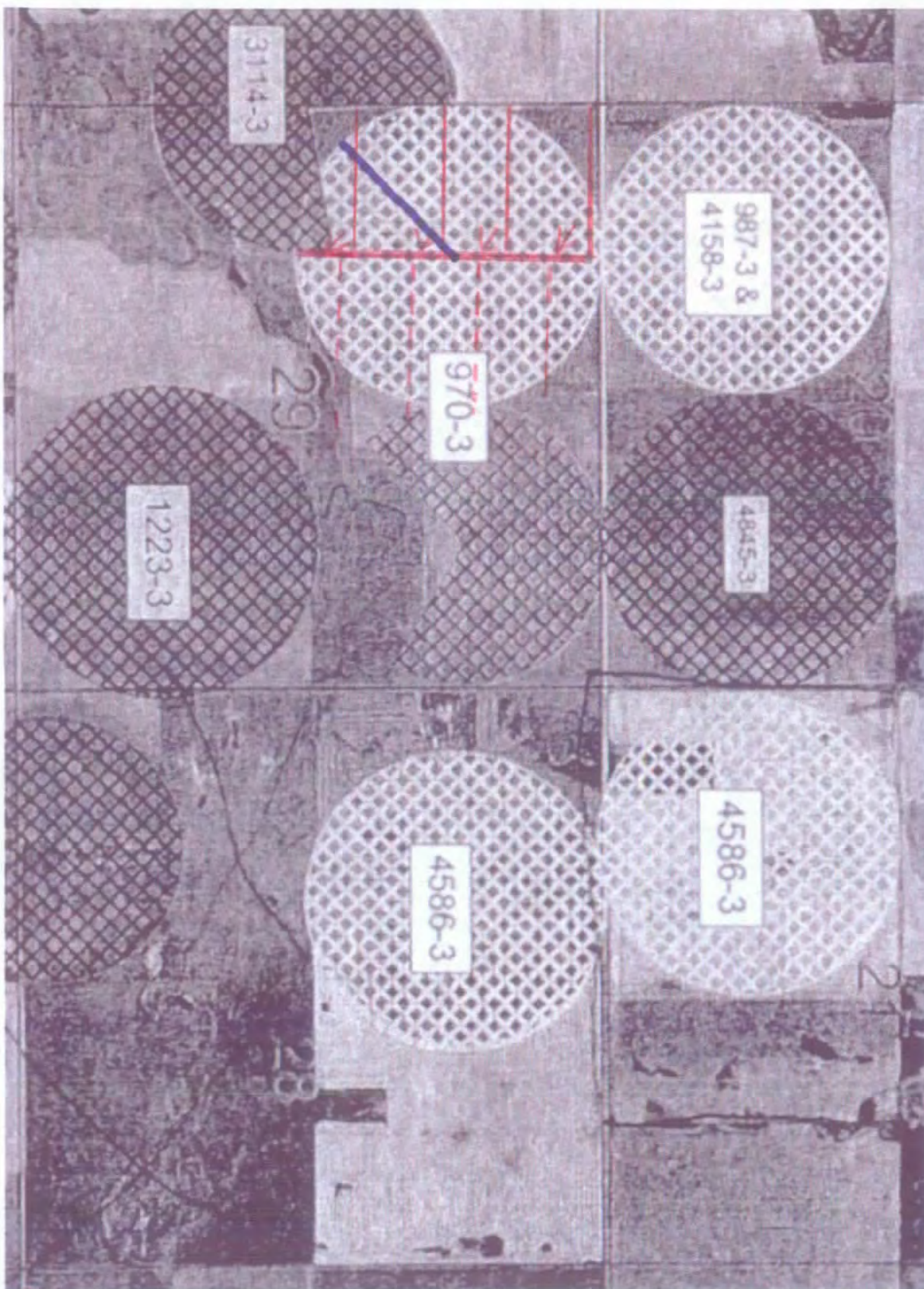
I have applied for an amendment to the following existing water permits: 970-3, 987-3, and 4586.3. If given the opportunity at that time we would like to offer more testimony about water conservation and use on these amended projects.

My Regards



Wm. F. St. Clair
37644 184th ST.
Tulare, SD. 57476
605-596-4262
CEL. 605-460-0080

A



RED LINES: Configuration of original Tow Line system
BLUE LINE: Configuration of all subsequent surface systems

10



HURON STEEL STRUCTURES

HIGHWAY #14, WEST
HURON, SOUTH DAKOTA

Nº 1611

6/17 63

Wm L. Davis
Aulere

Wm L. Davis

16006 PM

B

Backlog Lamp -

5 stage 1004 H

50'-8" Column 1 3/16" Melt air tube.

5'-8" Lead Pipe

8x16 Redwood Keel

75 HP di. Blower U.S. Miles 220-440 V. Wrenner Reeler

Full Voltage fault breaker + Panel. Start. stop button

3rd leg overload 33 fuses

1136 gpm -

30' lift
5' E.H.V.

28000°

206' head -

31' main line
140' operation

4x

560°

42x5 = 210

206'

28560°

HURON STEEL STRUCTURES

HIGHWAY #14, WEST

HURON, SOUTH DAKOTA

Nº 1634

Stm At Chari
Tulene & S

7/15-63

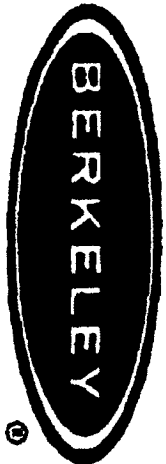
Buckley Machine Company

2 856.00

C

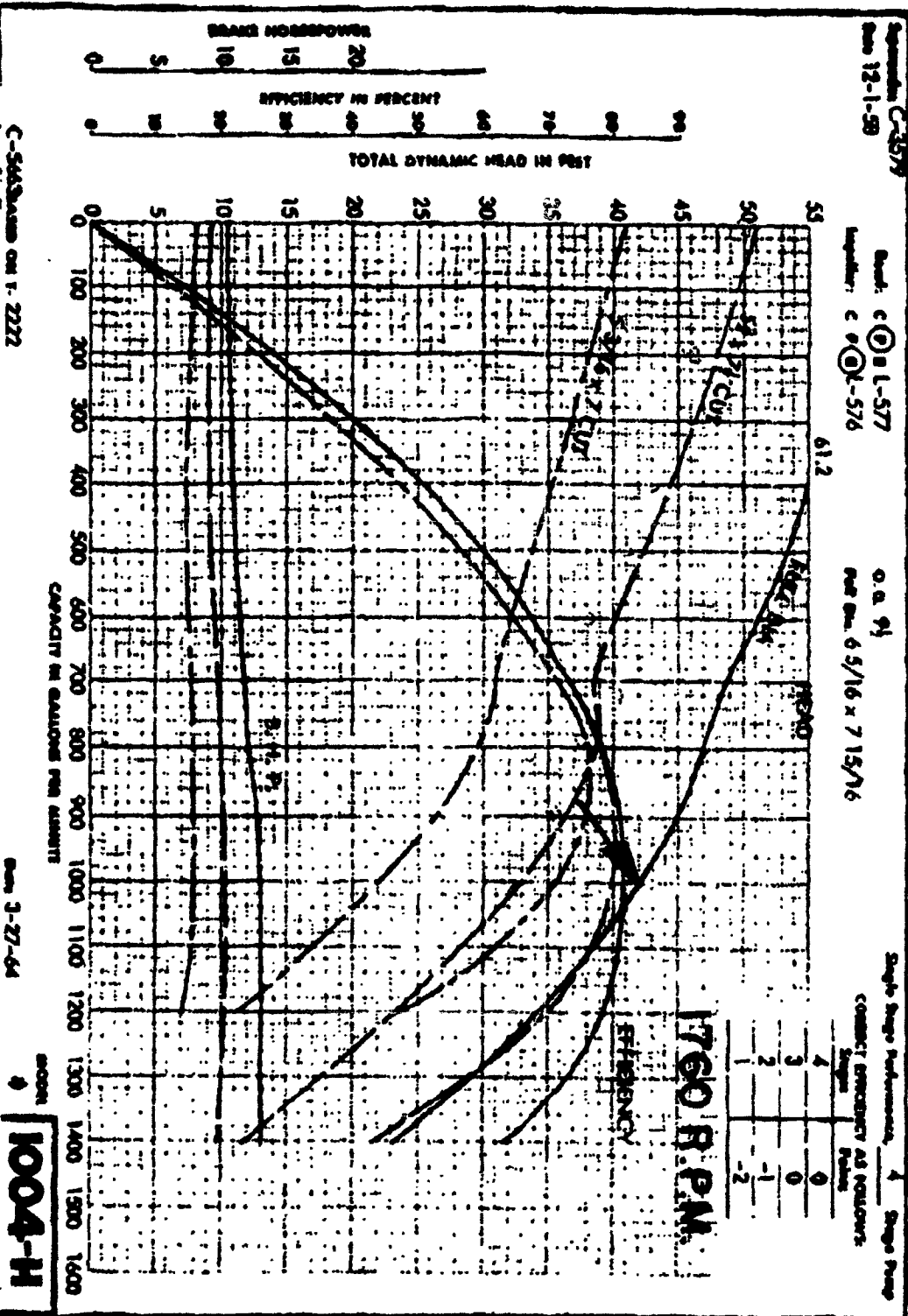
6

ATTN
DRIC



BERKELEY PUMP COMPANY
VERTICAL TURBINE CURVES
1760 RPM ENCLOSED IMPELLER

CURVE	5055
DATE	2-4-81
PAGE	8.51
SUPERSEDES	
Curve 5055 Pgs. 8.51	
Dated 6-1-76	



1790
is stage

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of "COMMENTS ON THE PROPOSED AND FINAL FINDINGS OF FACT" in the matter of the "PETITION FOR THE CANCELLATION OF A PORTION OF WATER RIGHT NO. 970-3, William St. Clair were served on the following by enclosing the same in envelopes and mailing by U.S. certified mail at the Tulare SD. Post office on this 10th day of April, 2003.

Francis E. Brink
1214 South Wells Street
Aberdeen, SD. 57401-7351

Leo Holzbauer
RR. 1 Box 170
Wagner, SD. 57380-9681

Rodney Freeman
P.O. Box 176
Huron, SD. 57350-0176

Bernita Loucks
219 42nd Street
Rapid City, SD. 57702-0240

Marian Gunderson
811 West 3rd
Yankton, SD. 57078-3702

Dwayne Rollag Chairman
320 Lincoln Lane S.
Brookings SD. 57006-2741

BOARD ATTORNEY
John Guhin, Deputy Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD. 57501

STAFF ATTORNEY
Diane Best Assistant
Assistant Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Building
Pierre, SD. 57501

WATER RIGHTS PROGRAM,
Department of Environment and Natural Resources

Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD. 57501-3181


William F. St. Clair
37644 184th ST.
Tulare, SD. 57476
605-596-4262
CEL. 605-460-0080



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 17, 2003

Wm. F. St. Clair
37644 184th Street
Tulare SD 57476

Dear Mr. St. Clair:

The Water Rights Program is in receipt of your request to delay consideration of Water Permit Application No. 6382-3 until the Water Management Board meeting in July. A notice of hearing will now be sent to you and the Redfield Press for publication scheduling a July 9th or 10th hearing before the Water Management Board. This notice will be sent after the Board's May 7th meeting. A cover letter will accompany the notice instructing you to contact the newspaper to authorize publication.

I also discussed with you during our telephone conversation that we received your comments to proposed finding of fact in the matter of cancellation of a portion of Water Right No. 970-3. I expect that you will be receiving a response from the Water Rights Program's staff attorney regarding your filing. As we discussed it is not our intent to object to your request to delay consideration of the findings until the July meeting as long you agree not to irrigate during the interim in the NE ¼ of Section 29. You confirmed that you did not plan to irrigate this quarter until you get the matter resolved. I want you to be aware that it is ultimately the Board's decision to grant or deny your request for delay of findings. I believe the Board will make that decision at the scheduled time to consider findings at the May 7th meeting.

If you have any questions, please feel free to contact me.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
(605) 773-3352

RECEIVED

APR 21 2003

WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE PETITION	)	DENR RESPONSE TO
FOR CANCELLATION OF A PORTION OF	)	ST. CLAIR COMMENTS ON
WATER RIGHT NO. 970-3,	)	PROPOSED AND FINAL
WILLIAM ST. CLAIR	)	FINDINGS OF FACT

COMES NOW, the Department of Environment and Natural Resources, Water Rights Program, and makes its Response to the comments on the Proposed and Final Findings of Fact, submitted by William St. Clair and Kevin Dettler on April 10, 2003.

1. Mr. St. Clair and Mr. Dettler ask that that Board wait until its July 2003, meeting to deliberate on the Findings of Fact and Conclusions of Law regarding the cancellation of part of Mr. St. Clair's water permit. The hearing was held on December 4, 2002, and this is the second request for delay in Findings of Fact and Conclusions of Law. Mr. St. Clair and Mr. Dettler seek delay until the July meeting so that the Findings in this case can be considered during the same meeting as another new related water transfer case. For the first delay, the DENR orally expressed concern that the matters should be resolved as soon as possible so that the issue is clear as to whether the DENR may take regulatory action for any unlawful pumping. That concern has not diminished on the land in question. However, Mr. St. Clair has assured the DENR staff (Eric Gronlund) that he will not be pumping water during the 2003 irrigation season on the Northeast Quarter (NE¼) of Section Twenty-nine (29). Based on this, the DENR has no objection to delay in this matter.

2. The St. Clair petition also seeks to submit additional evidence in this matter. This additional evidence includes information regarding the pumping rates of Mr. St. Clair's water permit system and additional written testimony. The DENR submits that the additional evidence in his submission (as well as his offer to provide further proof at the time for deliberating on Findings of Fact and Conclusions of Law) should be rejected for the following reasons:

a. Mr. St. Clair previously argued to the Board that due to greater efficiencies in his current irrigation system, he will now be able to irrigate more land. Under this theory, the water savings that he has accrued should be used to apply water over on the property involved in this case (property which was not irrigated for at least fourteen years). The issue at hand is the level at which Mr. St. Clair has historically irrigated the acreage in question. The failure to consistently irrigate the acreage in question for fourteen years constitutes forfeiture, regardless of any other efficiencies on other irrigated property. Consequently, Mr. St. Clair's argument must be rejected as a matter of law, no matter how much additional evidence he presents on water efficiencies.

b. Mr. St. Clair's argument should also be rejected in that the proposed additional evidence and testimony is not newly discovered evidence. Indeed, Mr. St. Clair's proposed evidence pertains to pumping rates and pumping information that he himself gathered from his own

irrigation equipment. This information was certainly available to Mr. St. Clair before the hearing was held in this matter in early December 2002. Likewise, cancellation proceeding was not a situation where Mr. St. Clair had an inadequate opportunity to prepare his evidence. On August 26, 2002, Mr. St. Clair was provided notice that the cancellation hearing would be held in September. Subsequently, he invoked his statutory right to automatic delay in order to prepare for hearing. Consequently, the hearing was conducted on December 4, 2002. Having had five months to prepare his evidence for the December hearing, he should not be allowed an additional opportunity to present new evidence in this matter.

c. Mr. St. Clair argues that he previously has used 1200 gpm and that the Board failed to recognize such usage in its Findings. The 1200 gpm rate is acknowledged and no further evidence need be submitted on that subject. However, due to this forfeiture of the right to irrigate land, the permit is now limited to the amount of water necessary to satisfy the remaining permitted parcel of 132 acres. Under SDCL 46-5-6, the statutory amount of water is 1.88 cfs (1 cfs per 70 acres). This is the number in the Board's final decision No. 3. He has never held the right to exceed the duty of water of water set forth in SDCL 46-5-6. In essence, by forfeiting the right to irrigate land, Mr. St. Clair has also forfeited the right to use water appurtenant to that land. He cannot hold some

additional quantity of water in escrow pending potential transfer to another parcel of land.

For the forgoing reasons, (a) the DENR does not object to consideration of Proposed Findings of Fact and Conclusions of Law in the above-entitled matter during the July 2003, Board meeting and (b) the DENR asks that the Board deny Mr. St. Clair's request to accept additional evidence in this matter.

Dated this 18th day of April, 2003.

Respectfully submitted,



Diane Best
Assistant Attorney General
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone (605) 773-3215

p1d.DB.04.16.03.William St. Clair(kak)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of DENR Response to St. Clair Comments on Proposed and Final Findings of Fact In the Matter of the Petition for Cancellation of a Portion of Water Right No. 970-3, William St. Clair were served upon each of the following by enclosing the same in envelopes with first class postage, prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 18th day of April, 2003:

James Hare
P.O. Box 60
Redfield, SD 57469-0060

William St. Clair
37644 184th Street
Tulare, SD 57476-7007

Kevin Dettler
40168 173rd Street
Doland, SD 57436

Francis E. Brink
1214 South Wells Street
Aberdeen, SD 57401-7351

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Marian Gunderson
811 West Third
Yankton, SD 57078-3702

Leo Holzbauer
RR 1, Box 170
Wagner, SD 57380-9681

Bernita Loucks
219 42nd Street
Rapid City, SD 57702-0240

Dwayne Rollag, Chairman
320 Lincoln Lane S.
Brookings, SD 57006-2741

by interoffice mail to:

Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

by hand-delivery to:

John P. Guhin, Deputy Attorney General
Office of Attorney General
Natural Resources Section
State Capitol Bldg.
500 East Capitol Ave.
Pierre, SD 57501-5070

A handwritten signature in cursive script, reading "Diane Best", written over a horizontal line.

Diane Best
Assistant Attorney General
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone: (605) 773-3215

pld.DB.04.16.03.William St. Clair(kak)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 12, 2003

NOTICE

TO: William St. Clair
37644 184th Street
Tulare SD 57476-7007

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Consideration of Findings of Fact, Conclusions of Law and Final Decision

On May 5th, the Water Management Board granted Mr. St. Clair's request to defer consideration of Findings of Fact, Conclusions of Law and a Final Decision in the matter of cancellation of a portion of Water Right No. 970-3. The Board will now consider Findings, Conclusions and Final Decision at 1:00 PM on July 10, 2003 in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The agenda item is an estimate.

The public hearing was completed December 4, 2002. The Board at its discretion may allow oral arguments in opposition to proposed findings at the July 10, 2003 hearing. No new evidence regarding the cancellation of a portion of Water Right No. 970-3 will be received on July 10, 2003.

The public notice for Water Permit Application No. 6382-3 will be sent to Mr. St. Clair and the Redfield Press for publication in the near future. This will schedule the application at the same time as the Board's consideration of findings.

Enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Kevin Dettler, 40168 173rd Street, Doland SD 57436

CERTIFICATION

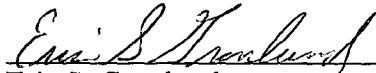
I hereby certify that on May 12, 2003, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 12, 2002, regarding consideration of findings of fact, conclusions of law and final decision in the matter of cancellation of a portion of Water Right No. 970-3, William St. Clair, addressed as stated below:

William St. Clair
37644 184th Street
Tulare SD 57476-7007

Kevin Dettler
40168 173rd Street
Doland SD 57436

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

John Guhin, Deputy Attorney General, Capitol Building
Diane Best, Assistant Attorney General, Capitol Building



Eric S. Gronlund
Natural Resources Engineer
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 13th day of May, 2003.



Karen Schlaak
Notary Public



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 8, 2003

NOTICE

TO: William St. Clair
37644 184th Street
Tulare SD 57476-7007

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Adoption of Findings of Fact, Conclusions of Law and Final Decision

This is to notify you that the Final Decision, including Findings of Fact and Conclusions of Law, were adopted July 10, 2003 by the Water Management Board canceling a portion of Water Right No. 970-3. A copy of the signed Findings of Fact, Conclusions of Law and Final Decision is enclosed.

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days of this notice and be in accordance with procedures established in SDCL 1-26-31.

Enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General
Kevin Dettler, 40168 173rd Street, Doland SD 57436

CERTIFICATION

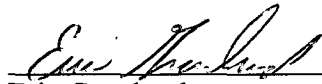
I hereby certify that on August 8, 2003, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated August 8, 2003, regarding adoption of findings of fact, conclusions of law and final decision in the matter of cancellation of a portion of Water Right No. 970-3, addressed as stated below.

William St. Clair
37644 184th Street
Tulare SD 57476-7007

Kevin Dettler
40168 173rd Street
Doland SD 57436

A copy of the Notice was sent Inter-office to:

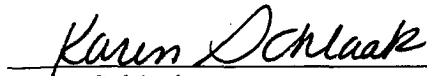
John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General



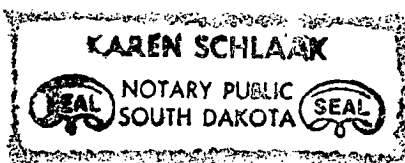
Eric Gronlund
Natural Resource Engineer
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 11th day of August, 2003.



Karen Schlaak
Notary Public
My Commission expires April 1, 2007



STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE PETITION)	FINDINGS OF FACT,
FOR CANCELLATION OF A PORTION OF)	CONCLUSIONS OF LAW
WATER RIGHT NO. 970-3,)	AND FINAL DECISION
WILLIAM ST. CLAIR)	

FINDINGS OF FACT

1. This action arises from a petition to cancel a portion of Water Permit No. 970-3, held by William St. Clair.

2. The Water Permit in question was granted on July 11, 1962, by the State Water Resources Commission.

3. Under the terms of the permit, Applicant was allowed to appropriate 5.58 cubic feet of water per second (CFS) from three wells to irrigate a total of 391 acres located in the N1/2 of Section 29 and the N1/2 SW1/4 of Section 28, T117N, R61W.

4. The designated water source is the East James Management Unit of the Tulare Aquifer.

5. The land under the permit has been in the St. Clair family for over 100 years.

6. Pursuant to the practice of the Department, a licensing investigation was conducted in 1973. The licensing investigation revealed that the irrigation in Section 28 had not been developed. The investigation also demonstrated that the wells located in the N1/2 Section 29 had been developed to irrigate 312 acres. The wells were capable of placing 3.88 CFS of water to beneficial use. The system used to apply water to beneficial use were for one-quarter of a mile long tow line. In addition, 1,320 feet of gated pipe were used to irrigate approximately 100 acres of leveled land.

7. Pursuant to the 1973 investigation, Water License No. 970-3 was issued. The license allowed two wells to irrigate 312 acres in the N1/2 of Section 29. This license specified 156 acres being irrigated in each quarter.

8. In the first part of 2002, the Water Rights Program received complaints alleging illegal use of water in the area.

9. The DENR investigation centered on the recently constructed irrigation system located in the Northeast Quarter (NE1/4) of Section twenty-nine (29). During the course of this examination the DENR also reviewed the use of water in the Northwest Quarter (NW1/4) of Section twenty-nine (29).

10. There is no dispute that the water right holder, Mr. St. Clair, has consistently irrigated 132 acres located in the NW1/4 of Section 29.

11. The issue in this case arises because of the activity, or lack of it, with regard to the NE1/4 of 29. The evidence indicates, that the NE1/4 of 29 was not irrigated at least from 1985 to 2000. This evidence appears clearly from the irrigation questionnaires, and from Farm Service Agency maps showing no irrigation in the period of 1991-95 and 1997-2001. Likewise, an orthographic map of Section 29, taken during the 1997 flight, shows no center pivot irrigation on the NE1/4 during that year.

12. Mr. St. Clair, in addition, frankly acknowledges that no irrigation was applied on the NE1/4 from 1986 through 2001.

13. Mr. St. Clair explained that the original system used to irrigate the area was a gravity system. Such systems, as

described by St. Clair, are archaic and essentially non-functional in this area of South Dakota.

14. As a result of the deficiencies of gravity systems, Mr. St. Clair discontinued using the gravity system in 1970 and put a center pivot in the NW1/4 at that time. Mr. St. Clair states that irrigation in the NE1/4 through the gravity system was especially problematic and difficult. He did not, however, put in a center pivot in the NE1/4 in 1970 (when he put the center pivot in the NW1/4). According to St. Clair, the NE1/4 was not well suited for putting in a center pivot at that time.

15. Between 1970 and 2001, St. Clair occasionally attempted to get his renters to put in a partial pivot in the NE1/4, but it was too costly.

16. In the year 2002, St. Clair and his renter attempted to react to the prior dry summer by putting in the irrigation system in the NE1/4. Approximately \$40,000 was spent setting up the system. About \$23,000 was spent by St. Clair himself and approximately \$17,000 was spent by his renter.

17. The pivot in the NE1/4 is a partial pivot which can irrigate approximately 70-80 acres. The partial pivot was put together through the use of used equipment and the hard work of those involved.

18. St. Clair testified that before he took the action described in the previous two paragraphs, he recalled speaking on the telephone to Water Rights Programs representatives in Pierre. He is unsure as to who he had spoken with. He acknowledged, to that person, that he had not irrigated the NE1/4 in the recent

history. He stated that he told the representative in Pierre that he tried to squirt water on seven or eight acres and that the person in Pierre said that that likely would not constitute irrigation.

19. St. Clair testified that he recalls a statement from the Water Rights Program representative in Pierre that "if no one complains, there probably would not be a problem."

20. The Board has considered the responsive testimony of the Division of Water Rights Program with regard to the conversation identified in the paragraph immediately above. Eric Gronlund testified as to a "standard dialogue" that he uses in handling inquiries about water rights. Gronlund testified that the "standard dialogue" would not allow him to speak to the validity of any permit. He stated that in such conversations he identified the pertinent statutes, and the doctrine that South Dakota was a "use it or lose it" state in which three years of non-use can result in loss of a water right. Gronlund referred specifically to his knowledge of the Stabio Ditch case, which he testified does not allow a member of the staff to comment on the validity of a water right.

21. The Board also considered the testimony of Jim Goodman, the supervisor of the ground water component of the Water Rights Program. Goodman made it clear that the regular policy of the ground water program was not to opine on the validity of any water right.

22. The Board determines, based on its analysis of the testimony, that the Water Rights Program did not give

Mr. St. Clair or the renter any assurance that his water right in the NE1/4 was still valid or that the water right would be valid unless "somebody complained."

23. The Water Right questionnaires returned by Mr. St. Clair from 1988 through 1996, recorded a pumping rate of 1,000 gallons per minute. It recorded a pumping rate of 800 gallons per minute for 1997 through 2000, and a 900 gallons per minute rate in the year 2001.

24. Mr. St. Clair now argues that the pumping rate submitted on the irrigation questionnaire was essentially a gross estimate and was very probably an underestimate. He now estimates that the actual pump rate was approximately 1200 gallons per minute.

25. Mr. St. Clair proposes that the 1200 gallon per minute rate, which he now claims be separated into two components. 800 gallons per minute could be applied on the NW1/4 because a more efficient system is now being used on the NW1/4. 400 gallons per minute could be put on the NE1/4 because only half of that quarter will be irrigated, and 400 gallons per minute would be sufficient.

26. Mr. St. Clair thus argues that because the total rate applied will be the same--1200 gallons per minute--the spirit of the permit is being honored.

27. The Water Rights Program argues, to the contrary, that if twelve inches of water per year are put on the NW1/4 at present, and if an additional twelve inches of water are put on the NE1/4, that there will, in fact, be additional water used.

28. The Board finds that the NE1/4 of Section 29, T117N, R61W has not been irrigated for a period of at least fourteen years.

29. The Board further finds that the failure to irrigate the Northeast Quarter (NE1/4) for that extended period of time was a result of the fact that the gravity system on that area was extremely inefficient; and that it was also too costly to Mr. St. Clair to install half of a center pivot on the Northeast Quarter (NE1/4) in 1970. Yet, at the same time, Mr. St. Clair did install a full center pivot on the Northwest Quarter (NW1/4) of the same section. Thus, if this matter involved a question of efficiencies and costs, the installation in the Northwest Quarter (NW1/4) would weigh against Mr. St. Clair's argument. The Board finds, however, that such issue need not be fully addressed because this claim is rejected on the legal basis set forth in Conclusion of Law 7.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter.
2. All notices required by the constitution and statutes have been given.
3. Pursuant to SDCL 46-5-37, when a person fails to use unappropriated water for a period of three years, without legal excuse the water shall revert to the public. ARSD 47:02:01:37 sets forth the conditions for legal excuse.

4. The Board concludes that St. Clair failed to beneficially use water on the NE1/4 for a period well in excess of three years.

5. The Board further finds that St. Clair has been unable to show legal excuse. As in prior decisions, the Board concludes that the failure to put the water to use in this case was essentially for an economic reason and that such a reason does not constitute a legal excuse under SDCL 46-5-37. See In the Matter of the Petition for Cancellation of Water Permit No. 1963-2, City of Custer (March 18, 2002, Water Management Board).

6. The Board rejects the contention that legal excuse for not putting the water to use on the NE1/4 was established because of "climatic conditions." Water was able to be applied on the adjoining quarter during all that period.

7. The Board also rejects the argument that legal excuse can be found somehow in the fact that, by putting the water to use now, in a more efficient and economical manner than would have been previously possible is beneficial and that because it is beneficial, the water right should not be found to be forfeited for three years of non-use. While the Board is sympathetic to the ideals underlying this proposal, the Board concludes that the proposal does not embody an allowable construction of South Dakota law. South Dakota law provides that a irrigator must use his water consistently. South Dakota law does not allow an irrigator to discontinue use of water until an

unknown time in the future when it might be more ecologically or economically appropriate to use the water.

FINAL DECISION

Water Right No. 970-3 is declared to be forfeited in part for nonuse.

1. Water Right No. 970-3 is ordered to be reissued to reflect the irrigation system in the NW1/4 of Section 29, T117N, R61W.

2. The well and irrigation of the NE1/4 of Section 29 and the non-irrigated lands in the NW1/4 of Section 29 are cancelled and deleted from Water Right No. 970-3 based on a forfeiture for non-use.

3. Water Right No. 970-3 is directed to be reissued to appropriate 1.88 cubic feet of water per second from one well located near the center of the NW1/4 of Section 29 to irrigate 132 acres located in the NW1/4 of Section 29, all in T117N, R61W

Dated this 31 day of July, 2003.

BY THE BOARD:


Chairman

j-WMB.jpg St. Clair

REISSUED
STATE OF SOUTH DAKOTA
WATER LICENSE NO. 970-3

(1) William St. Clair, 37644 184th St, Tulare SD 57476-7007 was issued Water License No. 970-3, April 10, 1973 to divert 3.88 cubic feet of water per second from groundwater (two wells), Spink County, South Dakota for irrigation purposes. Water Right No. 970-3 has a priority date of March 7, 1962.

On July 10, 2003, the Water Management Board adopted Findings of Fact, Conclusions of Law and a Final Decision canceling a portion of Water Right No. 970-3 due to forfeiture for non-use. The water license is being reissued to reflect the action taken by the Water Management Board on December 4, 2002.

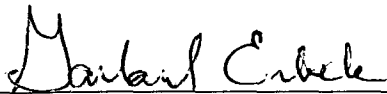
(2) The water supply system has been completed and water applied to beneficial use in accordance with South Dakota State Law. Pursuant to South Dakota Codified Law 46-5-30.1, the holder and/or owner of Water Right No. 970-3 is reissued a license, bearing a priority date of March 7, 1962 to appropriate 1.88 cubic feet of water per second from groundwater (one well) to irrigate 132 acres.

The diversion point is located: near the center of the NW ¼ Section 29-T117N-R61W. The acres authorized for irrigation are as follows:

132 acres – NW ¼ Section 29-T117N-R61W

(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Permit No. 970-3 including the following now applicable qualifications:

The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.



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

OCT 10 2003

date





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

OCT 10 2003

William St. Clair
37644 184th Street
Tulare SD 57476-7007

Dear Mr. St. Clair:

Enclosed is reissued Water Right No. 970-3. The water license is being reissued to reflect the action taken by the Water Management Board on December 4, 2002.

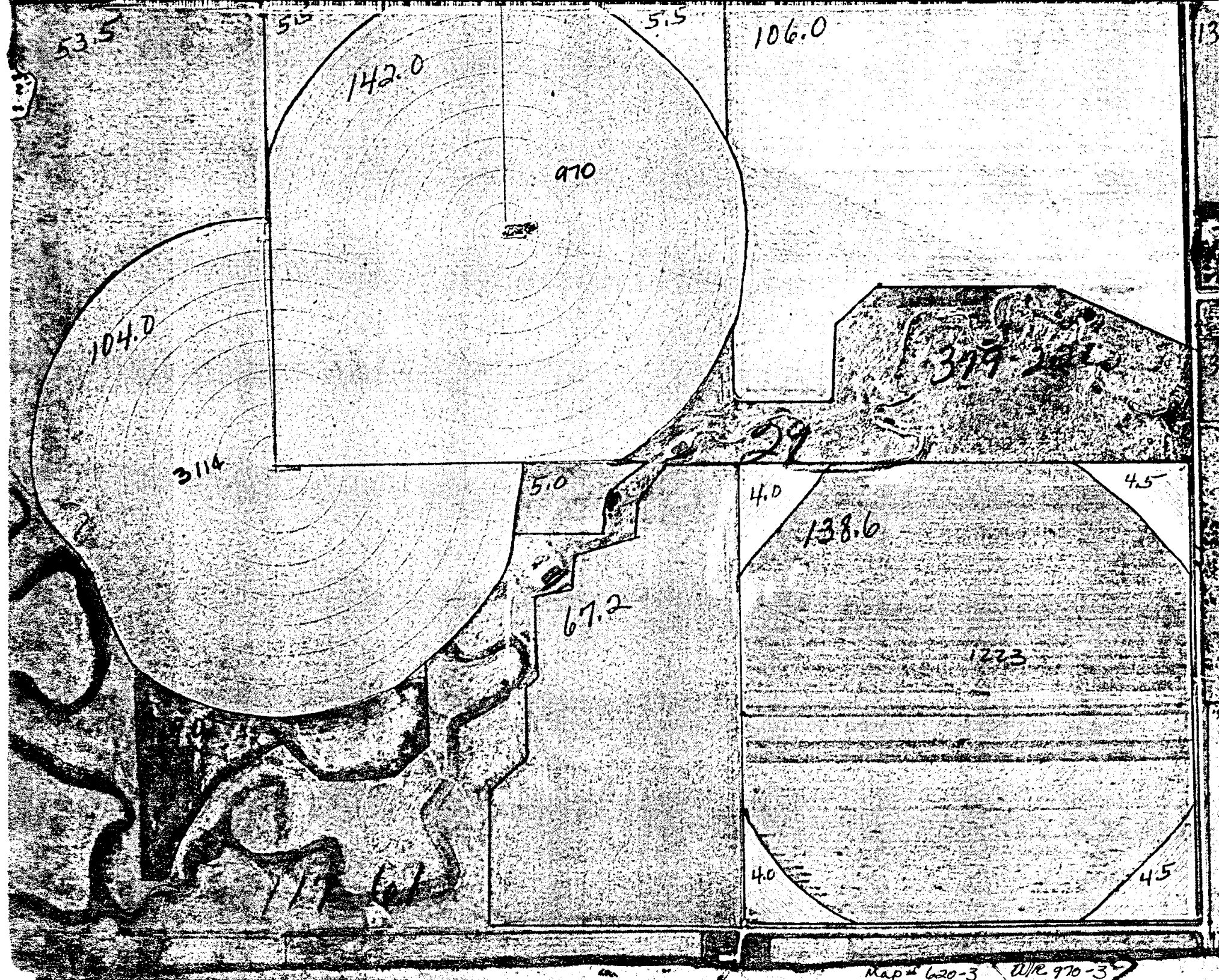
As long as you use water beneficially, as stated in Reissued Water Right No. 970-3, South Dakota Water Law provides that you have a continuing right to the use of the water.

If you have questions, please contact me.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program
605 773-3352

enclosure



11-22-2024

Please note, William F. St. Clair passed away 4 May 2024. JoAnn St. Clair (wife of William F.) has been appointed personal representative of his estate. Therefore I believe JoAnn St. Clair is the new owner of the permits and the current address of 37644 184 St. Tulare SD, 57476 remains the same. JoAnn's cell phone number is 605-450-0327.

For further questions and concerns, please call me or JoAnn.

Sincerely

William E. St. Clair (son of William F. and Joann)

605-450-0114

bstclair420@gmail.com

Permit Nos.

971-3	839-3
1725-3	970-3
6675-3	45860-3
7295-3	4158-3
987-3	6676-3



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

February 6, 2024

839-3, 970-3, 971-3, 987-3, 1725-3
3860-3, 3861-3, 4158-3, 4553-3
4586C-3, 6675-3, 6676-3, 7295-3

JoAnn St Clair
37644 184th St
Tulare SD 57476

Dear Ms. St Clair:

Each year, the State of South Dakota sends out Water Management Irrigation Questionnaires to collect information based on annual water use from our state's waters.

This year we received word from your son, William E St Clair, that due to the unfortunate death of your husband, William F St Clair, the water rights held in his name should be transferred to you, the property owner. For your convenience I have enclosed partially completed "Transfer of Ownership" forms for you to review, complete, and return in the pre-paid envelopes.

Please return the forms with a check for \$500.00 (\$50.00/transfer) made payable to "SD Water Rights Program" to cover the transfer fees. If you would prefer to pay by card, you may call our Fiscal Office at 605.773.5559. These forms will still need to be returned even if you are submitting payment over the phone.

Should you decide you wish to discontinue the irrigation on any of these pieces of land, we would ask that you let us know.

If you have any questions or concerns, please give me a call. My direct number is 605.910.5187

Sincerely,

Amanda Dewell
Permitting Administrator
Water Rights Program
605 773-3352
Amanda.Dewell@state.sd.us

enclosures

970-3
PAID

FEB 18 2025
Ck# 11968
Rec't# _____

NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

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

Water Right/Permit No. 970-3

Date: 2-10-2025

I/We request that Water Right/Permit No. 970-3 formerly owned by:
Willaim F St Clair - Tulare SD be transferred to:

New Owner Name: JoAnn St. Clair
Address: 37644 184th St mobile: 605-450-0327
City, State, Zip: Tulare SD 57476 email: willm-StClair@yahoo.com

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

N 1/2 Section 29, T117N, R61W - 312 acres

☒ I understand that the validity of Water Right/Permit No. 970-3 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, JoAnn St. Clair, the new owner, certify that the above information is true and correct.

JoAnn St Clair
(signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five-year construction period has expired. Once a water permit is developed, an inspection is conducted to issue a water right license for the project as developed. A water permit/right may be cancelled for one or more of the following reasons:

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

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Agriculture and Natural Resources

Date February 24th 2025

RECEIVED OF JoAnn St Clair 37644 184th St Tulare SD 57476

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	\$ _____
Fee for Application for Permit No. _____ to Appropriate Water for Future use	\$ _____
Fee to retain Future Use Permit No. _____ after period of seven years.	\$ _____
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____	\$ _____
Fee for Filing Transfer Form <u>4158-3, 1725-3, 987-3, 971-3, 970-3, 839-3, 7295-3, 4586C-3, 6676-3, 6675-3</u>	<u>\$500.00</u>
Fee for _____	\$ _____
Fee for Issuing New Well Driller's License No. _____	\$ _____
Fee for Renewal of Well Driller's License No. _____	\$ _____
Fee for Issuing Well Pump Installer's License No. _____	\$ _____
Fee for Renewal of Well Pump Installer's License No. _____	\$ _____
(Any Other Work Provided by Law)	TOTAL
	<u>\$500.00</u>

By

Eric Gronlund

Chief Engineer



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

February 24, 2025

4158-3, 1725-3, 987-3,
971-3, 970-3, 839-3,
7295-3, 4586C-3, 6676-3, 6675-3

JoAnn St Clair
37644 184th St
Tulare, SD 57476

Dear Ms. St Clair:

The South Dakota Water Rights Program is in receipt of the "Notice of Transfer of Ownership" form and the required fees you submitted for Water Right Nos. 4158-3, 1725-3, 987-3, 971-3, 970-3, 839-3, 7295-3, 4586C-3, 6676-3, and 6675-3. Enclosed is a receipt of payment for your records.

Water Right Nos. 4158-3, 1725-3, 987-3, 971-3, 970-3, 839-3, 7295-3, 4586C-3, 6676-3, and 6675-3 previously held by William F St Clair and St Clair Ranch are now listed under yourself. I have also updated your contact information in our system.

As a reminder, so long as you use the water beneficially, as stated in the Water Rights (copies enclosed), State Water Laws provide that you have a continuing right to use the water. Should the water not be put to beneficial use for a period longer than 3 consecutive years, without legal excuse, the Water Rights will be subject to cancellation.

If you have any questions, please contact me.

Sincerely,

Amanda Dewell
Permitting Administrator
Water Rights Program
605 773-3352
Amanda.Dewell@state.sd.us

NOTE: The validity of Water Right Nos. 4158-3, 1725-3, 987-3, 971-3, 970-3, 839-3, 7295-3, 4586C-3, 6676-3, and 6675-3 have not been determined by this transfer action. Only the Water Management Board has the authority to determine if a water permit/right is valid.

enclosures