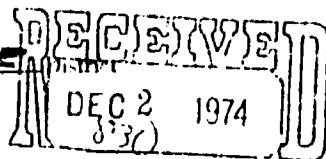


No. 1041-1
 Map No. 4/R Water Division No. 1 BELLE FOURCHE RIVER
 (Blanks to be Filled by the Engineer for the W. R. C.)


VESTED RIGHT APPLICATION FOR PERMIT TO APPROPRIATE WATER RIGHTS COMMISSION PIERRE, SOUTH DAKOTA

To Appropriate Water within the State of South Dakota

(NOTE: Draw a line through items not applicable)

1. Name of Applicant Bureau of Sport Fisheries and Wildlife
 Postoffice address 10597 West 6th Street, Denver, Colo., State
80215
 If a corporation show date and place of incorporation _____
2. Method of accomplishing work (contract, employment of others, or by direct labor) completed
3. Name of diversion work Spearfish Creek Diversion
4. Amount of water claimed (cubic feet per second) 6.66
5. Source of water supply Spearfish Creek
6. Location of point of diversion N. 13° 11' West, 388 feet from the center of the SE 1/4,
Section 15, T6N, R2E

- County Lawrence
7. Annual period or periods during which water is to be used continuously
8. Use to be made of water, (irrigation, industrial, municipal, commercial, recreation, etc.) Fish Culture
9. For irrigation use, Total number of acres to be irrigated _____

List below each forty acre sub-division, or lot, or fraction thereof and show number of acres to be irrigated in each.

Land Description	No. Acres Irr.	Land Description	No. Acres Irr.

Attach sheet if more space is needed

10. Time required to complete construction of water supply system completed years. Additional time required to complete application of water to the proposed beneficial use completed years.
11. Choice of newspaper for Notice of Intent to Appropriate Water publication N/A
12. Principal Features of the Proposed Water Supply System.

A. Works proposed to divert water from its natural source.
Intake structure with gates

B. Works proposed to transport water to place of use.
Canal 1520' long to hatchery

C. Works proposed to apply water to beneficial use.
Raceways, ponds, the Hatchery located in the City of Spearfish

Estimated Total Cost \$ _____

Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach map.
 (See instructions concerning preparation.)

STATE OF Colorado SOUTH DAKOTACounty of Jefferson

I, Harvey Willoughby the applicant, certify that I have read the foregoing application and have examined the attached map and that the matters therein stated are true and that I intend, and am able to complete the necessary construction.

Signed Harvey Willoughby Acting Beneficial Use OwnerSubscribed and sworn to before me this 26 day of November 1974
Ralph F. Kesteven
 Notary Public (or other qualified officer)

WATER RIGHT APPLICATION APPROVAL

The Water Rights Commission hereby approves Water Right Application No. 1041-1
BUREAU OF SPORT FISHERIES & WILDLIFE PO. Box 25986
 (Applicant) DENVER FEDERAL CENTER, DENVER.
 (Post Office Address)
COLORADO 80225 With the following modifications:
 (State)

"VESTED RIGHT" CLAIMED

Date of first receipt of application DECEMBER 2 19 74
 Date of return to applicant for correction, amendments or changes required — 19 —
 Date of receipt of corrected application — 19 —
 Approved JANUARY 23 19 75, Recorded in Book 13 Page 179

WATER RIGHT PERMIT NO. 1041-1

The Water Rights Commission hereby grants and issues this Water Right Permit No. 1041-1 authorizing the construction of the water use system and the putting of water to beneficial use as stated in the Application and as modified in the Water Right Application approval, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is FEBRUARY 19 19 37
2. The equivalent of at least one-fifth of the work above specified is ~~to be~~ completed ~~on or before~~ — 19 —
3. The whole of said work is ~~to be~~ completed ~~on or before~~ — 19 —
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is COMPLETED 19 —
5. The water appropriated shall be used for the purpose of FISH CULTURE

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

7. The amount of the appropriation herein granted shall not exceed 6.66 cubic feet per second; neither shall it exceed the capacity of the above described water supply system, nor shall it exceed the amount of water needed for ~~beneficial use~~ ~~and if for the irrigation purpose, said appropriation must be limited to not more than 3 acre feet per acre per year and be limited to not more than one-seventh (1/70) of one cubic foot of water per second of time for each acre of land to which water~~ USED FOR FISH CULTURE PURPOSES was actually and beneficially ~~applied for irrigation~~ on or before JUNE 30 19 75; said water to be used during the following described annual period: CONTINUOUSLY

Witness my hand this 10TH day of FEBRUARY 19 75

WATER RIGHTS COMMISSION

By Donald Dinsell
 Chief Engineer, Executive Officer

Certificate of Construction Issued FEBRUARY 10 19 75

Water License Issued FEBRUARY 10 19 75

NOTE: This Form is supplemental to Form 2, and is to be used when an affidavit pertaining to construction and water use, already completed, is needed.

AFFIDAVIT OF CONSTRUCTION OF WATER USE SYSTEM AND APPLICATION OF WATER TO BENEFICIAL USE

Name of Applicant (Same as Form 2) Bureau of Sport Fisheries and Wildlife
 Post Office Address 10597 West 6th St., Denver, State Colorado 80215
 If a Corporation show date and place of incorporation _____

13. Notice of Appropriation (If available)

No prior posting

Date of Posting _____ Date of Recording _____
 Recording Date _____

14. Date of start of construction of water supply system February 19, 193715. Date that water was first applied to beneficial use 193716. Name of owner of original water supply system Same as above17. Amount of water originally applied to beneficial use 3000 G.P.M. c. f. s.

18. Present Use of Water

Amount of water now being used 3,000 G.P.M. c. f. s.
 Date that this amount of water was first used 1937

19. Chronological History of Water Use

Water has been used at hatchery site since 1899 with water source being springs shown on Water Right No. 52-1A. In 1937 (see Easement attached) water was diverted from Spearfish Creek, and has been used in Hatchery operation since that time.

Attach to this Form 2B. any copies of notices, postings, filings, publications, affidavits, or other records that apply. You may also attach any written statement by you, or by others, that you deem pertinent.

STATE OF Colorado)
~~SOUTH DAKOTA~~)County of Jefferson) ss.

I, Harvey Willoughby, the applicant, certify that I have read the foregoing and that the matters therein stated are true.

Signed

Harvey Willoughby
Acting Regional DirectorSubscribed and sworn to before me this 26 day of November, 1937.Joseph F. Kutcher
(Notary Public - or other qualified Officer)

My Commission expires Aug. 23, 1977.

I, the undersigned, do hereby certify that I know about the water use system described above that I have read the foregoing and that the matters therein stated are true.

Permit No. 1041-1

Water Diversion No. 1 BELLE FOURCHE RIVER Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That the Bureau of Sport Fisheries and Wildlife

the holder of
Vested Right
/ Permit No. 1041-1, issued upon Application No. 1041-1, bearing date of priority of February 19,
1937 authorizing the diversion of 6.66 cu. ft. per second of the waters of Spearfish Creek
County of Lawrence, State of South Dakota at a point North 13° 11' West, 388 feet from the center of the SE Corner,
Section 15, T6N, R2E
for fish culture

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 recognized as
satisfactory for diverting and conveying to the place of intended use 6.66 cu. ft. per second of water.

Date February 10, 1975

By: WATER RIGHTS COMMISSION

DONALD DRISCOLL, Chief Engineer

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 1041--1

(1) WHEREAS, On the 2nd day of December A. D. 19 74
the Bureau of Sport Fisheries and Wildlife

made Water Right Application No. 1041-1 ^{Vested right} for a permit to use 6.66 cubic feet per second of the waters of Spearfish Creek

County of Lawrence, State of South Dakota, for fish culture

^{purpose; and}
(2) WHEREAS, On the 10th day of February A. D. 19 75
^{Vested Right} /Permit No. 1041-1, with a date of priority of February 19, 1937

^{recognizing}
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~~ _____ day of _____, 1975 and ~~for the~~ application to beneficial use of said water ~~on or before the~~ _____ day of _____, 1975

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 6.66 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.

water is used for fish culture purposes at the Spearfish National Fish Hatchery.

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

the Bureau of Sport Fisheries & Wildlife

Denver, Colorado

_____ of _____
the holder _____ and owner _____ of said permit No. **1041-1** a water right, dating from **February 19, 1937**

_____ to use of **6.66** cubic feet per second of the waters
of **Spearfish Creek**

in the County of **Lawrence** and State of South Dakota, or so much thereof as may be necessary for the
purposes hereinbelow mentioned, to be diverted at _____

a point North 13° 11' West, 388 feet from the center of the SE Corner,

Section 15, T6N, R2E

and conduct to and upon **through the Spearfish National Fish Hatchery**

for the purpose of **Fish Culture**

Subject to any limitations listed in Water Right Permit No. **1041-1** 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 **February** A. D.

Nineteen Hundred and **Seventy-five**

WATER RIGHTS COMMISSION

By:

Chief Engineer, Executive Office **DONALD DRISCOLL**

This Water License No. 1041-1 is based on a vested right claim recorded and filed by the Water Rights Commission.



DEPARTMENT OF WATER & NATURAL RESOURCES

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

1041-1

May 6, 1991

TO: Spearfish Creek Water Right Owners
(See Attached List With Priority Dates)

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

SUBJECT: Diversions from Spearfish Creek

If drought conditions continue in the Black Hills area during 1991, we expect another irrigation season with very low flows in Spearfish Creek. As I understand it, during the 1990 irrigation season, there were short periods of time when there were no flows in Spearfish Creek at different locations.

I believe that a short reach of the creek channel below Cook Ditch's diversion received the most attention from the news media. Although state law does not require instream flows for fish and wildlife and aesthetic purposes, state law does give preference to water for domestic use which includes livestock watering.

We would like to work with you to maintain minimum flows in the creek for domestic use during 1991. Maintenance of minimum flows should reduce news media attention to Spearfish Creek.

If you have any questions, please contact Del Brosz or Rassool Ahadi, Division of Water Rights, 523 E. Capitol, Pierre, SD 57501. Phone: (605) 773-3352

cc: Representative Harvey Krautschun

1041-1

SPEARFISH CREEK WATER RIGHTS

PERMIT NO.	NAME	PRIORITY DATE	RATE (CFS)
*43-1	Homestake Mining Co	01/04/1909	100.00
138-1	City of Spearfish	11/12/1917	0.50
141-1	City of Spearfish	03/01/1919	1.10
148-1	City of Spearfish	01/27/1930	1.50
150-1	City of Spearfish	01/27/1930	1.00
+1041-1	US Bur Sport & Fish	02/19/1937	6.66
X1385-1	Homestake Mining Co	10/01/1876	1.67
1386-1	Walton-Schuler Ditch	03/20/1887	8.50
1387-1	Tonn-Evans Ditch	05/01/1876	14.40
1388-1	Bowman Ditch	06/11/1977	8.0
1389-1	Cook Ditch	06/10/1877	21.60
1392-1	Mann Ditch	03/21/1878	1.45
1394-1	Kemper Ditch	07/31/1881	33.00
1399-1	Cook-Burns Ditch	06/15/1881	33.0
1400-1	Owens-Gay Ditch	03/01/1877	1.74
1403-1	Ramsdell Ditch	10/01/1876	2.00
1416-1	Richard Cundy	04/01/1920	0.20

* - Power Generation, non-consumptive

+ - Fish Hatcher in City of Spearfish

X - For municipal use, City of Spearfish

SOUTH DAKOTA

VESTED WATER RIGHT CLAIM NO. 1041-1

Date of Receipt of Claim December 2, 1974.

Date of Validation May 6, 1992.

The Water Management Board validated Vested Water Right Claim No. 1041-1 for the US Fish and Wildlife Service, PO Box 25486, Denver Federal Center, Denver CO 80225 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 1041-1 appropriates 6.66 cubic feet of water per second from Spearfish Creek located in the SE 1/4 SE 1/4 Section 15-T6N-R2E.
2. The appropriated water is used for supplying water to the Spearfish National Fish Hatchery and may not exceed the amount of water needed for beneficial use for fish culture purposes.

The water is to be used during the following annual period:
January 1 - December 31

3. The priority date of the Vested Water Right is February 19, 1937.
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

WATER MANAGEMENT BOARD

By: _____

John H. H. H.
Chief Engineer

JUN 29 1992

date

Division of Water Rights
Dept. of Environment and Natural Resources



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

JUN 29 1992

US Fish and Wildlife Service
PO Box 25486
Denver Federal Center
Denver CO 80225

Dear Sir:

The Water Management Board has validated the enclosed Vested Water Right Nos. 52-1A and 1041-1. These validations give legal status to the claims and are the final document for your vested rights.

As long as you use the water beneficially, as stated in the validation, State Water Laws provide that you have a continuing right to use the water.

Very truly yours,

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

enclosure