

1. Considered: October 7, 1982

Water Right No. 1263-1

2. Name of Applicant Department of Game, Fish and Parks

3. Post Office Address Pierre

4. Amount of Water Claimed 1.34 maximum acre feet

5. Source of Water Supply Missouri River

6. Water to be used for Fish Hatchery (FWP) acres to be irrigated

7. County Corson about _____ miles of _____

8. PROOF OF PUBLICATION: Received ~~10-7-82~~ 12-7-82 Not Received _____

APPLICATION: Approved 10-7-82 Subject to OK 10-18-82; 11-22-82; 12-6-82

Not Approved _____ Action Deferred _____

notified several times re. affidavit

Dated Received 9/2/82 Application complete-yes XX no _____ FEE N/A

Remarks Grand River spawning and imprint station

Corrected Application received _____ Period of Annual Use 1/1/ to 12/31
continuously

Received yes _____ no _____ APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as application-yes _____ no _____ Remarks _____

Disapproved _____ Returned _____

Diversion Point _____

NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 6-T19N-R29E

Land to be irrigated _____

					*
				6	

Driller _____ Licensed - yes _____ no _____

Depth _____

Remarks _____

PRIORITY

9/2/82

12-7-82
affidavit

WATER
QUALITY

MAP Map No. 1070-1 Map located in Water Right X Map file X
 Type of Map drawn Prepared by Winston Douglas PE

+++++

REVIEWED This Application was received within 30 days of the date received, accepted as complete, Number assigned and written up for advertisement before the Board on:

September 3, 1982

Betty Westlund
 (Signed)

+++++

PROTESTS Letters/Petitions in File - yes no _____ Remarks _____
Ben J. ... stated it was not a
community water right

REMARKS Date _____
 F.F. & C. Final Decision, including F.F. & C. of Law were adopted _____
 OF LAW, Date _____
 FINAL Final Decision mailed to parties and/or parties notified that Final Decision was
 DECISIONS adopted _____
 ETC. Remarks _____

No. 1263-1
 Map No. 1070-1 Water Division No. 1 MISSOURI RIVER District 101 30102
 Above for Office Use



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

Check one of the following:

New ☒ Vested Right _____ Future Use _____

Change in Diversion _____ Additional Diversion _____

Change in Acreage _____ Additional Acreage _____

1. Name of Applicant Department of Game, Fish & Parks Phone No. 773-3381
 Post Office Address Anderson Building, Pierre State South Dakota 57501
 (Street, RR, or Box) (Town) (Zip Code)
 If a corporation show date and place of incorporation _____

2. Method of accomplishing work (contract, employment of others, or by direct labor) Contract3. Name of diversion work Grand River Spawning and Imprint Station4. Amount of water claimed (cubic feet per second) 1.34 cfs (600 gpm taken from surface water)5. Source of water supply Missouri River6. Location of point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 6, T 19N, R 29ECounty Corson7. Annual period or periods during which water is to be used Continuously8. Use to be made of water, (irrigation, industrial, municipal, commercial, recreation, etc.) Fish Hatchery

9. For irrigation use, Total number of acres to be irrigated _____

List below each forty acre subdivision, 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 5 years. Additional time required to complete application of water to the proposed beneficial use 4 years.

11. Choice of county newspaper for publication of Notice of Intent to Appropriate Water McLaughlin Messenger
McLaughlin, 57642

12. Principal Features of the Proposed Water Supply System.

A. Works proposed to divert water from its natural source.

Pump - all water will be returned to the source.

B. Works proposed to transport water to place of use.

Pipeline

C. Works proposed to apply water to beneficial use.

Fish tanks within cold storage building.

Estimated Total Cost \$ 62,400.00

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 SOUTH DAKOTA)
) ss.
 County of Hughes)

I, Art R. Talsma 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 Art R. Talsma *gm*Subscribed and sworn to before me this 20th day of August, 1982*Charles E. Keeler*

Notary Public (or other qualified officer)

WATER RIGHT APPLICATION APPROVAL

The Water Management Board hereby approves Water Right Application No. 1263-1

Department of Game, Fish and Parks

Anderson Building, Pierre

(Applicant)

(Post Office Address)

South Dakota 57501

(State)

With the following qualifications

Date of first receipt of application September 2, 1982
Date of return to applicant for correction, amendments or changes required October 18, 1982
Date of receipt of corrected application December 7, 1982
Approved October 7, 1982, Recorded in Book Page

WATER RIGHT PERMIT NO. 1263-1

The Water Management Board hereby grants and issues this Water Right Permit No. 1263-1 authorizing the construction of the water use system and the putting of water to beneficial use as stated in the Application and as qualified in the Water Right Application approval, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is December 7, 1982
2. The equivalent of at least one-fifth of the work above specified is to be completed on or before April 7, 1985
3. The whole of said work is to be completed on or before October 7, 1987
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is October 7, 1991
5. The water appropriated shall be used for the purpose of Fish and Wildlife Spawning (fish Hatchery)
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 1.34 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 uses served, and if for irrigation purposes said appropriation must be limited to not more than 2 acre feet per acre per year and 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 October 7, 1991; said water to be used during the following described annual period: January 1st thru December 31st

Witness my hand this 7th day of December, 1982

THE WATER MANAGEMENT BOARD

By:

Chief Engineer, Water Rights

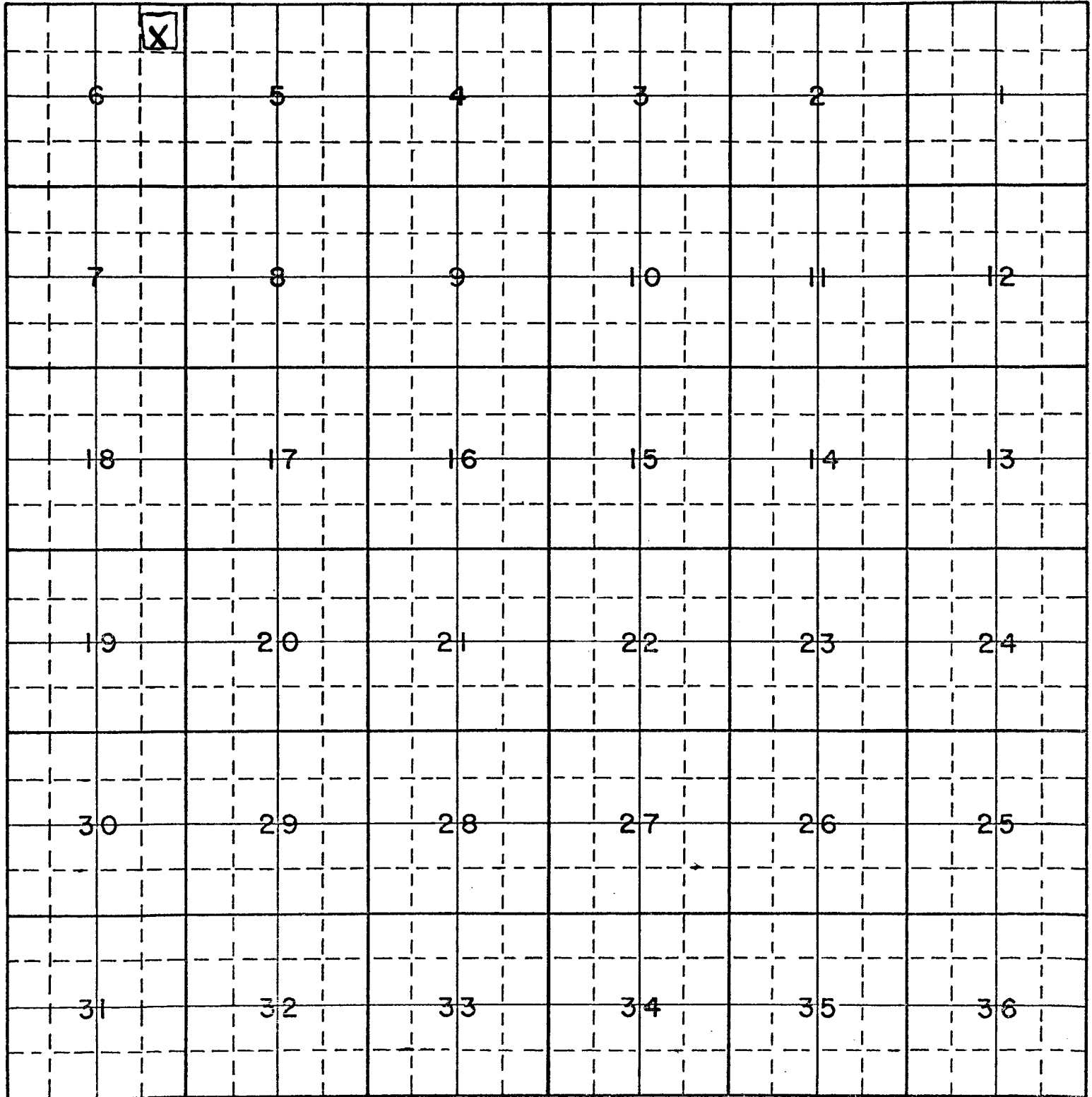
JOHN HATCH

Certificate of Construction Issued, 19

Water License Issued, 19

Grand River Spawning and Imprint Station, Corson COUNTY, SOUTH DAKOTA
Location: NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 6

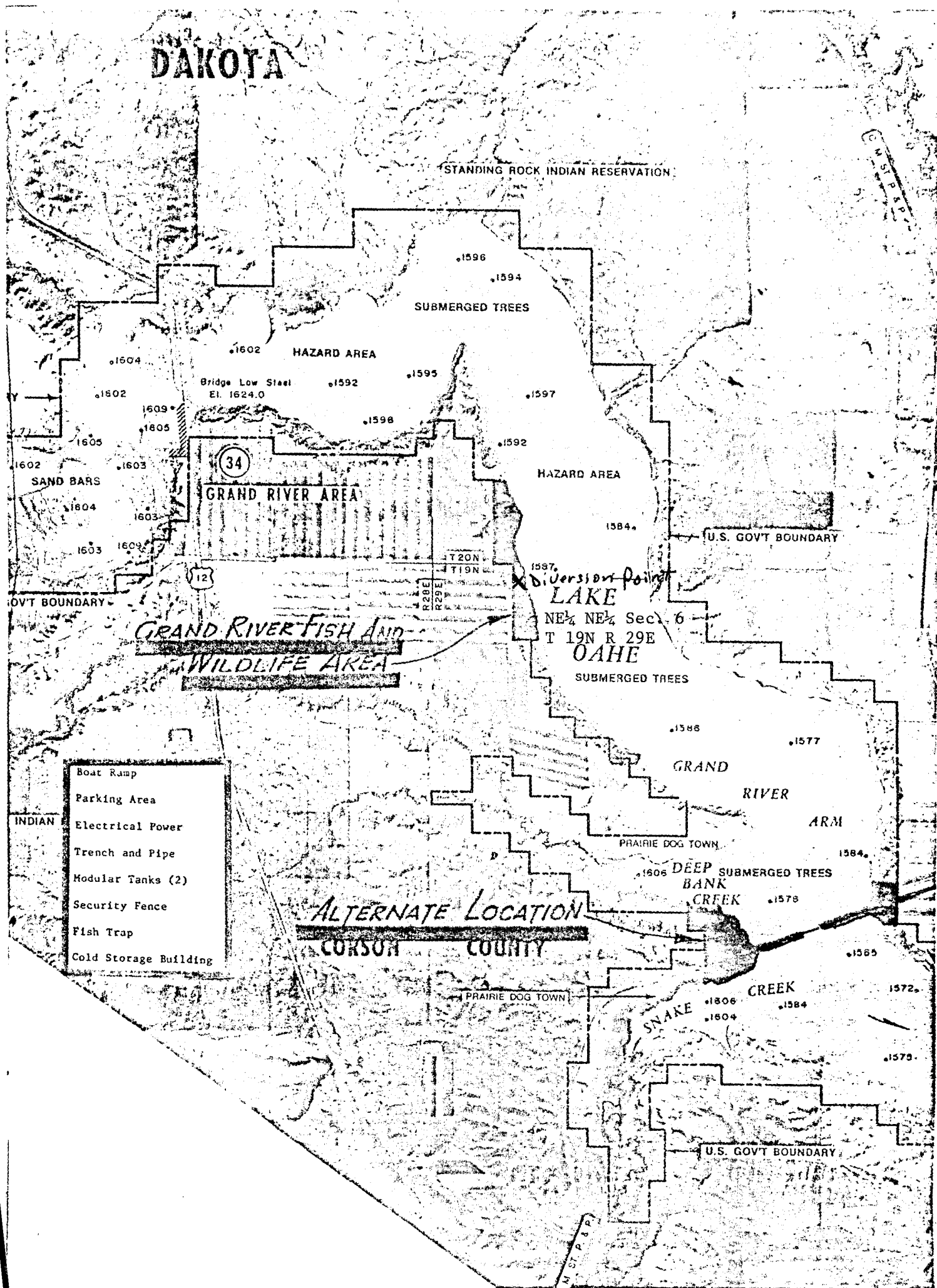
TOWNSHIP NO. T 19N RANGE NO. R 29E



Thomson Senior Engr.

Scale = 1" = 4000'

Map # 1070-1 (Appl # 1263-1)



DEVELOPMENT PLAN

SCALE: 1" = 400'



NORTH

Project Name Lake Oahe
 Area Name Grand River Fish and Wildlife Area
 Phase Development Phase 1 Development
See Exhibit 2-7 For Detailed Cost Estimate
Future State Management

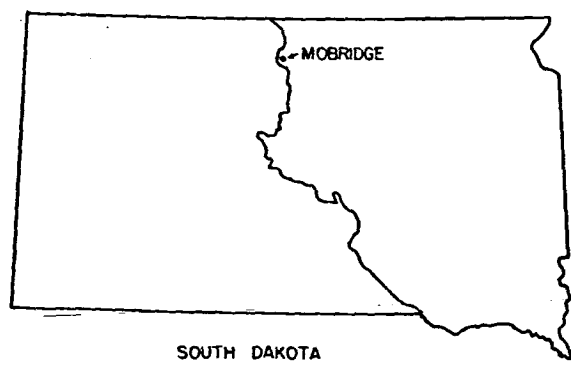
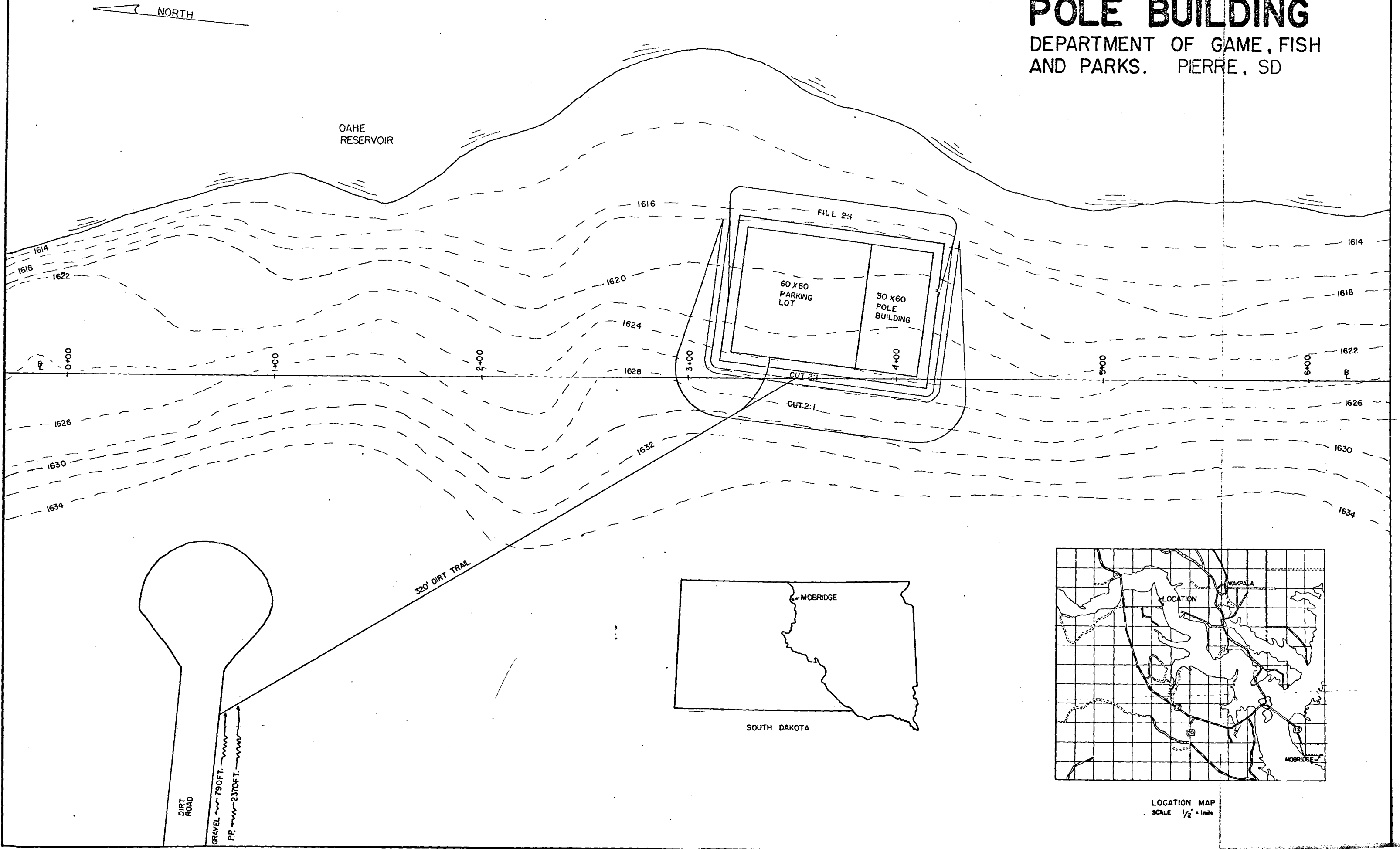
EXHIBIT NO. 2-30

Map # 1070-1

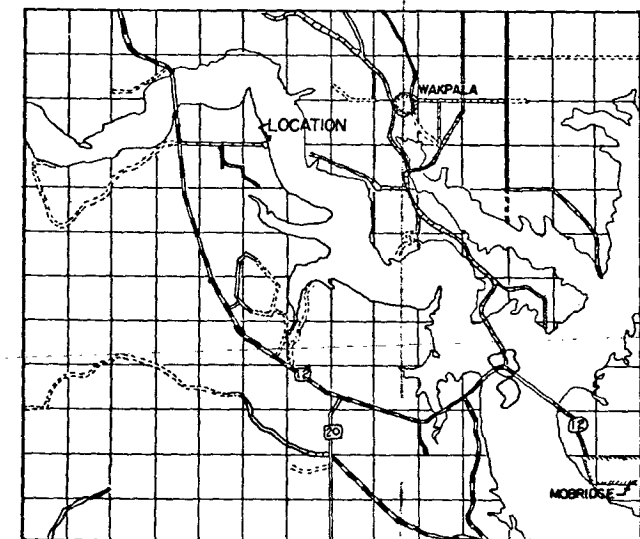
Appl 1263-1

GRAND RIVER POLE BUILDING

DEPARTMENT OF GAME, FISH
AND PARKS. PIERRE, SD



SOUTH DAKOTA



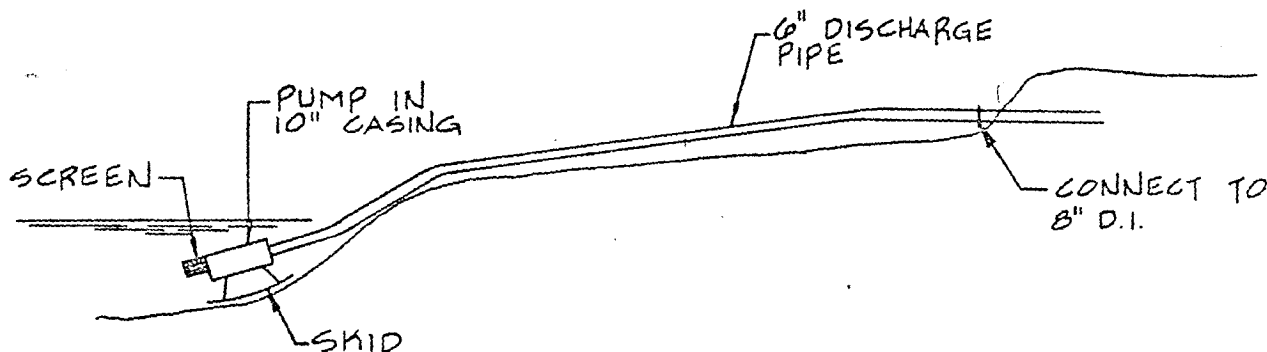
LOCATION MAP
SCALE 1/2" = 1 mile

GRAND RIVER SPAWNING STATION:

PROPOSED LAKE INTAKE

4.6.3 Alternatives for Water Pumping

It is assumed that a $2\frac{1}{2}$ exchange per hour water flow will be included in the main pumping system capacity, or 600 gpm. It would be preferable to have a duplex pump system such that each pump would provide about 60% of the total water demand establishing some back-up capability if one pump were to fail.

Alternative "A" - Skid mounted, slide-in pumps

It is common practice in local irrigation applications to use submersible turbine pumps mounted horizontally on a skid that is pushed into the Reservoir in the pumping season and pulled out when not in use. Some have gone as far into the water as 300-400 feet, so the approximate 330 feet needed for this station is realistic.



US Army Corps
of Engineers
Omaha District

Public Notice

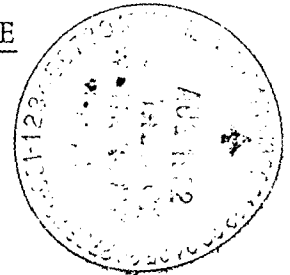
1263-1

Reply to:
Permits Branch
PO Box 5
Omaha, NE 68101

Application No: G.P. 82-09
Date: 10 August 1982
Expiration Date: 24 August 1982

MROOP-N-1.
SD 2SB OXT 3 004801
South Dakota Department of Game,
Fish and Parks
Fisheries Structures
Missouri River Reservoirs

15 DAY NOTICE



NOTICE OF PERMIT PENDING

1. In accordance with Section 325.5(c) as published in the Federal Register, Volume 47, No. 141 of Thursday, 22 July 1982, the US Army Corps of Engineers, Omaha District, Omaha, Nebraska is proposing to issue a General Permit to the South Dakota Department of Game, Fish and Parks for construction of fisheries structures pursuant to Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act.

2. This General Permit will apply to the construction of fisheries structures in the Missouri River Reservoirs within the State of South Dakota.

3. When performed under the limitations and conditions explained below, which a proposed activity must meet to receive consideration under this General Permit, they will have only minimal adverse cumulative effects on the environment. These limitations and considerations include:

a. That each artificial fisheries structure be constructed in accordance with one of the following methods:

(1) Imprint and spawning stations are permanent facilities which are located lakeside where fish concentrate for the purpose of spawning. Typical facilities would include a 30 x 60 ft. cold-storage building to house several modular raceways or tanks, a fishway and fish trap, electrical power for lights and permanent pumps, a well or lake water supply of approximately 400 to 1,000 g.p.m., a parking area for trucks and boat trailers, and security fencing (see drawing, sheet 1 of 8).

(2) Rearing subimpoundments would range in size from approximately 5 - 100 acres. They would be constructed with earthen dikes and generally would be shallow water impoundments of 4 - 8 ft. deep. Control structures (gates, planks, or monks) would be installed to drain the subimpoundments so small fish

could be released to the reservoirs. The source of water would be natural drainage or pumping from the reservoirs. Fill material would be borrowed from adjacent project lands and dikes or berms would be sloped at a minimum grade of 1 to 3 and riprapped (see drawing, sheet 2 of 8).

(3) Warmwater Pools would protect and improve warmwater springs which are now flowing into the reservoirs. Construction would generally include excavation and dike work to provide a pool of approximately 1-2 acres which would be open to the reservoir for fish passage. Excavation and fill would be approximately equal and all exposed berms would be sloped at a minimum slope of 1 to 3 and riprapped. Design objectives would be to provide a pool area approximately 15 ft. deep wherein the water temperature would be 5 - 10°F higher than ambient reservoir temperatures (see drawing, sheet 3 of 8).

(4) Fenced Natural Spawning Areas would protect existing riparian habitat associated with creeks and shallow water embayments. Fence construction would occur during low water periods using wood and steel posts and 4 or 5 strand barbed wire (see drawing, sheet 4 of 8).

(5) Aeration Systems would be added to existing or future subimpoundments to provide oxygen to the water during winter for fish survival. Aeration systems would be constructed of one of the following types: compressed air diffusion, aerohydraulic system, surface blower, or Helixor system (see drawing, sheets 5 and 6 of 8).

(6) Rough Fish Barriers may also be constructed. The rough fish barriers are constructed of 3/4-inch bars placed parallel to each other to allow approximately 1-inch space between each. This type structure allows for debris to pass through yet detain fish (see drawing, sheet 7 of 8).

(7) Artificial Reefs and Fishing Piers are constructed of rock and large gravel which would be located in mid to deep water zones for attraction and spawning of cold water species and in the littoral zone for warm water species. Rock and gravel would be placed on firm bottoms forming a reef approximately 300 x 30 x 10 ft. Reefs with an attached fishing pier would be joined to land and have a 10 ft. flat compacted top with sloped riprapped sides to allow fishing access. Reefs which would be submerged will be clearly marked to protect navigational interests (see drawing, sheet 8 of 8).

4. The South Dakota Department of Game, Fish and Parks will notify the District Engineer thirty days in advance of their intent to construct a specific project under the General Permit. This Notice of Intent will contain the following information:

- a. Application for permit (ENG Form 4345).
- b. A drawing or sketch showing details of the proposed project and a location map (with the project location clearly marked).
- c. Brief description of the work.
- d. A completed environmental questionnaire with photographs of the project site.

If the evaluation of the above information indicates compliance with the General Permit requirements, the South Dakota Department of Game, Fish and Parks will be so notified and construction may proceed.

5. Certification that the proposed activities associated with this general permit will not violate applicable water quality standards has been requested from the Regional Administrator, Environmental Protection Agency, Region VIII, Denver, Colorado.

6. The General Permit will be conditioned to include the following:

- a. That equipment for handling and conveying materials during construction shall be operated to prevent dumping or spilling the materials into the waterway except as authorized herein.

- b. That no petroleum products, chemicals, or other deleterious materials shall be allowed to enter or be disposed of in such a manner so that they could enter the water and that precautions be taken to prevent entry of these materials into the water.

- c. That fuel storage tanks above ground shall be diked or curbed or other suitable means provided to prevent the spread of liquids in case of leakage in tank or piping. Such diking or curbed area shall have a capacity at least equal in volume to that of the tank plus 10 percent.

- d. That the project area is kept clean and free from discarded material.

- e. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

- f. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

g. That this permit may be either modified, suspended, or revoked, in whole or in part, if the District Engineer determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest.

h. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

i. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

j. Meet the General Permit conditions and any other special conditions the District Engineer includes to protect the public interest.

7. Any interested parties or agencies entertaining objections to or desiring to express their views concerning the General Permit may do so by filing their comments, in writing, to the District Engineer, Omaha District, Corps of Engineers, PO Box 5, Omaha, Nebraska 68101, on or before 24 August 1982. A lack of response will be interpreted as meaning that there is no objection to the permit approval.

8. The decision whether to issue a General Permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, among those are conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, energy needs, safety, food production, navigation, recreation, water supply, water quality, and in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency under authority of Section 404(b) of the Clean Water Act (40 C.F.R., Part 230). Issuance of the General Permit will not be considered unless it is found to be in the public interest and in compliance with the following: National Environmental Policy Act of 1969, Fish and Wildlife Coordination Act, the Historical and Archaeological Act, National Historic Preservation Act, Endangered Species Act, and the Clean Water Act of 1977.

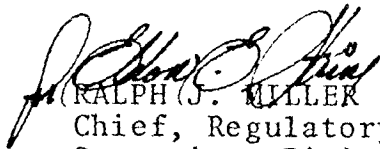
9. A preliminary determination has been made that neither singularly nor cumulatively would this project have a significant effect on the quality of the human environment within the meaning of the National Environmental Policy Act and, therefore, an Environmental Impact Statement will not be required. An Environmental Assessment is currently being prepared which will consider in its preparation, comments received in response to this public notice.

10. If adopted, the policies of the General Permit will be subject to reconsideration at anytime but at least every five (5) years.

11. A permit, if granted, will be under the provisions of Section 10 of the River and Harbor Act of 3 March 1899 (30 Stat. 1151; 33 USC 403) and Section 404 of the Clean Water Act.

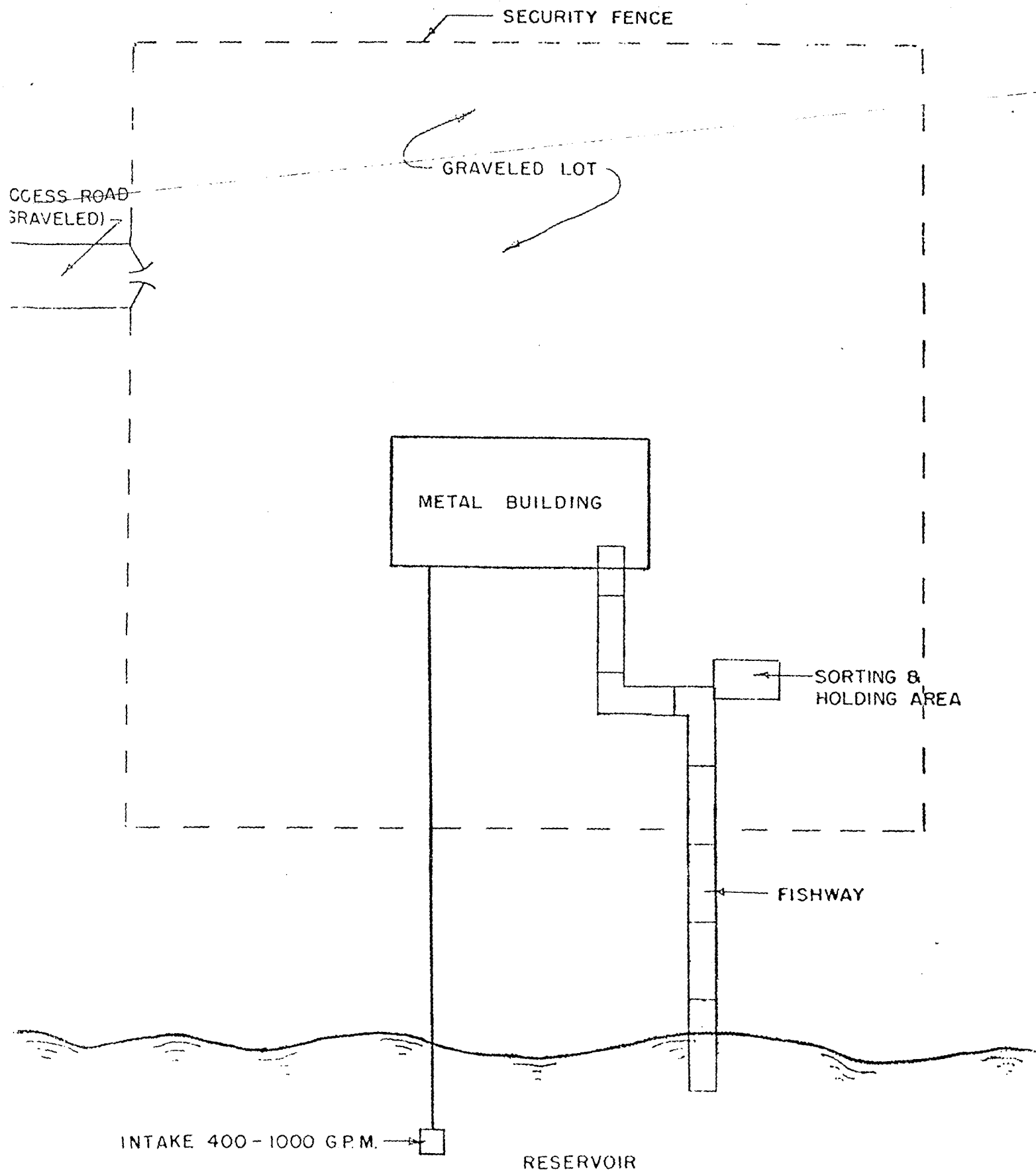
12. Drawings showing the location and extent of the work are attached to this notice.

Attachments
As stated



RALPH J. MILLER

Chief, Regulatory Functions Branch
Operations Division

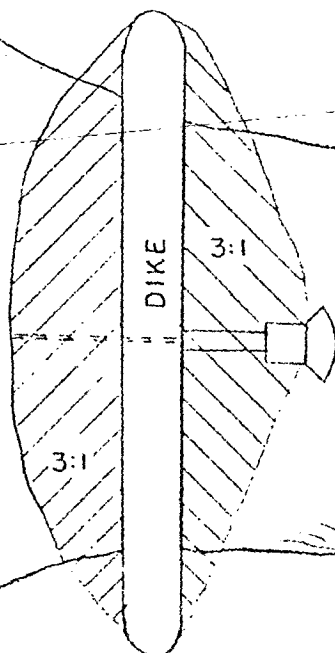


SPAWNING AND IMPRINT STATION

NO SCALE

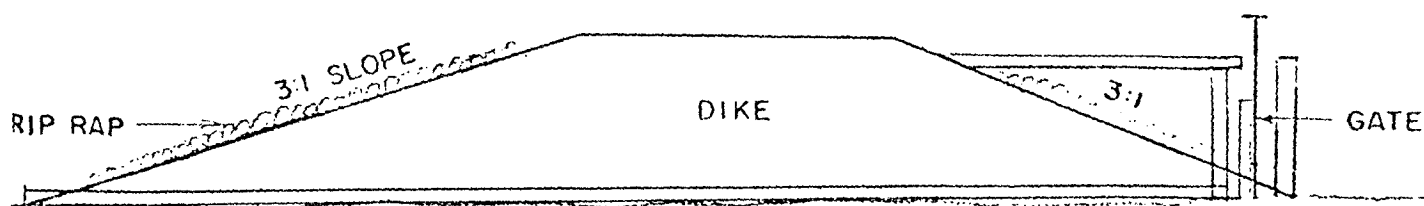
Sheet 1 of 8

RESERVOIR



PLAN VIEW

NO SCALE

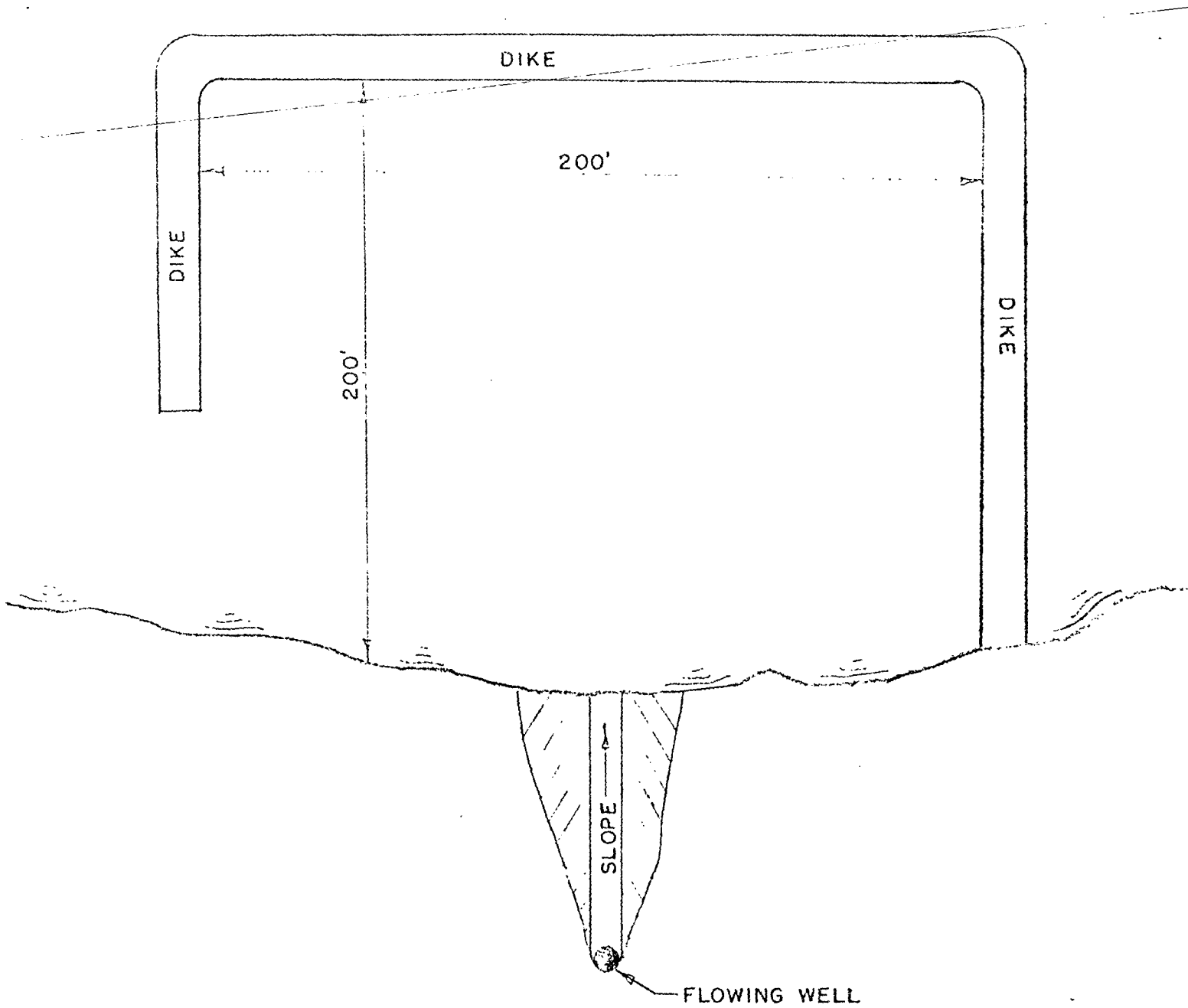


TYP. CROSS SECTION

NO SCALE

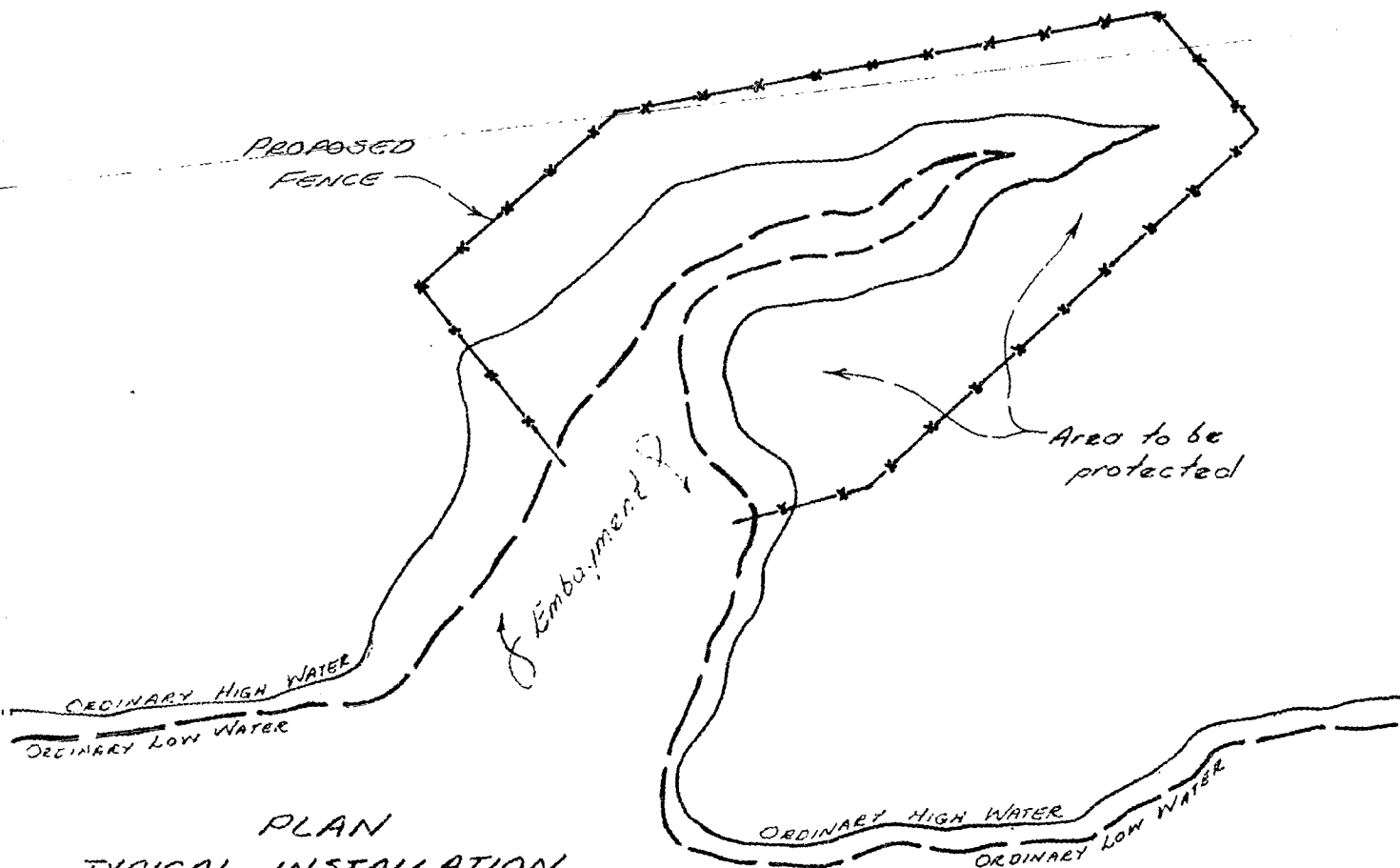
REARING SUBIMPOUNDMENTS

RESERVOIR



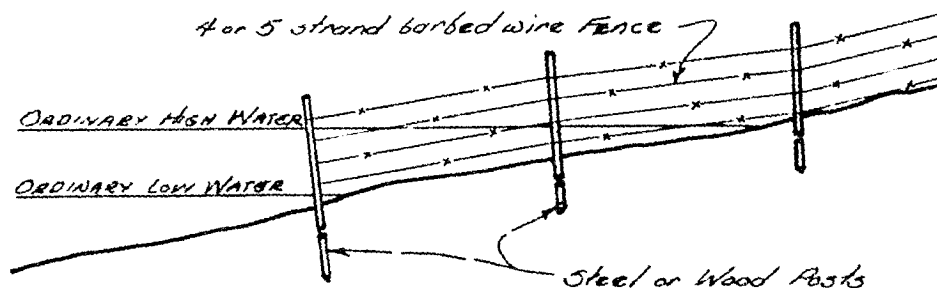
WARMWATER POOL

NO SCALE



PLAN
TYPICAL INSTALLATION
No Scale

FENCED NATURAL SPAWNING AREAS



TYPICAL SECTION
No Scale

NOTE:

DEPARTMENT OF THE ARMY PERMIT
IS ONLY REQUIRED FOR THAT PORTION
OF THE FENCE CONSTRUCTED BELOW
THE ORDINARY HIGH WATER LINE

Aeration-Destratification

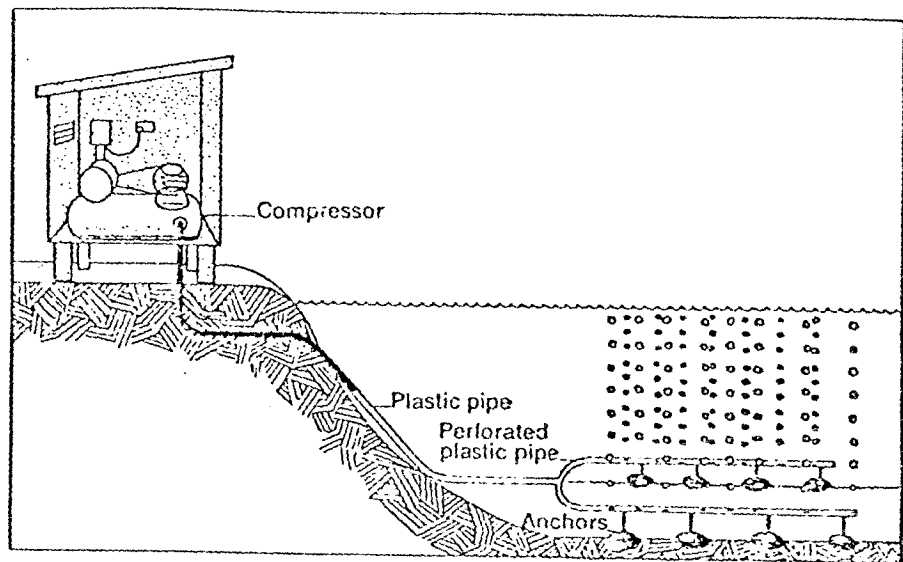


Exhibit 1. Compressed air diffusion system for aeration-destratification

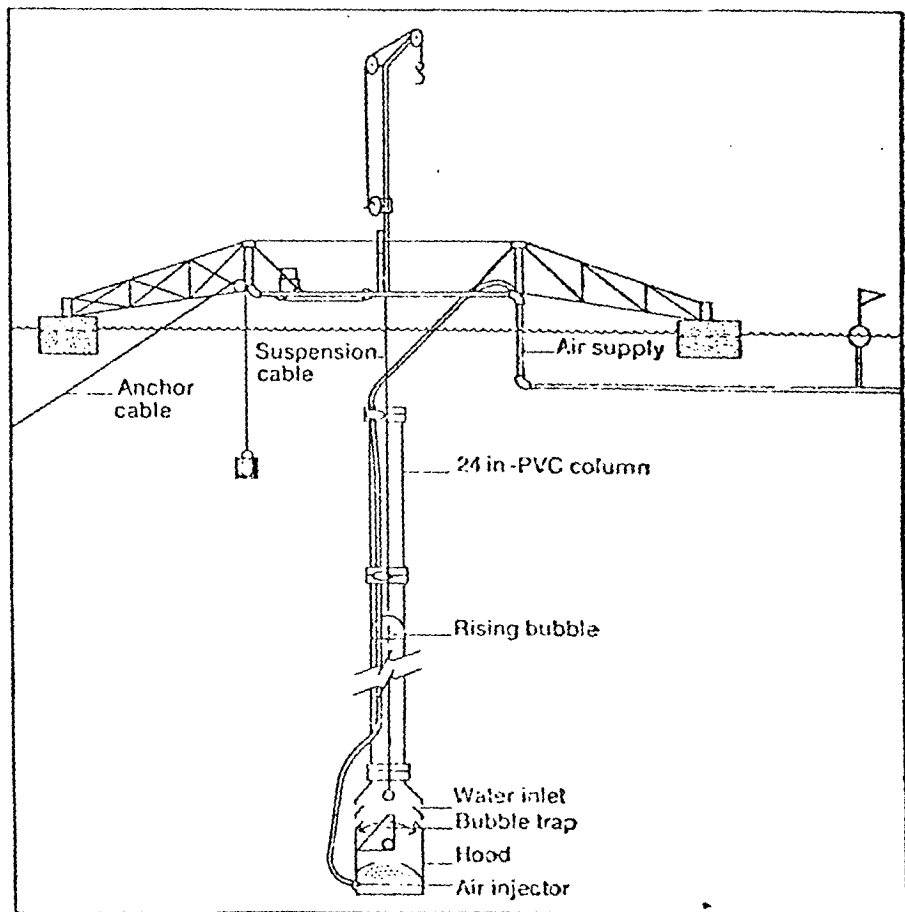
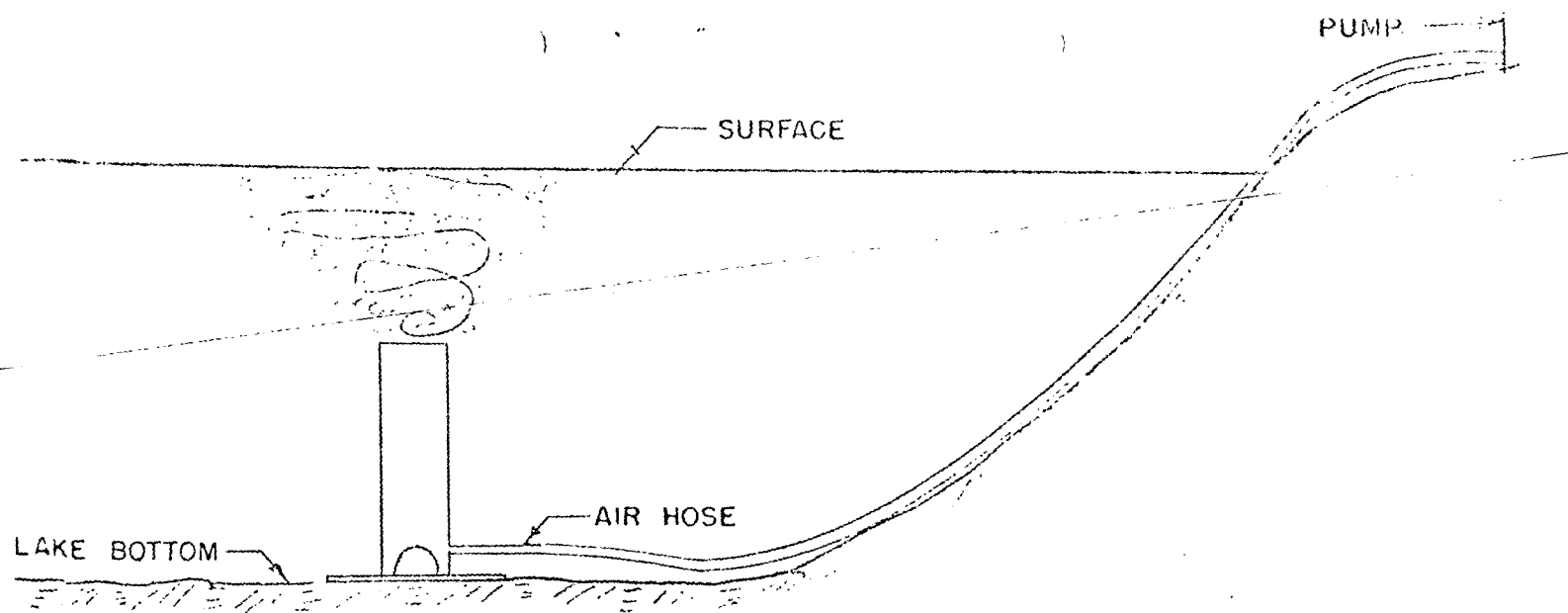
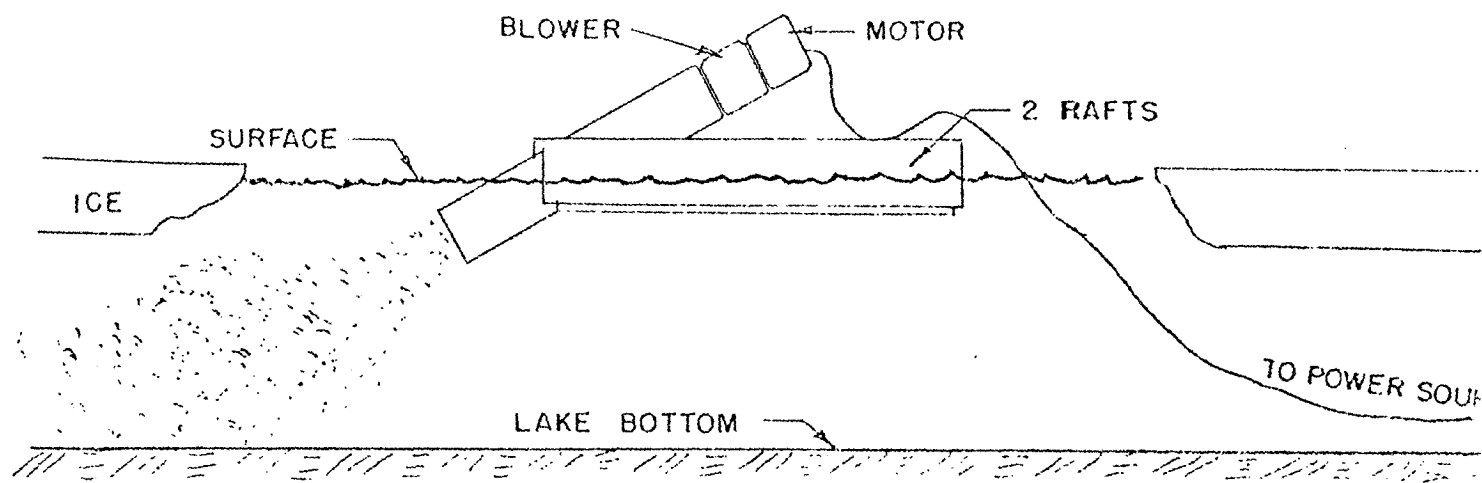


Exhibit 2. Aerohydraulic gun for aeration-destratification.



HELIXOR SYSTEM

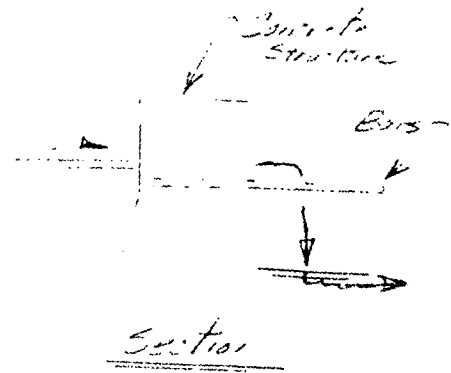
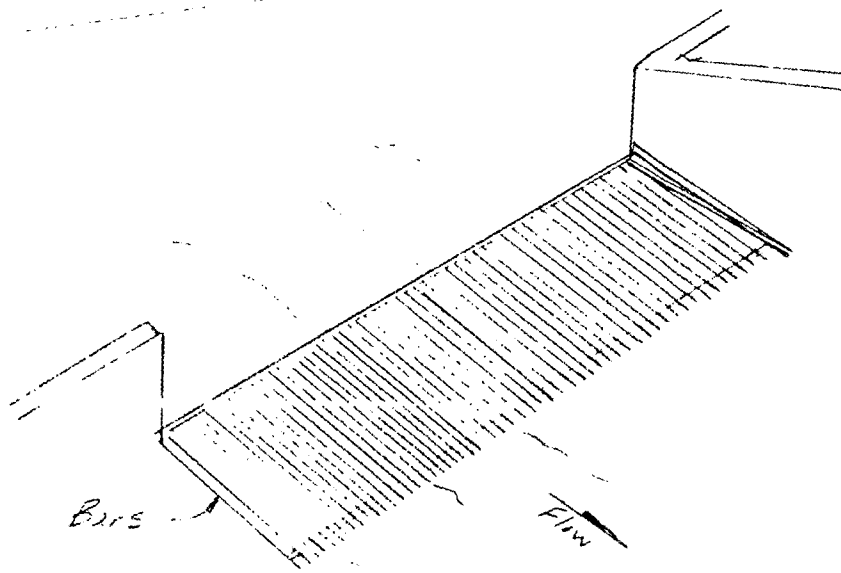
NO SCALE



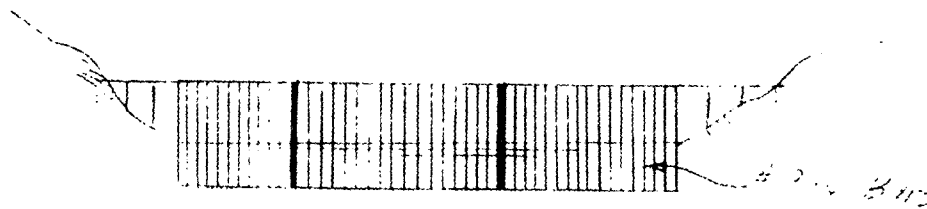
SURFACE BLOWER SYSTEM

NO SCALE

AERATION SYSTEMS



ROUGH FISH BARRIER
TYPICAL



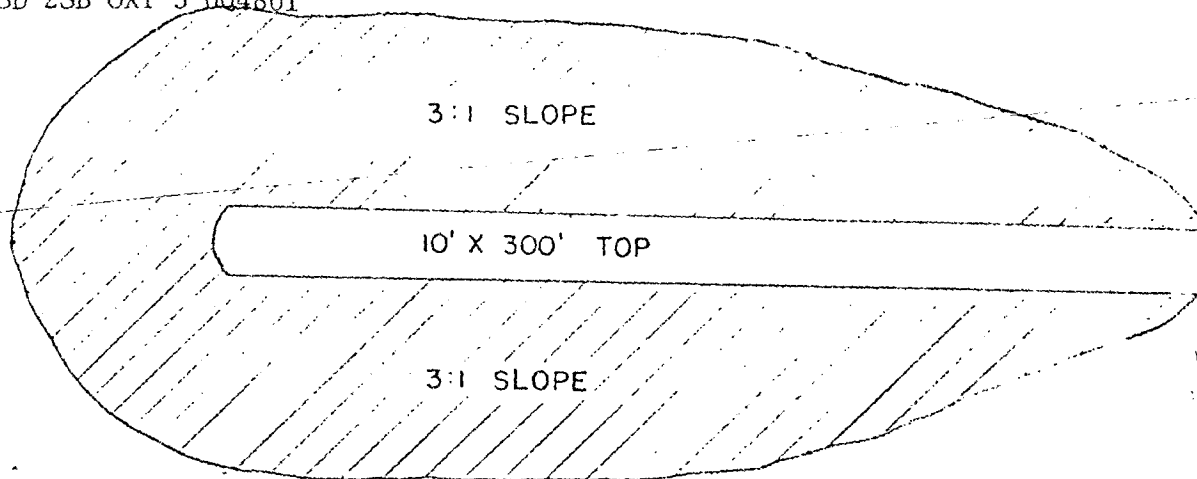
FISH BARRIER
TYPICAL

ROUGH FISH BARRIER

MAY BE ATTACHED TO SHOULDERLINE, AS SHOWN OR BE AN ISLAND

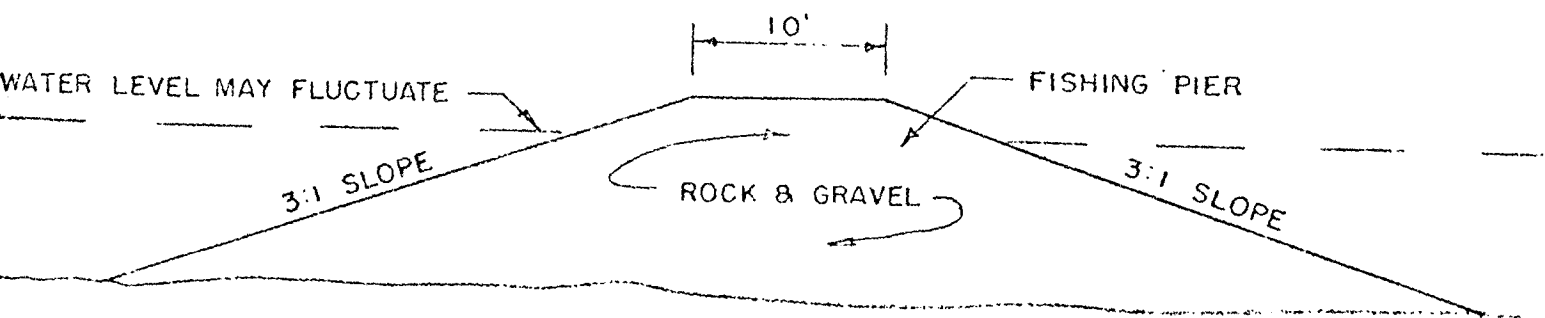
G.P. 82-10
SD 2SB OXT 3 004801

SHORELINE



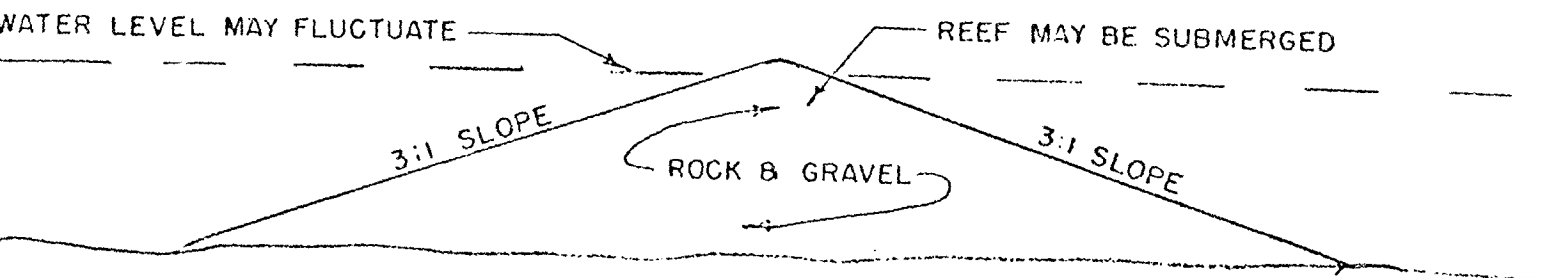
PLAN VIEW

NO SCALE



TYP. CROSS SECTIONS

NO SCALE



ARTIFICIAL REEFS AND FISHING PIERS

AFFADAVIT OF PUBLICATION

McLaughlin Messenger

STATE OF SOUTH DAKOTA)

COUNTY OF CORSON)

Merle E. Lofgren of said county and state, being first duly sworn, on his oath says that the McLaughlin Messenger is a weekly newspaper of general circulation, printed and published in McLaughlin, in said county and within the County of Corson for more than fifty-two successive weeks prior after mentioned and that I, Merle E. Lofgren, the undersigned, am Editor of said newspaper, in charge of the advertising department thereof, and have personal knowledge of the facts stated in the affidavit and that the advertisement headed

a printed copy of which is hereunto attached, was printed and published in the regular and entire issue of said newspaper, and not in supplement, once each week for 2 weeks, the first publication being made on the 16 day of Sept, 1982 and the last publication being made on the 23 day of Sept, 1982.

The 1st publication being on	<u>16</u>	day of	<u>Sept</u>	of 19 <u>82</u>
The 2nd publication on the	<u>23</u>	day of	<u>Sept</u>	19 <u>82</u>
The 3rd publication on the		day of		19
The 4th publication on the		day of		19
The 5th publication on the		day of		19
The 6th publication on the		day of		19
The 7th publication on the		day of		19
The 8th publication on the		day of		19
The 9th publication on the		day of		19

That said newspaper is a legal newspaper and has a bonafide circulation of more than two hundred copies weekly, and has been published within the County of Corson for more than fifty-two successive weeks prior to the first publication of said notice and is printed in English in an office maintained at McLaughlin, S. D., the place of publication of said newspaper. That the full amount of the fee for the publication of the annexed notice is \$16.90 and incurs solely to the benefit of said publisher, that no agreement or understanding of a division thereof has been made with any other person whomsoever.

Merle E. Lofgren

Subscribed and sworn to before me this 26 day of Sept, 1982

Notary Public

My Commission Expires 10

NOTICE OF HEARING ON APPLICATION TO APPROPRIATE WATER

Notice is hereby given the Department of Game Fish & Parks whose post office address is Anderson building, Pierre, South Dakota, has made an application in accordance with the provisions of SDCL 46-1-1 thru 46-1-9; 46-1-12 thru 46-

1-14; 46-2-9 thru 46-2-11, 46-2-13; 46-5-1 thru 46-5-8, 46-5-10 thru 46-5-22, 46-5-25, 46-5-41 and Board rules ARSD 74:02:01:01 thru 74:02:01:15 for a permit to appropriate for beneficial use 1.34 cubic feet of water per second of time from the Missouri River through the Grand River Spawning and Imprint Station, the point of diversion which is to be located in the NE 1/4 NE 1/4 of Section 6, Twp. 19N, Range 29E. Said water to be used for purpose of providing water supplies for a fish hatchery.

This Application No. 1263-1 will be considered by the Water Management Board at Meeting Room #1 Kneip Bldg. Church & Illinois, Pierre, S. D. upon the 7th day of

October, 1982 at 10 A.M. The Board is authorized to make a determination on this application at the hearing. All interested persons may appear and be heard. Any person who may be affected by a Board decision who desires to present evidence or cross-examine witnesses according to SDCL 1-26 may notify the Board in writing prior to the hearing or orally at the hearing.

This hearing is an adversary proceeding. Any person has the right to be present or to be represented by a lawyer. Their and other due process rights will be forfeited if they are not exercised at the hearing. Decisions of the Board

may be appealed to the Circuit Court and the State Supreme Court as provided by law.

Any handicapped person wishing to attend this hearing can contact the Water Rights Division, DWRN, Joe Foss Building, Pierre, S. D. prior to the hearing date for assistance to assure access to the hearing.

For the Water Management Board
S/ Betty Westland
Water Rights Specialist
Publish McLaughlin Messenger
September 16 & 23, 1982



Publish first publication, on or before September 12, 1982NOTICE OF HEARING ON
APPLICATION TO APPROPRIATE WATER

Pierre, South Dakota 57501

September 6, 1982Notice is hereby given the Department of Game Fish & Parks whose post officeaddress is Anderson Building, Pierre, South Dakota, has made an application in accordance with the provisions of SDCL 46-1-1 thru 46-1-9; 46-1-12 thru 46-1-14; 46-2-9 thru 46-2-11, 46-2-13; 46-5-1 thru 46-5-8, 46-5-10 thru 46-5-22, 46-5-25, 46-5-41 (ground) ~~46-6-3 thru 46-6-5, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, (future use) 46-5-38; (transfer lands) 46-5-33 thru 46-5-35 and Board Rules ARSD 74:02:01:01 thru 74:02:01:15, (future use) 74:02:01:23 thru 74:02:01:26 (10,000 AFA) 74:02:07:01 thru 74:02:07:03~~, for a permit to appropriate for beneficial use1.34 cubic feet of water per second of time from the Missouri River through the Grand River Spawning and Imprint Station, the point ~~(s)~~ of diversion which is ~~(are)~~ to be located in the NE1 NE1of Section 6, Twp. 19N, Range 29E. Said water to be used for purpose of providing ~~irrigation on portions of the following described land:~~water supplies for a fish hatcheryThis Application No. 1263-1 will be considered by the Water Management Board at Meeting Room #1, Kneip Bldg, Church & Illinois, Pierre SD upon the 7th day of October, 1982

at 10 A.M. The Board is authorized to make a determination on this application at the hearing. All interested persons may appear and be heard. Any person who may be affected by a Board decision who desires to present evidence or cross-examine witnesses according to SDCL 1-26 may notify the Board in writing prior to the hearing or orally at the hearing.

This hearing is an adversary proceeding. Any person 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 at the hearing. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

Any handicapped person wishing to attend this hearing can contact the Water Rights Division, DWNR, Joe Foss Building, Pierre SD, prior to the hearing date for assistance to assure access to the hearing.

For the Water Management Board

cc: applicant
WNR-806-2/82

BETTY WESTLUND, Water Rights Specialist



1263-1

United States Department of the Interior,
OFFICE OF THE SOLICITOR

ROOM 211 - FEDERAL BUILDING
P.O. BOX 549
ABERDEEN, SOUTH DAKOTA 57401

OCTOBER 4, 1982



Ms. Betty Westlund
Water Rights Specialist
Water and Natural Resources
Joe Foss Building
Pierre, SD 57501

Dear Ms. Westlund:

The Area Director, Bureau of Indian Affairs, has advised that on October 7, 1982, a hearing will be held by the Water Management Board at their office at Pierre, South Dakota, on the application of the Department of Game Fish & Parks, Anderson Building, Pierre, South Dakota, for a permit to appropriate for beneficial use 1.34 cubic feet of water per second of time from the Missouri River through the Grand River Spawning and Imprint Station, the point of diversion which is to be located in the NE 1/4 NE 1/4 of Sec. 6, T. 19 N., R. 29 E. for the purpose of providing water supplies for a fish hatchery.

This letter will serve as our written objection to such application for a permit to appropriate ground water from within the boundaries of the Standing Rock Indian Reservation. Regardless of the decision in Colorado River Water Conservation District v. United States, 96 S. Ct., 1236, the issuance of such permit would be contrary to established law, which declares that the state lacks jurisdiction with respect to the adjudication of the waters of, or the lands within the exterior boundaries of an Indian Reservation. See 25 U.S.C.A. §381, Winters v. United States, 207 U.S. 564, 28 S. Ct. 207; United States v. McIntire, 101 F.2d 650; and United States v. Powers, 94 F. 2d 783; United States v. Alexander, 131 F. 2d 359; and Colville v. Walton, 1647 F.2d 42 (1981).

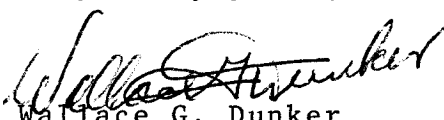
Colville, supra, held the State does not have any power to regulate water from reservation sources even on fee simple lands within an Indian reservation, and that permits of that nature are of no force and effect.

In filing this objection to the issuance of such proposed permit and in writing this letter to you, we do not waive our right to challenge the state's jurisdiction by legal action or otherwise and merely intend to call the state's attention to the absence of state jurisdiction in this matter and to the Winter's Doctrine.

In the event your decision is to grant such application, we request that the following paragraph be inserted in such permit:

Notice is hereby given that all rights to the use of water granted by this permit are subject and subordinate to the reserved water rights of the Standing Rock Reservation and that the use of water granted by this permit must be curtailed, if necessary to allow utilization of the Indian reserved water rights.

Very truly yours,


Wallace G. Dunker
Field Solicitor

cc: Area Director
Superintendent,
Standing Rock Agency
Mr. Ed Sand
Department of Game Fish & Parks
Anderson Building
Pierre, SD 57501

LAW OFFICES

SONOSKY, CHAMBERS, SACHSE & GUIDO

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KEVIN A. GRIFFIN
LOFTUS E. BECKER, JR.
MARY V. BARNEY

October 5, 1982



Water Management Board
State of South Dakota
Foss Building
Pierre, South Dakota 57501

Re: Opposition of the Standing Rock
Sioux Tribe to Application
No. 1263-1 to appropriate
water (302.45)

Gentlemen:

We serve as general counsel to the Standing Rock Sioux Tribe. The Tribe strenuously objects to the granting of Application No. 1263-1, which seeks to permit the State Department of Game, Fish and Parks to appropriate 1.34 cubic feet of water per second from the Missouri River through the Grand River Spawning and Imprint Station.

The application seeks State permission to use water on the Standing Rock Sioux Reservation. The water involved is the property of the Tribe. Under the reserved rights doctrine, the Tribe owns, as a matter of federal law, all the water needed to fulfill the purposes for which the Reservation was created. Winters v. United States, 207 U.S. 564 (1908). This includes water to irrigate all the "practicably irrigable acres" on the Reservation, as well as sufficient water to serve Tribal fishing, grazing, industrial, domestic and other needs. Arizona v. California, 373 U.S. 546, 599-601 (1963). The tribal reserved water has a priority date as of the creation of the Reservation, and does not depend on actual present or past use. The Tribe's reserved water rights are among the Tribe's most valuable assets.

The State has no authority to act in derogation of the Tribe's water rights. In particular, the State has no jurisdiction to adjudicate or permit the right to use water within the Reservation. The laws of the State "regarding water rights are not applicable, because Congress at no time has made such statutes controlling on the reservation." Northern Cheyenne Tribe v. Adsit, 668 F.2d 1080 (9th Cir. 1982);

Water Management Board
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Colville Confederated Tribes v. Walton, 647 F.2d 42 (9th Cir. 1980); United States v. McIntyre, 101 F.2d 650, 654 (9th Cir. 1939). Therefore, Application No. 1263-1 should be denied.

We should appreciate your including this letter as part of the hearing record on this matter.

Sincerely,


William R. Perry

WRP:mjf

POLICY OF WATER RIGHTS COMMISSION WITH RESPECT
TO WATER RIGHTS ON INDIAN RESERVATIONS

The Water Rights Commission recognizes that Indians have a superior water right on Indian-owned lands within the exterior boundaries of an Indian Reservation. This right exists whether the water is used or not, and the Indian owner has a prior right in the future to use such water for reasonable beneficial use. No water right permit need be obtained from the State for such use of water.

Water Right Applications Pertaining
to Deeded Lands within Indian Reservations

Volume II-E, Section 1, Legal and Institutional Arrangements of the South Dakota Water Plan, was prepared for the South Dakota Department of Natural Resource Development by the School of Law, University of South Dakota. This volume has a section entitled "Indian Water Rights."

The case of United States vs Hibner is mentioned on page 192 of this section on Indian Water Rights. In a discussion of the status of the water rights of those who had acquired by purchase their lands from the Indians, the court was quoted as follows:

"The status of the water right after it has passed to others by the Indians seems to be somewhat different from while such right is retained by the Indians, because the principle invoked by the courts for the protection of the Indian so long as he retains title to his lands does not prevail and apply

apply in cases of federal jurisdiction. Where South Dakota water laws do have jurisdiction, however, the Water Resources Commission is assigned the responsibility to carry forward the provisions of such state laws. Pending resolution of some of the questions concerning Indian water rights at the national level, the Water Resources Commission must take action on the water right applications directed to them. The Commission does not believe that it can discharge its obligations to the people of South Dakota by inaction or deferment pending settlement of these national controversies. It is realized that water rights acquired under provisions of state laws cannot adversely affect Indians' use of water. In case of conflict, the holder of state water rights must curtail his use of water to the extent necessary. (In the reorganization of State Government, implemented on July 1, 1973, the Water Resources Commission was renamed the Water Rights Commission which thereby assumed jurisdiction of water rights.)

Water Right Applications Pertaining
to Indian-Owned Lands within Indian Reservations

Section 46-1-3 of South Dakota Coded Laws of 1967 states:

"It is hereby declared that all water within the state is the property of the people of the state, but the right to the use of water may be acquired by appropriation in the manner provided by law."

Sections 46-5-10 and 46-6-3 provide that any person, association, etc., intending to acquire the right to the beneficial use of water

shall make an application to the Water Rights Commission for a permit to appropriate such water.

As has been previously stated, the Water Rights Commission recognizes that a water permit does not need to be obtained from the state (Water Rights Commission) for the beneficial use of water on Indian-owned lands within the exterior boundaries of an Indian Reservation. However, considering the above-mentioned section of South Dakota laws, if a water right application is received by the Water Rights Commission proposing beneficial use of water on Indian-owned land within the exterior boundaries of an Indian Reservation, the Commission policy has been that it has an obligation to process the application and give the Indian owner the privilege of obtaining a state water right, as an additional water right to any other rights the owner may already possess.

This policy of being obligated to accept and process water right applications received pertaining to Indian-owned lands would also apply to water right applications received pertaining to lands owned by non-Indians within the exterior boundaries of an Indian Reservation.

July 15, 1976

Bergren & Duffy
P. O. Box 7
Fort Pierre, South Dakota 57532

Attention: David L. Bergren

Gentlemen:

Reference is made to your letter regarding water right permits on Indian Reservations.

Upon advice from the Attorney General's office, applications proposing to take water from within the exterior boundaries of Indian Reservations either by Indian owners or others, are acted upon by the Water Rights Commission. We send copies of the notice of Intent to Appropriate water on applications within reservations to Harley Zephier, Director, Bureau of Indian Affairs at Aberdeen and to the Office of Coordinator of Indian Affairs in the Capitol Building here in Pierre.

On each application to appropriate water from within exterior boundaries of reservations we receive a letter from the Office of the Solicitor at Aberdeen (example attached). If such application is approved, our transmittal letter to the applicant contains the following note:

This is to inform you that the Office of the Solicitor, U. S. Department of Interior in a letter dated _____, contends that the State of South Dakota lacks jurisdiction with respect to the issuance of permits to use water within the exterior boundaries of Indian Reservations.

On Indian owned lands where permits are approved by the Water Rights Commission, the following note is added:

In considering water right applications on Indian Lands that may be claimed on Indian Treaty Basis, it is the policy of the Commission that this Permit is approved in addition to any water rights which may accrue on Indian land.

Basically, the Water Rights Commission recognizes Indian claims, based on federal treaties and case law, to the right to water for beneficial use on Indian lands, either tribal or allotment. Such right shall be

to the white man, and the reason for so holding is that there was reserved unto the Indians the absolute right to own and use in their own way the water for their lands, while the white man, as soon as he becomes the owner of the Indian lands, is subject to those general rules of law governing the appropriation and use of the public waters of the state, and would as grantee of the Indian allotments, be entitled to a water right for the actual acreage that was under irrigation at the time title passed from the Indians, and such increased acreage as he might with reasonable diligence place under irrigation, which would give to him, under the doctrine of relation, the same priority as owned by the Indians. Otherwise the application of any other rule would permit such grantee for an indefinite period to reclaim the balance of his land and withhold the application of the water to a beneficial use, which is against the policy recognized in the development of arid lands."

This court case is one of the reasons why the Water Rights Commission's position is that a non-Indian wanting to obtain a water right on land that he owns within the exterior boundary of an Indian Reservation should make a Water Right Application to the State of South Dakota (Water Rights Commission).

Past action of the Water Resources Commission is indicative of the following policy. It must be recognized that state laws do not

GRAND RIVER SPAWNING & IMPRINT STATION

NOTICE OF COMPLETION OF WORKS AND/OR
APPLICATION OF WATER TO BENEFICIAL USEPost Office Pierre, South DakotaDate 10/19/83

TO: Water Rights
Joe Foss Building
Pierre, South Dakota 57501

Dear Sirs:

This is to inform you that I have completed the construction of the water diversion system and/or that I have put the water to beneficial use to maximum extent it is going to be used, not exceeding the amounts as specified in Water Right No. 1263-1.

Water Right Permit No. 1263-1 states that the diversion system is to be constructed by October 7, 1987, and that the water is put to beneficial use by October 7, 1991.

The diversion system was completed on April 15, 1983. Applying the water to beneficial use was completed on April 15, 1983.

You may schedule an inspection so that the Certificate of Construction and/or the Water License may be issued, thus completing my acquisition of a water right.

Art R. Tabma
(Signature)

DEPT. OF GAME, FISH & PARKS
WILDLIFE DIVISION
Sigurd Anderson Building
Pierre, South Dakota 57501