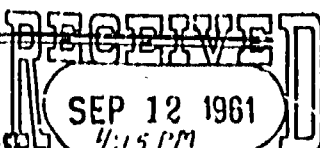


No. 614-1Water Division No. 1 Belle Fourche River District 1
(Blanks to be filled by the Engineer for the W. H. C.)STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

VESTED RIGHT APPLICATION FOR PERMIT

To Appropriate Water within the State of South Dakota

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

1. Name of applicant South Dakota Department of Game, Fish and Parks
Postoffice address Pierre, County Hughes, State South Dakota

I. If a corporation

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

- (b) Cash on hand, \$ _____ (c) Treasury stock, \$ _____
(d) Bonds to be issued, \$ _____ (e) Other resources, \$ _____

2. Name of diversion work MIRROR LAKE - Lawrence County
As required to fill lake to spillway outlet - approximately
3. Amount of water claimed 24 acre feet per cubic feet per second
4. Source of water supply Springs - Redwater Drainage
One point in the watershed located in the
5. Location of point of diversion NE 1/4 Sec. 20, T 7, R 1 E
_____ on _____ bank _____ County.

6. Annual period or periods during which water is to be used
- continuously

7. To be used for:

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

- (a) Number of acres to be irrigated _____ acres.

- (b) Legal subdivisions to be irrigated _____

(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.)
- NE 1/4 Sec. 20, T 7, R 1 E

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

- (a) Nature of use
- Public recreational user
-
- 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 _____

8. Estimated cost of work:

(a) Head Gates, \$----- (b) Pumping plant, \$-----
(c) Fluming, \$----- (d) Canal-earth, \$----- Rock, \$-----
(e) Other structures ----- \$----- Total, \$4000.00.

9. Description of diversion works:

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

II. Dimensions of works.

(a) Dam: Height 12 feet; length at bottom 250 feet; length at top 260 feet; thickness at bottom 33 feet; thickness at top 12 feet; slope at front water face 2:1; slope at back face 2:1
material used in construction earth fill
(b) Reservoir: Capacity when filled 32 acre feet. Surface area at highwater mark 8 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	GR/DE 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 completed - not applicable
11. Time required for complete application of water to the proposed beneficial use completed years.
12. Choice of newspaper for publication of notice of intention to appropriate not applicable

STATE OF SOUTH DAKOTA

County of Hughes ss.

I, Walter J. Fillmore, 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 11 day of September 1961

Notary Public (or other qualified officer.)

Remarks by State Water Resources Commission:

"Vested right" claimed

STATE OF SOUTH DAKOTA

County of

HUGHES

SS.

Pierre, South Dakota,

November 13, 1962

This is to certify that the foregoing application was received by the Commission at 4:15 o'clock

P.

12TH

day of

SEPTEMBER

1961

State Water Resources Commission

By:

for Chief Engineer, Executive Officer

Number of permit

614-1

Date of first receipt of application

September 12

1961

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

19

Date of receipt of corrected application

19

Date from which applicant may claim right

1934

Approved

November 13, 1962

Recorded in Book

7

Page

198

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

19

2nd. The whole of said work is to be completed on or before

19

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

completed

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

public recreation

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 24 acre feet annually 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 for each acre of land to which water is actually used for public recreation

and beneficially applied for irrigation on or before

June 30, 1955

19

said water to be used during the following described annual period:

Continuously

Witness my hand this

13TH

day of

November

1962

State Water Resources Commission

By:

for Chief Engineer, Executive Officer

Chief Engineer, Executive Officer

Certificate of Construction Issued

November 13, 1962

Water License Issued

November 13, 1962

STATE OF SOUTH DAKOTA

WATER LICENSE No. 614-1

WHEREAS, On the 12th day of September A. D. 1961
the Department of Game, Fish and Parks

of Pierre County of Hughes and State of
South Dakota duly made application (No. 614-1) to us for ^{"Vested Right"} permit to use 24 acre feet
annually ~~cubic feet per second~~ of the waters of springs
County of Lawrence, State of South Dakota, for public recreation
purposes; and

WHEREAS, On the 13th day of November A. D. 1962
"Vested Right" 614-1 was issued to said applicant... for the diversion of said water, ^{recognizing} and providing for the
completion of the works of diversion therein described ~~on or before the~~ day of
and for the application to beneficial use of said
water ~~before the~~ and,

WHEREAS, On the 12th day of September A. D. 1961
the holder... of said permit duly made proof of the completion of adequate works for the diversion of 24 acre feet
annually ~~cubic feet per second~~ of said waters, as evidenced by our Certificate No. 614-1
dated November 13, 1962 confirming the completion of works of sufficient capacity for
diverting and conveying to the place of intended use 24 acre feet annually ~~cubic feet per second~~ of water, with date of
priority of 1934 and,

WHEREAS, On the 12th day of September A. D. 1961
proof was duly made of the application to beneficial use of 24 acre feet annually ~~cubic feet per second~~ of said water;
to be used in place for public recreation

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 Department of Game, Fish and Parks
of Pierre, ^{"Vested Right"} the holder and owner of said Permit No. 614-1
a water right, dating from 1934 to the use of 24 acre feet
annually of the waters of springs
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 in the NE¹ NE¹ Section 20,
T7N, R1E
and conducted to and by stored in place

for the purpose of public recreation

subject, however, to the laws of the State of South Dakota applicable to a license for the use of the waters of the State, and subject, also to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and seal of our office at Pierre, South Dakota,
this 13th day of November A. D. Nineteen
Hundred and Sixty-Two.

State Water Resources Commission

By:

Chief Engineer, Executive Officer
J. W. GRIMES

STATE OF SOUTH DAKOTA

Water License No. _____

To _____

Source of Supply _____

County _____

Am't _____ c. f. s.

Point of Diversion _____

Place of Use _____

Purpose _____

Date of Priority _____

Recorded _____

In Book _____ of _____ Page _____

Permit No. 614-1Water Division No. 1 Belle Fourche River
Water District**Certificate of Completion of Works**

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That the Department of Game, Fish and Parksof Pierre, County of Hughes, and State of South Dakota,
the holder "Vested Right" of Permit No. 614-1, issued upon ApplicationNo. 614-1, bearing date of priority of 1934, authorizing the diversion of24 acre feet annually ~~annually~~ of the waters of springsCounty of Lawrence, State of South Dakota, at a point in theNE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 20, T7N, R1Efor public recreationpurposes, has fully complied with the provisions of the laws of the State of South Dakota relating to proof of
recognized ascompletion 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 24 acre feet annually ~~annually~~

of water; and that the lands proposed to be irrigated by the use of said water are described as follows,

to-wit: to be used in place for public recreation.Witness my hand this 13th day of November A. D. 62

State Water Resources Commission

By:

Chief Engineer, Executive Officer
J. W. GRIMES

Location No.

Water Division No. Water District

Proof of Application of Water to Beneficial Use**PETITION OF HOLDER**

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. South Dakota Department of Game, Fish and Parks, Pierre, S. Dak.

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business (if a foreign corporation, give name and postoffice of statutory agent,) your position with reference to same, and your authority for appearing in its behalf.

Ans.

Ques. 3. State date of posting and date of recording notice of appropriation.

Ans.

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Springs - Redwater Drainage - One point in the watershed located in theNE 1/4 Sec. 20, T. 7, R. 1, E.

Ques. 5. Describe your works of diversion giving length and height of each dam and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use, and date of completion of same.

Ans. Earth fill dam - approximately 250 feet long and 12 feet highImpoundment of 8 acres at dam site

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have ACTUALLY been irrigated with said water.)

Ans. Fish and wildlife propagation, conservation and recreation

Ques. 7. If for other than irrigation purpose, state how applied, amount of horse power generated, etc.

Ans. Used in place in lake or reservoir

Ques. 8. What is the minimum amount of water required for the use specified above?

Ans. As required to fill lake to spillway outlet - approximately 24-acre-feet per year

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans.

Ques. 10. State when, how, in what amount and to what extent, the water diverted under above mentioned permit has been used.

Ans. Been in use ever since 1934 when dam was constructed, Used by the public
for the uses specified except for that amount lost by evaporation and seepage.

(Sign) *W. McLean*

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Pierre, County of Hughes

State of South Dakota, on this 11 day of September A. D. 1961

Witnesses *Edward Bohman*

11-6-65

I, the undersigned, do hereby certify that I am a duly qualified elector residing in the immediate vicinity of the diversion works designated in the foregoing testimony, that I have no interest in the works, water or land above described, that I have read the foregoing testimony and that I know of my own personal knowledge that the matters therein stated are true.

Location No. _____

**PROOF OF APPLICATION OF
WATER TO BENEFICIAL USE**

PETITION OF HOLDER

Amount of Water _____ c. f. s.

Source _____

County _____

Purpose _____

Place of Use _____

Date of recording _____

Received and filed _____

BEST IMAGE POSSIBLE FROM POOR ORIGINAL

COOPERATIVE AGREEMENT

BETWEEN

STATE OF SOUTH DAKOTA, DEPT. OF GAME, FISH & PARKS

and the

FISH AND WILDLIFE SERVICE, U. S. DEPT. OF THE INTERIOR.

Relative to the Transfer of the Use of Certain Lands
Owned by the State of South Dakota to the Fish and
Wildlife Service, United States Department of the
Interior, for Fish Cultural purposes.

THIS AGREEMENT, made and entered into this 6th day of January,
1949, by and between the STATE OF SOUTH DAKOTA, through its DEPARTMENT
OF GAME, FISH & PARKS, hereinafter called the "Department" and the
FISH AND WILDLIFE SERVICE, UNITED STATES DEPARTMENT OF THE INTERIOR,
hereinafter called the "Service,"

WITNESSETH:

WHEREAS, the Department desires the construction of a fish-cul-
tural station as an adjunct to the existing Spearfish, South Dakota,
station for the purpose of increasing the supply of fishes available
for stocking adjacent waters;

WHEREAS, the Appropriation Act of the Department of the Interior
for the fiscal year 1949 appropriated not to exceed \$33,000 for the
construction and operation, in accordance with the provisions of the
Act of August 14, 1946 (60 Stat. 1030), of fish-cultural facilities
on lands owned by the State of South Dakota, which appropriation may
be supplemented by future legislation;

NOW, THEREFORE, in consideration of the premises herein contained,
it is hereby mutually agreed by the parties hereto that:

BEST IMAGE POSSIBLE FROM POOR ORIGINAL

1. The Department agrees to and hereby grants to the service the exclusive use and control of the land hereinafter described, together with all water rights, easements and appurtenances thereto belonging, owned or controlled by it for the purpose of occupying, constructing, operating and maintaining thereon a fish-cultural station.

DESCRIPTION OF THE STATE OF SOUTH DAKOTA TRACT (2)

LAWRENCE COUNTY, SOUTH DAKOTA

The following-described tract of land is located in South Dakota, Lawrence County, lying about eleven miles northwesterly of the village of Spearfish, being, in part, a portion of the land described in a conveyance from James M. McKenny, et al., to the State of South Dakota, dated December 26, 1942, and recorded in Book 204, Page 190; and in part, a portion of the land described in a patent from the State of South Dakota to the South Dakota Department of Game and Fish, dated January 3, 1944, and recorded in Patent Record Book 279, Page 217; all of said instruments are of record in Lawrence County and described according to the public land surveys:

Township Seven (7) North, Range One (1) East, Black Hills Meridian

In section sixteen (16), all of the Southwest quarter Southwest quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$); in section seventeen (17), all of the East half Southwest quarter Southeast quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$); in section twenty (20), all of the East half Northeast quarter Northeast quarter (E $\frac{1}{2}$ NE $\frac{1}{4}$); and in section 21, all of the Northwest quarter Northwest quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) and the North half North half Southwest quarter Northwest quarter (NN $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$).

BEST IMAGE POSSIBLE FROM POOR ORIGINAL

The above-described tract of land is delineated on a map tracing designated STATE OF SOUTH DAKOTA TRACT (2), bearing date of August 18, 1946, of record in the files of the Department of the Interior.

2. The Department further agrees to and hereby grants to the Service a right of way twenty (20) feet in width in a location to be selected by the Service, over and across the Southwest Quarter Northwest quarter (SW 1/4) of Section twenty-one (21), Township Seven (7) North, Range one (1) East, for the purpose of constructing a road to be used as a means of access to the above-described lands.

3. The Department further agrees to, and hereby grants to the Service first priority to the full use and control of sufficient water for fish-cultural purposes out of Arrow Lake including the right of access to, and easements sufficient for the construction of pipe lines from, said lake.

4. All construction for fish-cultural purposes on the above-described lands, including residences, wells, and other improvements will be made in accordance with plans to be prepared by the Service.

5. The Service agrees to distribute not less than 60% of the pounds of trout and 60% of the numbers of warm-water fishes produced at the McNenny sub-station in South Dakota waters provided that the need for such stocking has been established by the Department and the Service.

6. The Department guarantees to the Service the continuing right to use all structures and other facilities which may be affixed to the real property of the State of South Dakota in carrying out the operations contemplated under this agreement, provided, that if for any reason, other than reasons beyond the control of the Service, the lands herein described

BEST IMAGE POSSIBLE FROM POOR ORIGINAL

are not used for fish-cultural purposes for any one period of five consecutive years, the right of the Service to use said lands, improvements, and fixtures shall terminate.

7. It is an express condition of this agreement that it shall not be assigned in whole or in part, that no member or or delegate to Congress or resident commissioner, after his election or appointment, and either before or after he has qualified and during his continuance in office shall be directly or indirectly admitted to any share or part of this agreement or to any benefit to arise thereupon. The provision herein with respect to the interest of members of or delegates to Congress and resident Commissioners in this agreement shall not be construed to extend to any incorporated company where such contract of agreement is made for the general benefit of such corporation or company. (Section 3741, Revised Statutes, and Section 112-116, Act October 3, 1909).

IN WITNESS WHEREOF, the parties hereto by their duly authorized agents have executed this agreement as of the day and year first above written.

Approved:

State of South Dakota

By /s/ M. L. Johns

Chairman

Title Game, Fish and Parks Commission

/s/ Elmer Peterson, Director
Department of Game, Fish and Parks

Approved:

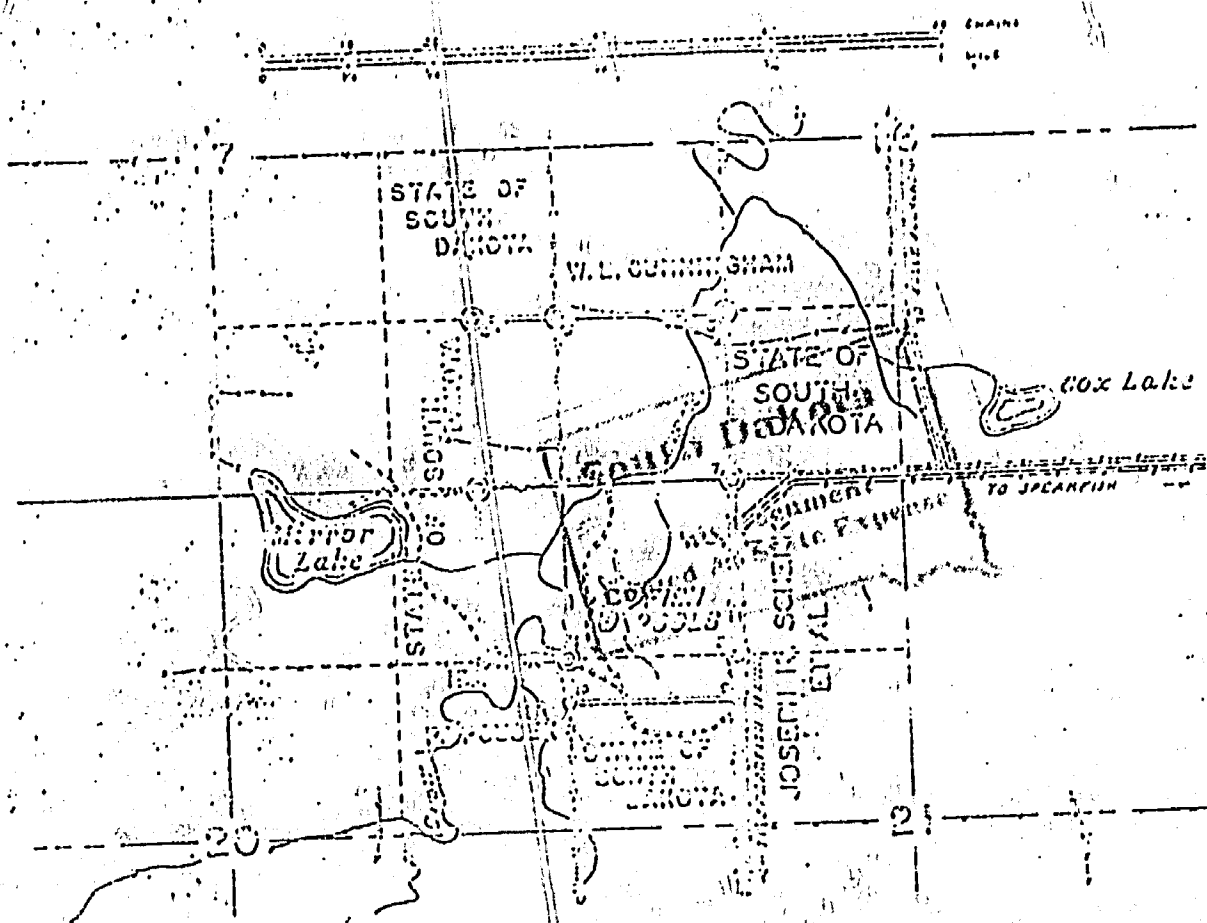
Fish and Wildlife Service

By O. E. Johnson

Title Acting Director

BEST IMAGE POSSIBLE FROM POOR ORIGINAL

UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
SPECIAL FISH CULTURAL STATION (MCKENNEY SUBSTATION)
STATE OF SOUTH DAKOTA TRACT
(2)
120.00 ACRES
LAWRENCE COUNTY, SOUTH DAKOTA
BLACK HILLS MOUNTAIN



THIS MAP was compiled from official plats of the Bureau of Land Management, and from surveys of the Fish and Wildlife Service made in June, 1940, and official records in the files thereof.

March 11, 1949

James L. Evers
District Engineer
Surveys & Maps Branch of Lands

600704



OFFICE OF ATTORNEY GENERAL
WATER LITIGATION SECTION
Foss Building
Pierre, South Dakota 57501
(605) 773-3805



MARK V. MEIERHENRY
ATTORNEY GENERAL

December 31, 1980

MEMORANDUM

TO: Mr. Burt Jones, Water Management Board

FROM: John P. Guhin, Assistant Attorney General *JP*

RE: Cooperative Agreement Concerning McNeeney National Fish Hatchery

I am enclosing a copy of a cooperative agreement between the State of South Dakota Game, Fish & Parks Department and the Fish and Wildlife Service, United States Department of the Interior dated January 6, 1949. It might be convenient to have a copy of this agreement in your files.

There are two interesting water rights questions we should discuss. First, in paragraph 1, the Department of Game, Fish & Parks grants to the United States the "exclusive use and control of the land" described therein "together with all water rights, easements and appurtenances thereunto belonging, owned or controlled by it. . . ." My assumption is that under 46-5-32 any permit or license held by the Department of Game, Fish & Parks could be assigned but would not be binding except upon the parties except if it was filed in the office of the Water Management Board. Has any such assignment been filed with your office?

A second area for questioning arises from the paragraph numbered 3. That paragraph states that "the Department further agrees to, and hereby grants to this service first priority to the full use and control of sufficient water for fish cultural purposes out of Mirror Lake including the right of access to, and easement sufficient for construction of pipelines from, said lake." To your knowledge, does the Department of Game, Fish & Parks have any water right to "grant" to anyone out of Mirror Lake?

Thank you for your assistance in this matter. I will contact you some time next week.

File 614-1

Division of Water Rights (605) 773-3352

January 7, 1981

MEMORANDUM

TO: John Guhin, Assistant Attorney General
FROM: Burton Jones, Water Rights Specialist
RE: Your Memo Dated December 31, 1980

The phrase referred to in your memo "Together with all water rights, easements and appurtenances thereunto belonging, owned or controlled by it ..." has previously spawned numerous questions and considerable confusion. Apparently it was a standard qualification attached to land transfers and agreements. Our contention has been that the phrase is meaningless in the absence of evidence of an existing water right prior to drawing up such document. The document itself in no way establishes any right to the use of water.

Your second question concerns the Department of Game, Fish & Parks granting water use priorities. This is not, nor has it ever been, a function of the Department, so I can see no validity to any claim of the Fish & Wildlife Service based on such a grant.

"Vested Right" filing No. 614-1 of the Department of Game, Fish & Parks covers only the spring feeding Mirror Lake, and only to the extent of up to 24 acre feet as needed to keep Mirror Lake at spillway level. The License specifies that the water is to be stored in place for public recreation purposes. The filing makes no claim for use of water downstream from Mirror Lake for Hatchery or rearing pond purposes.

To my knowledge, the only valid claims to water use at McNenny Hatchery are spelled out in the permits furnished your office a few weeks ago.

We find no record of any assignment pertaining to this matter having been filed in this office.

BJ/gy



720-7N-1E

Mirror Lake - LAWRENCE Co
SD. GAME Fish & PARKS
8 in = 1 mile

SOUTH DAKOTA
Department of
Water & Natural Resources

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

September 21, 1988

Richard Beringson, Secretary
 Department of Game, Fish and Parks
 Anderson Building
 445 E Capitol
 Pierre SD 57501

Dear Mr. Beringson:

I am writing to notify you that pursuant to the Notice of Intent to Validate Vested Water Right Claims dated June 20, 1988 that I intend to oppose validation of all Department of Game, Fish and Parks Vested Water Right Claims for lakes for the following reasons:

1. Until the outlet elevation for each lake is surveyed and the outlet elevation is set by the Water Management Board.
2. To allow the Vested Water Right Claim to be amended, if necessary, as follows:
 - a) Include the outlet elevation;
 - b) To correct the amount of water claimed;
 - c) To add the qualification that a vested claim is subject where necessary to installation of a concrete outlet structure to assure retention of the outlet as the established elevation; and
 - d) To add any amendments and qualifications necessary to clarify a Vested Right Claim.

Also, that I intend to oppose validation of all Department of Game, Fish and Parks Vested Water Right Claims for dams to allow the Vested Water Right Claim to be amended, if necessary, as follows:

1. To include the spillway elevation;
2. To correct the amount of water claimed; and
3. To add any amendments and qualifications necessary to clarify a Vested Right Claim.

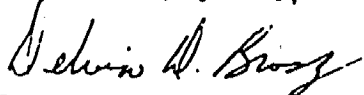


September 21, 1988
Richard Reringson, Secretary
Page 2

We will be working with your staff on these validations. We have already discussed setting outlet elevations before validating claims for lakes. Although the work necessary to complete the validation process will take several years to complete, the results should be of benefit to the public and to your Department. As the work is completed to validate each claim, the claim will be presented to the Water Management Board for validation.

Please advise if you have any questions.

Very truly yours,



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

cc: Ron Koth, Department of Game, Fish and Parks