

No. 0377-1

Office of State Engineer
DOCUMENT FILE

Name: U. S. Dept. of Interior
H. S. T. S.

By: Raymond J. Walker

County: Butte #18875

Date: Aug. 3, 1904

Filed: Aug 5, 1904

Note: Water Right for
Belle Fourche Irrigation
Project.

2,026 cu. ft. of

Belle Fourche

Clear: 1000 cu. ft. from:

Cross Creek, S 36, 7 N, 1 E

Pawl Creek, S 19, 9 N, 4 E

Indian Creek, S 7, 10 N, 4 E

Worse Creek, S 28, 10 N, 5 E

Wing Creek, S 26, 10 N, 5 E

Wilson Creek, S 15, 13 N, 6 E

Diversion Cts.

NOTICE OF WATER APPROPRIATION.

Raymond E. Walter, Engineer, United States Geological Survey, Thereunto duly authorized by the Secretary of the Interior, for and on behalf of the United States of America, under the provisions of the Act of Congress approved June 17, 1902 (32 Stat.L., 283) claims, at the point where this notice is posted, on the Belle Fourche River, all the unappropriated water of said stream; and at the point where this notice is posted, on Crow Creek, all the unappropriated water of Crow Creek; and at the point where this notice is posted on Owl Creek, all the unappropriated water of Owl Creek; and at the point where this notice is posted on Indian Creek, all the unappropriated water of Indian Creek; and where this notice is posted on Horse Creek, all the unappropriated water of Horse Creek; and where this notice is posted on Dry Creek, all the unappropriated water of Dry Creek; and where this notice is posted on Willow Creek, all the unappropriated water of Willow Creek; both surface and underflow, more specifically stated as amounting to 2,026 cubic feet per second, from the Belle Fourche River and 1,000 cubic feet per second from each of the above named creeks.

This notice is posted at the following points, to wit:

On a post on the north bank of the Belle Fourche River in sec. 2, T. 8 N., R. 2 E. E.H.Y., at a point near the northeast corner of said section.

On a post on the north bank of Crow Creek, in the NE1/4 Sec. 36, T. 9 N. R. 2 E., about 500 feet northeast of the west 1/4 corner of said section.

On a post on the north bank of Owl Creek, in the SE1/4 Sec. 19, T. 9 N. R. 4 E., about 1/4 mile south of the northeast corner of said section.

On a post on the north bank of Indian Creek, in the SE1/4 of Sec. 19, T. 10 N. R. 4 E., at a point about 1/4 mile east of the southwest corner of said section.

On a post on the east bank of Horse Creek, in the SE1/4 of sec. 29, T. 10 N., R. 5 E., at a point about 500 feet south of the center of said section.

On a post on the north bank of Dry Creek, in the SE1/4 of Sec. 36, T. 10 N., R. 5 E., at a point about 800 feet north of the southeast corner of said section.

On a post on the east bank of Willow Creek, in the SE1/4 Sec. 19, T. 10 N., R. 6 E.

The water is to be used for irrigation, domestic, power, mechanical, and other beneficial uses in and upon lands situated in Butte and Steele counties, and located in the following townships:

T. 5 N. Rs. 9 to 12 inclusive T. E.H.Y.

T. 6 N. Rs. 9 to 12 " "

T. 7 N. Rs. 7 to 12 " "

T. 8 N. Rs. 7 to 8 " "

T. 9 N. Rs. 3 to 7 " "

T. 10 N. Rs. 3 to 6 " "

The water hereby appropriated is to be used for direct irrigation and stored by means of a dam located in secs. 13 and 19, T. 9 N., R. 4 E.

Also a reservoir located in T. 9 N., Rs. 3 and 4 E., also by a dam located in sec. 1 T. 9 N., R. 6 E., in a reservoir in Ts. 8 and 9 N., R. 6 E., and in other reservoirs to be hereafter located, and will be conducted to the points intended use by means of canals, flumes, tunnels, or other appropriate conveying water, first section of which will be of the

following dimensions: 50 feet wide on the bottom, 70 feet wide at water line, and 10 feet deep, grade 1.026 feet per mile, or such other equivalent dimensions and grade as will give a capacity of 2.026 cubic feet per second, the size decreasing as the water is used from the canal along its course.

Work was begun on said project on July 22, 1903.

W.C. Woods, being duly sworn, deposes and says that on the 23rd day of July 1904, he did post a notice of the appropriation of water, of which the foregoing is a copy, for 2,026 cubic feet per second of the waters of the Belle Fourche and Red Water Rivers, and 1,000 cubic feet per second of the waters of each of the following creeks: Crow, Owl, Indian, Horse, Dry and Willow, at the following described points:

On a post on the north bank of the Belle Fourche River, in sec. 2, T. 1 N., R. 2 E., E.H.V. at a point near the northeast corner of said section.

On a post on the north bank of Crow Creek, in the NW1/4 sec. 36, T. 9 N., R. 2 E., about 500 feet northeast of the west 1/4 corner of said section.

On a post on the north bank of Owl Creek, in the NE1/4 sec. 19, T. 9 N., R. 4 E., about 1/4 mile south of the northeast corner of said section.

On a post on the north bank of Indian Creek, in the SE1/4 of sec. 19, T. 10 N., R. 4 E., at a point about 1/4 mile east of the southwest corner of said section.

On a post on the east bank of Horse Creek, in the SE1/4 of sec. 29, T. 10 N., R. 5 E., at a point about 500 feet south of the center of said section.

On a post on the north bank of Dry Creek, in the SE1/4 of sec. 36, T. 10 N., R. 5 E., at a point about 300 feet north of the southeast corner of said section.

On a post on the east bank of Willow Creek, in the SE1/4 sec. 15, T. 10 N., R. 6 E.

(Signed)

W.C. Woods.

Subscribed and sworn to before me this fifth day of August, 1904.

(SEAL)

F.E. Perford,

Notary Public.

My commission expires July 17, 1907.

...the line between the water of the river and the land of the owner of the land...
...the line between the water of the river and the land of the owner of the land...
...the line between the water of the river and the land of the owner of the land...

...the line between the water of the river and the land of the owner of the land...
...the line between the water of the river and the land of the owner of the land...
...the line between the water of the river and the land of the owner of the land...

STATE OF SOUTH DAKOTA
COUNTY OF BUCHANA

I hereby certify that the within and foregoing instrument is a true, correct and complete transcript of the instrument which it purports to be, as the same was filed for record in the office of the State Engineer, at my office in Pierre, State of South Dakota.

This day of April, 1908

[Signature]
State Engineer

By *[Signature]*
Notary Public

...the line between the water of the river and the land of the owner of the land...
...the line between the water of the river and the land of the owner of the land...
...the line between the water of the river and the land of the owner of the land...

(1908)

...the line between the water of the river and the land of the owner of the land...
...the line between the water of the river and the land of the owner of the land...
...the line between the water of the river and the land of the owner of the land...

(1908)

...the line between the water of the river and the land of the owner of the land...
...the line between the water of the river and the land of the owner of the land...
...the line between the water of the river and the land of the owner of the land...

Notice of Water Appropriation.

Raymond F. Valter, Engineer, United States Geological Survey, Thereunto duly authorized by the Secretary of the Interior, for and on behalf of the United States of America, under the provisions of the act of Congress approved June 17, 1902 (32 Stat. L., 388), claims, at the point where this notice is posted, on the Belle Fourche River, all the unappropriated water of said stream; and at the point where this notice is posted, on Crow Creek all the unappropriated water of Crow Creek; and at the point where this notice is posted, on Owl Creek, all the unappropriated water of Owl Creek; and at the point where this notice is posted, on Indian Creek, all the unappropriated water of Indian Creek; and where this notice is posted, on Horse Creek, all the unappropriated water of Horse Creek; and where this notice is posted, on Dry Creek, all the unappropriated water of Dry Creek; and where this notice is posted, on Willow Creek, all the unappropriated water of Willow Creek; both surface and underflow, more specifically stated as amounting to 2,026 cubic feet per second, from the Belle Fourche River, and 1,000 cubic feet per second from each of the above named creeks.

This notice is posted at the following points, to wit:

On a post on the north bank of the Belle Fourche River, in sec. 2, T. 8 N., R. 2 E., B. H. M., at a point near the northeast corner of said section.

On a post on the north bank of Crow Creek, in the NW 1/4 sec. 26, T. 9 N., R. 2 E., about 500 feet northeast of the west 1/4 corner of said section.

On a post on the north bank of Owl Creek, in the NE 1/4 sec. 19, T. 9 N., R. 4 E., about 1/4 mile south of the northeast corner of said section.

On a post on the north bank of Indian Creek, in the SW 1/4 of sec. 19, T. 10 N., R. 4 E., at a point about 1/4 mile east of the southwest corner of said section.

On a post on the east bank of Horse Creek, in the SW 1/4 of sec. 29, T. 10 N., R. 5 E., at a point about 500 feet south of the center of said section.

On a post on the north bank of Dry Creek, in the SW 1/4 of sec. 30, T. 10 N., R. 5 E., at a point about 100 feet north of the southeast corner of said section.

On a post on the east bank of Willow Creek, in the S. E. 1/4 sec. 15, T. 10 N., R. 6 E.

The water is to be used for irrigation, domestic, power, mechanical, and other beneficial uses in and upon lands situated in Butte and Meade counties, and located in the following townships:

T. 5 N., Rs. 9 to 12 inclusive, E., B. H. M.

T. 6 N., Rs. 9 to 12 " " "

T. 7 N., Rs. 7 to 12 " " "

T. 8 N., Rs. 3 to 8 " " "

T. 9 N., Rs. 3 to 7 " " "

T. 10 N., Rs. 3 to 6 " " "

The water hereby appropriated is to be used for direct irrigation and stored by means of a dam located in secs. 18 and 19, T. 9 N., R. 4 E., in a reservoir located in T. 9 N., Rs. 3 and 4 E., also by a dam located in sec. 4 T. 8 N., R. 6 E., in a reservoir in Ts. 8 and 9 N., R. 6 E., and in other reservoirs to be hereafter located, and will be conducted to the points of intended use by means of canals, flumes, tunnels, or other appropriate means of conveying water, first section of which will be of the following dimensions: 50 feet wide on the bottom, 70 feet wide at water line, and 10 feet deep, grade of 1,050 feet per mile, or such other equivalent dimensions and grade as will give a capacity of 2,026 cubic feet per second, the size decreasing as the water is used from the canal along its course.

Work was begun on said project on July 22, 1903.

W. C. Woods, being duly sworn, deposes and says that on the 28th day of July, 1904, he did post a notice of the appropriation of water, of which the foregoing is a copy, for 2,026 cubic feet per second of the waters of the Belle Fourche and Red Water Rivers, and 1,000 cubic feet per second of the waters of each of the following creeks: Crow, Owl, Indian, Horse, Dry, and Willow, at the following described points:

On a post on the north bank of the Belle Fourche River, in sec. 2, T. 8 N., R. 2 E., B. H. M., at a point near the northeast corner of said section.

On a post on the north bank of Crow Creek, in the NW 1/4 sec. 26, T. 9 N., R. 2 E., about 500 feet northeast of the west 1/4 corner of said section.

On a post on the north bank of Owl Creek, in the NE 1/4 sec. 19, T. 9 N., R. 4 E., about 1/4 mile south of the northeast corner of said section.

On a post on the north bank of Indian Creek, in the SW 1/4 of sec. 19, T. 10 N., R. 4 E., at a point about 1/4 mile east of the southwest corner of said section.

On a post on the east bank of Horse Creek, in the SW 1/4 of sec. 29, T. 10 N., R. 5 E., at a point about 500 feet south of the center of said section.

(2)

On a post on the north bank of Dry Creek, in the SE 1/4 of sec. 36, T.10 N., R. 5 E., at a point about 800 feet north of the southeast corner of said section.

On a post on the east bank of Willow Creek, in the SE 1/4 sec. 15, T. 10 N., R. 6 E.

(Signed)

W.C. Woods.

Subscribed and sworn to before me this fifth day of August, 1904.

(Seal)

W.E. Penfold.

Notary Public.

My commission expires
July 17, 1907.

Certified Copy.

109

No. 5507-1

Raymond F. Walter.

State of South Dakota, }
County of Butte } ss.

Office of Register of Deeds.

Filed for record 5 _____

August _____

10⁴⁰ _____

17 _____ on page 13 _____

Geo. B. Rowe.

Ada Miller.

1887 _____

1887 _____

1887 _____

1887 _____

1887 _____

1887 _____

1887 _____

1887 _____

1887 _____

1887 _____

1887 _____

1887 _____

1887 _____

1887 _____

1887 _____

1887 _____

1887 _____

February 23, 1950

J. W. Grimes
Acting District Manager
Bureau of Reclamation
U. S. Dept. of Interior
P. O. Box 825
Huron, South Dakota

Dear Mr. Grimes:

We are enclosing herewith certified copies of the following water rights, as requested by you in your letter of February 14.

No.	Name	Cu. Ft.	Diverted on	County	Priority
0377-1	U.S. Dept. Int. U.S.G.S.	1000	19-9N-4E	Butte	8/3/1904
On Owl Creek					
0376-1	U.S. Dept. Int., U.S.G.S.	310	11-8N-4E	Butte	7/28/1904
On Belle Fourche River					
0377-1	U.S. Dept. Int., 4026 U.S.G.S.		2-8N-2E	Butte	8/3/1904

The law requires this Office to charge 15¢ per each one hundred words or fraction thereof for furnishing copies of documents. On that basis the fee for each copy of Right No. 0377-1 will be \$1.35 and the fee for the copy of No. 0376-1 will be 90¢ or a total of \$3.60 for the three.

Yours very truly,

WJ
Encs.

DEAN W. LOUCKS
State Engineer



OFFICE OF THE DISTRICT MANAGER

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

REGION 6
MISSOURI-OAHE DISTRICT
P. O. BOX 825
HURON, SOUTH DAKOTA

ADDRESS ALL COMMUNICATIONS TO THE
DISTRICT MANAGER

ATTENTION OF 220

FEB 14 1930

Mr. Dean W. Loucks
State Engineer
Pierre, South Dakota

My dear Mr. Loucks:

Will you please furnish this office with an authentic copy
of the original of each of the following stream filings:

On Owl Creek

No.	Name	Dist.	Diverted on	County	Priority
0377-1	U. S. Dept. Int., U.S.G.S.	1000	19-9N-4E	Butte	8/3/1904

On Belle Fourche River

0376-1	U. S. Dept. Int., U.S.G.S.	310	11-8N-4E	Butte	7/28/1904
0377-1	U. S. Dept. Int., U.S.G.S.	2026	2-0N-2E	Butte	8/3/1904

Sincerely yours,

J. Williams
Acting District Manager

Contract No. 14-06-600-6979
Approved as to form: 8-3-62

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Belle Fourche Irrigation Project, South Dakota

SECOND AMENDATORY CONTRACT BETWEEN THE UNITED
STATES OF AMERICA AND THE BELLE FOURCHE
IRRIGATION DISTRICT, SOUTH DAKOTA

THIS SECOND AMENDATORY CONTRACT, Made this 2nd day of January, 1963, between the UNITED STATES OF AMERICA (hereinafter called the United States), acting through the Secretary of the Interior (hereinafter called the Secretary), and pursuant to the Federal Reclamation Laws, and the BELLE FOURCHE IRRIGATION DISTRICT (hereinafter called the District), an irrigation district organized and existing under and by virtue of the laws of the State of South Dakota, with its principal place of business and office at Newell, South Dakota;

W I T N E S S E T H :

WHEREAS, the following preliminary statements are made in explanation:

(a) The United States and the District entered into an amendatory repayment contract (Ilr-1555) on November 29, 1949, which covered the District's repayment to the United States of the costs of constructing irrigation works for the District's lands and other purposes. Article 36 of this 1949 contract provided as follows:

"36. Whenever the Secretary shall find that an additional water supply can be made available to the lands of the District, or any part thereof, from the Keyhole dam and reservoir appropriate consideration shall be given to the District water requirements for irrigation purposes and the Secretary shall determine to what extent the terms of this contract shall be modified as a basis for obtaining an additional water supply."

(b) The United States and the District are agreed that an additional water supply can be made available to the District by assigning for the District's use a portion of the space of Keyhole reservoir, with the right of the District to store therein water which it is entitled to use under its project water right, to use so much of Keyhole storage water as shall be properly allocable to such space, and to purchase additional Keyhole water when available and needed by the District.

NOW, THEREFORE, in consideration of the mutual promises herein set forth, it is agreed as follows:

Definitions

1., Where used in this contract, the terms

(a) "Secretary" shall mean the Secretary of the United States Department of the Interior, or his duly authorized representative.

(b) "Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof and supplementary thereto, including particularly, without limitation of the foregoing, the Reclamation Project Act of 1939 (53 Stat. 1187), as amended.

(c) "Irrigation season" shall mean the period April 15th through November 30th within any year.

(d) "Year" shall mean the period January 1 through the next following December 31.

(e) "Project water" shall mean water which landowners of the District are entitled to use under South Dakota Notices of Appropriation Nos. 18674 and 18875, both dated August 5, 1905, and respectively recorded at pages 12 and 13 of Book 17, Butte County records, South Dakota.

(f) "Keyhole water" shall mean water which the United States is entitled to store in Keyhole reservoir and to dispose of under Wyoming Permit 5707 Res.

(g) "1949 repayment contract" shall mean the amendatory repayment contract (Hr-1555) of November 29, 1949, between the United States and the District.

Storage and Use of Water

2. (a) The District shall have storage rights in Keyhole reservoir equal to 7.7 percent of the total active capacity of the reservoir. This percentage initially is equivalent to approximately 10,000 acre-feet of space.

(b) The District may use its Keyhole reservoir storage space to retain either project water or its 7.7 percent share of Keyhole water, or both; and such right to retain water shall include the right to hold over such water from prior years; but the total amount of water retained at any one time shall not exceed that which can be stored within 7.7 percent of the then total active capacity of Keyhole reservoir.

(c) The District shall each year be entitled to the use of 7.7 percent of Keyhole water coming into the Keyhole reservoir during that year. Such right to the use of 7.7 percent of Keyhole water for any one year shall include the right to store or to hold over all or any portion of said 7.7 percent share of Keyhole water in Keyhole reservoir within the limitations above set out in article 2 (a) and (b).

(d) All space in Keyhole reservoir shall be operated with like priority as to storage rights; and the United States reserves the privilege

of granting to others holdover rights and of itself exercising such holdover rights as to any unsold space that are not inconsistent with the rights granted to the District under this contract. In determining the amount of stored water to which the District is entitled under this contract, losses incidental to storage will be prorated equally over all water in storage, and, in determining the amount of stored water delivered, the point of measurement shall be the outlet works of Keyhole dam and reservoir. The District shall receive said stored water at the point of measurement and shall be wholly responsible for taking said water at that point and conveying, diverting, and utilizing it.

(e) While Keyhole dam and reservoir is being operated and maintained by the United States, it will operate the works to the end of delivering all the water to which the District is entitled under this contract and on such schedule of deliveries as shall be agreed to between the District's Board of Directors and the officer in charge of the Keyhole dam and reservoir, within the capacity limits of such works and having regard for other existing rights which must be supplied through these facilities. Deliveries of stored water shall be limited at any time to the amount which can be delivered through the outlet works of the dam taking into account the requirement of passing through the reservoir water belonging to prior or coordinate rights.

(f) The District, during the term of this contract and subject to the fulfillment of all its obligations hereunder, shall have a right to its share of Keyhole water, as provided in this Article 2, for beneficial use on District lands, and, upon completion of payment of the District's construction charge obligation under this contract, such right and the District's right hereunder to the use of 7.7 percent of the active capacity of Keyhole reservoir, shall become permanent, subject to the payment of the District's operation and maintenance obligations as determined at the time the construction obligation has been met.

Keyhole Construction Charge

3. Of the reimbursable cost of the Keyhole dam and reservoir, the District shall pay to the United States the sum of \$60,000 as a Keyhole Construction charge obligation. This \$60,000 Keyhole construction charge obligation shall be additional to the District's construction charge obligation under the 1949 repayment contract and will be paid in forty successive annual installments each of Fifteen Hundred Dollars (\$1,500), and each of which shall be paid one-half on or before June 30 and one-half on or before December 31, of each year beginning with the year 1963.

Keyhole Operation and Maintenance Charges

4. The District will pay 7.7 percent of the portion of the annual cost of operating and maintaining the Keyhole Dam, Reservoir and appurtenant works allocated to irrigation. Such payments, in the amounts estimated annually by the Secretary and communicated in writing to the District, will

be made on or before April 1 of each year this contract is in force. After the first year's notification of operation and maintenance costs, the notifications will contain a credit or surcharge equal to the overage or deficit, as the case may be, in the amount paid the prior year and the actual cost of operation and maintenance for that year. If the United States fails to notify the District of the estimated cost of operation and maintenance prior to April 1 of any year, the prior year's estimated cost will be paid.

Additional Keyhole Water

5. (a) During the term of this contract Keyhole water additional to that accruing to the District under Article 2(c) may be requested by the District upon a deposit of \$1.25 for each acre-foot of additional water so requested. If the Secretary determines that such additional water is available when requested, he shall release the same under the conditions prescribed in Article 6.

(b) The District's annual obligation for the additional Keyhole water so released shall be computed either at the rate of \$1.25 per acre-foot measured at Keyhole Dam, or \$2.00 per acre-foot measured at the boundary line between Wyoming and South Dakota, depending upon which is the most economical to the District, as determined by the Secretary. Should the District's annual obligation be less than the amount deposited under Article 5(a), the overpayment shall be applied to the District's next annual installment under Article 3.

(c) When releasing only Keyhole water from the reservoir, all water measured at the state line will be considered released water for determining cost of water at \$2.00 per acre-foot.

(d) When releasing Keyhole water with Project water, all water measured at the state line will be considered released water and the losses will be assigned in the same proportion as the amount of each kind of water released for purposes of determining the cost of additional Keyhole water.

Manner of Release

6. Any release of Keyhole water will be made in increments of 3,000 acre-feet or more, or will be made in conjunction with a release of project water in which the total release equals 3,000 acre-feet or more: Provided, that this requirement may be modified by agreement between the Secretary and the District's Board of Directors.

Agreed Charges a General Obligation of the District

7. The District as a whole is obligated to pay to the United States the charges becoming due as provided in this contract, notwithstanding the default in payment to the District by individual water users of assessments, tolls, or other charges levied by the District.

Levy of Assessments, Tolls and Charges

8. (a) The District shall cause to be levied and collected all necessary assessments, tolls, and other charges, and will use all of the authority and resources of the District to meet the obligations of the District to make in full all payments to be made pursuant to this contract on or before the date such payments become due and to meet its other obligations under this contract.

(b) It is understood that the provisions of this contract will benefit lands of the District including the lands within the so-called Johnson lateral and Inlet canal areas. The District agrees to levy charges against all lands in accordance with land classification. Assessments, tolls or other charges against all lands for the purpose of paying the District's obligations hereunder shall be fixed for the different classes of land at such ratios as may be determined by the District's Board of Directors: Provided, That all assessments shall be within the percentage ratios as follows, all ratios being based on a ratio of 100 for Class 1 land:

Class 1 - 100
Class 2 - 88-92
Class 3 - 60-65
Class 4 - 40-50

Application of 1949 Repayment Contract

9. (a) The 1949 repayment contract shall continue in full force and effect.

(b) The additional obligations assumed by the parties to this second amendatory contract shall be governed by the same provisions as are stipulated in the 1949 repayment contract respecting penalties (Article 17); defaults (Article 20); general obligation (Article 21); application of payment (Article 22); the keeping of records (Article 24); access to books and records (Article 25); excess lands (Article 27); computation of costs (Article 29); rules and regulations (Article 30); liability for drouth (Article 32); assignments and successors (Article 34); and contingency on appropriations or allotments (Article 37). Such provisions and the articles containing them are incorporated in this second amendatory contract by reference and made a part hereof.

(c) The District's obligation to prepare and submit a District budget and to make assessments as provided in Article 10 of the 1949 repayment contract shall be extended to cover additionally the annual instalments of the Keyhole construction charge obligation and the Keyhole operation and maintenance charges as above prescribed in Article 3 of the second amendatory contract.

Confirmation of Contract

10. The execution of this second amendatory contract shall be authorized by a vote of qualified electors of the District as provided by

law. Thereafter, without delay, the District shall prosecute a proceeding in court for a judicial confirmation of (1) the regularity of the steps leading up to the making of this contract, and (2) the validity of the contract so far as the District and the District landowners are concerned. The District shall furnish the United States for its files, certified copies of all proceedings relating to the authorization of this contract.

Nondiscrimination

11. The following provisions governing performance of work under Government contracts, as set out in Section 301 of Executive Order 10925, dated March 6, 1961, shall be applicable to this contract, and shall be included in all contracts executed by the District for the performance of work contemplated by this contract, and for that purpose the term "contract" shall be deemed to refer to this instrument and to contracts awarded by the District and the term "contractor" shall be deemed to refer to the District and to contractors awarded contracts by the District:

In connection with the performance of work under this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(5) The contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(7) The contractor will include the provisions of the foregoing paragraphs (1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Term of Contract

12. The term of this contract is the 40-year period beginning January 1, 1963.

Officials Not to Benefit

13. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

UNITED STATES OF AMERICA

Legal approval: 1-2-63

By /s/ Bruce Johnson
Regional Director, Region 6
Bureau of Reclamation

BELLE FOURCHE IRRIGATION DISTRICT

By /s/ David Lungren
President, Board of Directors

ATTEST:

(SEAL)

/s/ Florence T. Hedman
Secretary, Board of Directors

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Belle Fourche Project, South Dakota

CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND THE BELLE FOURCHE IRRIGATION DISTRICT
FOR OPERATION OF BELLE FOURCHE AND KEYHOLE RESERVOIRS

Year	Amount	Cost
1960		

Contract - 14-06-600-8970

THIS CONTRACT, Made and entered into this 1st
day of March, 1966, pursuant to the Act of Congress
of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or
supplementary thereto, known as the Reclamation Law, between the UNITED
STATES OF AMERICA, hereinafter called the United States, acting through
the Contracting Officer executing this contract, and the BELLE FOURCHE
IRRIGATION DISTRICT, an irrigation district organized and existing under
the laws of the State of South Dakota, having its principal place of
business at Newell, South Dakota;

WITNESSETH, THAT:

WHEREAS, the following statements are made in explanation:

(a) The spillway of the Belle Fourche Reservoir requires
replacement or repair and, in its present condition, the reservoir should
not be fully filled.

(b) The United States has space available in Keyhole Reservoir
to store water for the District.

NOW, THEREFORE, in consideration of the mutual promises herein
contained, it is agreed:

1. This agreement takes effect upon the day and year first
above written and will remain in force until the spillway of the Belle
Fourche Dam and Reservoir is repaired or replaced, but in no event will
it be effective after October 31, 1969.

2. The District will:

a. Limit the maximum water surface of the Belle Fourche
Reservoir to two thousand nine hundred seventy-one and eight
tenths (2971.8) feet m.s.l., which will hold one hundred
sixty thousand three hundred (160,300) acre-feet of water
in storage;

b. reduce diversions from the Belle Fourche River to current irrigation requirements reduced by the supply of water available from Owl Creek and Crow Creek when Belle Fourche storage is at or above elevation two thousand nine hundred seventy-one and eight tenths (2971.8) feet m.s.l.;

c. maintain suitable lines of communication between the district's headquarters at Newell, South Dakota, the Belle Fourche Dam and the Diversion Dam so as to insure prompt transmittal, reception, and performance of operating instructions.

3. For the purpose of providing service in conformance with Contract No. 14-06-600-6979 between the parties, dated January 2, 1963, and to provide temporary replacement storage space at Keyhole Reservoir in Wyoming until the spillway of the Belle Fourche Dam and Reservoir is repaired or replaced, the United States agrees to operate Keyhole Reservoir in the following manner:

a. Until peak storage at Belle Fourche Reservoir has occurred, or June 1, whichever occurs later, release inflows to Keyhole Reservoir only to the extent required to meet current downstream requirements.

b. Compute credits for water stored in Keyhole Reservoir after storage period is over. Credit Belle Fourche Irrigation District with (A) water stored in Keyhole Reservoir which could have been used by the District or stored in Belle Fourche Reservoir within total capacity of one hundred eighty-five thousand one hundred seventy (185,170) acre-feet. Use 6-day lag time for releases at Keyhole Dam to reach the Inlet Canal, capacity one thousand three hundred (1,300) c.f.s. Credit the District with (B) seven and seven tenths (7.7) percent and the United States with (C) ninety-two and three tenths (92.3) percent of the remainder.

c. For District credits A and B totaling up to thirty-four thousand eight hundred seventy (34,870) acre-feet, make releases as requested by the District.

d. Water credited to the District in excess of thirty-four thousand eight hundred seventy (34,870) acre-feet will be released at rates determined by the Bureau of Reclamation.

e. When District credits A and B total more than thirty-four thousand eight hundred seventy (34,870) acre-feet and Belle Fourche Reservoir peak storage for the season is determined to be less than one hundred thousand (100,000) acre-feet, release that portion of surplus required to bring

storage in Belle Fourche Reservoir to one hundred thousand (100,000) acre-feet. Retain remainder in Keyhole Reservoir and proceed as in item (f).

f. When District credits A and B total more than thirty-four thousand eight hundred seventy (34,870) acre-feet and Belle Fourche Reservoir peak storage for the season is one hundred thousand (100,000) acre-feet or more, retain that water in excess of thirty-four thousand eight hundred seventy (34,870) acre-feet in Keyhole Reservoir until the following storage season. Credit for water in excess of thirty-four thousand eight hundred seventy (34,870) acre-feet is to remain with the District (as reduced by proportionate share of evaporation and seepage losses) but kept in a separate account. If peak storage in Belle Fourche Reservoir the next season is less than one hundred thousand (100,000) acre-feet, release the storage credit in excess of thirty-four thousand eight hundred seventy (34,870) acre-feet to the District; if more than one hundred thousand (100,000) acre-feet, retain until needed in succeeding storage seasons.

g. A total of one hundred eighty-five thousand one hundred seventy acre-feet of concurrent storage in Belle Fourche Reservoir and credit A in Keyhole Reservoir will be permitted regardless of source of the stored water. However, this total will be increased to one hundred ninety-five thousand one hundred seventy (195,170) acre-feet, to the extent that the subsequent storage occurs at Belle Fourche Reservoir and results from water originating below Keyhole Reservoir.

h. Credits to Belle Fourche District in Keyhole Reservoir assume reasonable diversion of available flows to Inlet Canal. Divertable flows which are allowed to pass downstream may act to reduce the amount of District credits in Keyhole.

i. Adjustments in releases from Keyhole Reservoir will generally be made twice each week.

4. The existing contractual relations between the parties hereto remain in full force and effect except to the extent they are temporarily amended by this contract.

5. Equal Employment Opportunity.

(a) During the performance of work under this contract, the Belle Fourche Irrigation District, in this article referred to as the contractor, agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions

may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) Inclusion of the above nondiscrimination clause in subcontracts may be by reference to Section 202 of Executive Order No. 11246, dated September 24, 1965. Subcontracts below the second tier, other than subcontracts calling for construction work at the site of construction, are exempt from inclusion of the clause.

CIVIL RIGHTS ACT, 1964

6. The District hereby agrees as follows:

(1) To comply with Title VI (Section 601) of the Civil Rights Act of July 2, 1964, (78 Stat. 241) which provides that "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance," and to be bound by the regulations of the Department of the Interior for the effectuation thereof, as set forth in 43 CFR 17.

(2). To obligate his subcontractors, subgrantees, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.

OFFICIALS NOT TO BENEFIT

7. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

By G. H. Cheney
Regional Director, Region 6
Bureau of Reclamation
Billings, Montana

BELLE FOURCHE IRRIGATION DISTRICT

By R. J. Donaldson
Title President

L.S.

Wm. R. Johnson
Secretary



United States Department of the Interior

BUREAU OF RECLAMATION

121 Regional Office, Region 6

P. O. Box 2553

5000 SOUTH PARK Billings, Montana 59103

IN REPLY REFER TO:

430

JUL 2 1969

Contract No. 14-06-600-8970
Amendment No. 1

ORIGINAL

Mr. Daryld M. Williamson, President
Belle Fourche Irrigation District
Newell, South Dakota 57760

Dear Mr. Williamson:

On March 1, 1966, the Belle Fourche Irrigation District and the United States entered into an agreement, Contract No. 14-06-600-8970, to replace unusable storage in Belle Fourche Reservoir with storage from Keyhole Reservoir until the original spillway in the Belle Fourche Reservoir was repaired or replaced, and full storage in that reservoir was again available. The life of the agreement was limited to October 31, 1969.

The spillway has not been repaired or replaced because construction funds have not been available. There is no indication as to when funds will be available, therefore, we recommend that our arrangements for the exchange of Keyhole Reservoir storage space for Belle Fourche Reservoir storage space be continued until all of the storage space in Belle Fourche Reservoir can be utilized.

The terms of the original agreement, Contract No. 14-06-600-8970, are acceptable to us, and if they still are acceptable to the Commissioners of the Belle Fourche Irrigation District, we recommend that the contract continue in force with section 1 amended to read as follows:

"1. This agreement takes effect upon the day and year first above written and will remain in force until the spillway of Belle Fourche Dam and Reservoir is repaired or replaced, unless sooner terminated by the United States."

If the proposed change is acceptable to the Commissioners, please have the President or other authorized official sign both copies in the space provided below.

Please return the Original, with a copy of the resolution authorizing the signature to us, attention 400. The signed Duplicate Original copy is for your files.

Sincerely yours,

Acting

J. A. Bralley
Regional Director

*Delivered
7-2-69*

In duplicate

Belle Fourche Irrigation District

Namur (S.D.) *Oct 7 1969*
President Date

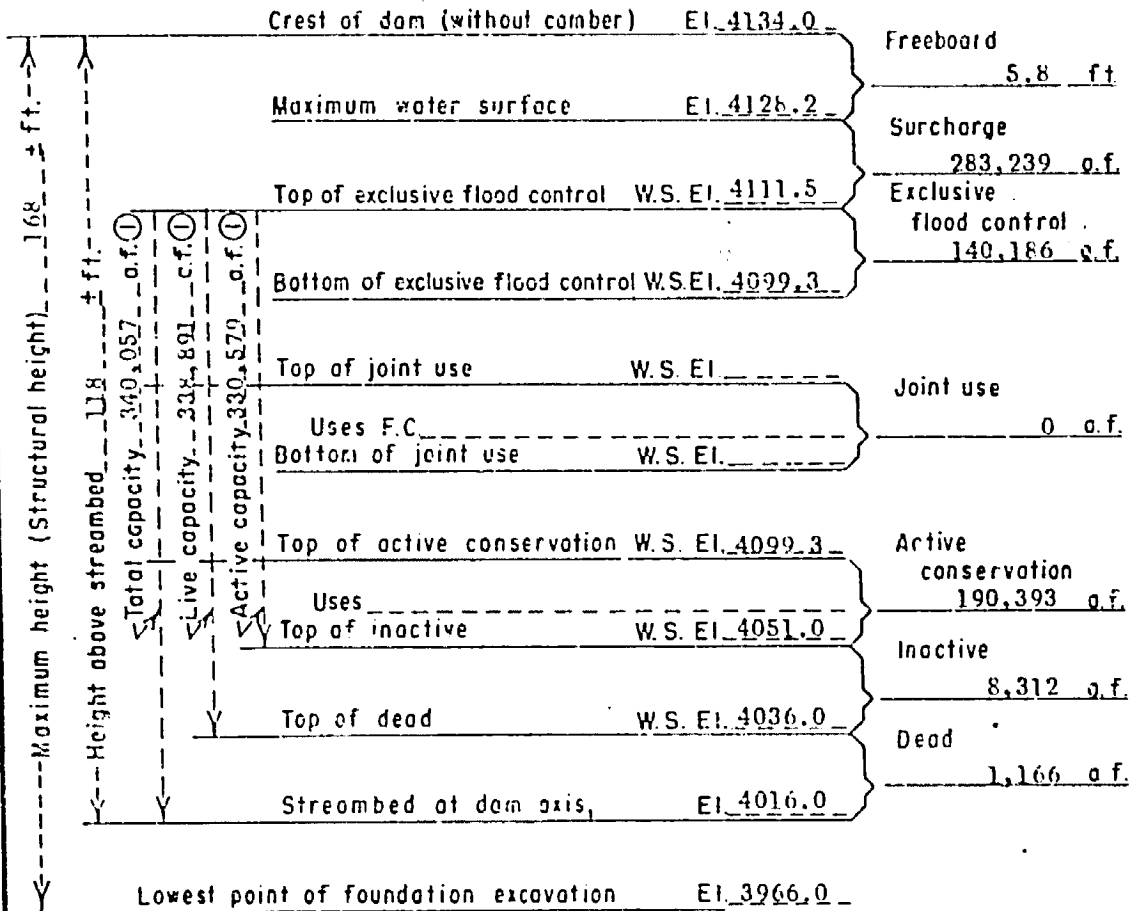
Attest:

Adrian A. Johnson
Secretary

RESERVOIR CAPACITY ALLOCATIONS

Type of dam: <u>Zoned Earthfill</u>	Region <u>6</u> State <u>Wyoming</u>
Operated by: <u>Bureau of Reclamation</u>	<u>Keyhole</u> Reservoir
Crest length: <u>3,420</u> ft	<u>Keyhole</u> Dam
Volume: <u>1,335,000</u> cubic yards	<u>Missouri River Basin Project</u>
Top width: <u>30</u> ft, Max. Base Width: <u> </u> ft	<u>Cheyenne</u> Division
Closure date: <u>February 2, 1952</u>	<u>Keyhole</u> Unit
Construction period: <u>1950-52</u>	<u>Operational</u> Status
Stream: <u>Belle Fourche River</u>	<u>December 1966</u> Date
Reservoir Surface area <u>9,394</u> acres at El. <u>4099.3</u>	

Furnish one copy of completed form to the Chief Engineer: Attention D-756



F.C.	Flood Control (Total)	a.f.	}	C (ACTIVE CONSERVATION AND JOINT USE)
I.	Irrigation	a.f.		
M. & I.	Municipal and Industrial	a.f.		
P.	Power	a.f.		
F. & W.	Fish and Wildlife	a.f.		
	Other	a.f.		
S	Sediment	a.f.		
①	Includes 70,000 a.f. allowance for 100 year sediment deposition between streambed and El. 4099.3, of which _____ a.f. is above El. _____			

Reference: Area-Capacity table of Dec. 1966
Area-Capacity curve Drwg. 456-600-81

Proof No. 27340

Certificate of Construction of Reservoir

Certificate Record No.-----R-3----- Page 156

the kernel

Reservoir. Permit No.

5707

Res. located in - 571-571 - 571

[illegible]

United States of America, Department of the Interior, Bureau of Reclamation; Address F. O. Box 3655, Billings, Montana

under provisions of Permit No. 5707 ----- Res. is ----- 190,000 ----- more feet

IN TESTIMONY WHEREOF, I, FLOYD A. BISHOP

ATTES:

George W. F. Edwards
Ex-Officio Secretary.

Richard D. Rosenberg
President

On November 6, 1979, the Secretary of the Interior approved changing the name of the former Bureau of Reclamation to the Water and Power Resources Service. R. Keith Higginson has been designated Commissioner of Water and Power Resources.

Upper Missouri Region
P.O. Box 2553
Billings, Montana 59103

IN REPLY
REFER TO: UM-450
870.

Mr. Chilton Latham
Powder River Basin Resource Council
1318 W. 2nd Avenue
Cheyenne, Wyoming 82001

Dear Mr. Latham:

Please refer to your letter of November 8, 1979, regarding water rights in the Keyhole Reservoir.

The water rights for all water stored in Keyhole Reservoir were obtained by and are still held by the United States. However, all stored water is subject to provisions of the Belle Fourche River Compact which allocates the water to Wyoming and South Dakota.

Presently we have three contracts for water service from Keyhole Reservoir. The Belle Fourche Irrigation District has a contract which allows them to utilize 10,000 AF of reservoir space, the Belle Fourche-Wyoming Water Association's contract provides up to 1,250 AF annually for irrigation, and the Shattuck Hills Homeowner's Association has contracted for a maximum of 50 AF of water annually.

Basin Electric Power Cooperative has no contract for water service from Keyhole Reservoir and no such contract has been requested by the Cooperative.

The Water and Power Resources Service and the States of Wyoming and South Dakota are cooperating in an investigation to determine the quantity of water available to each State under terms of the Belle Fourche River Compact and the future service capability of Keyhole Reservoir. No further use of Keyhole storage will be committed until results of this investigation are known.

Sincerely yours,

Joseph E. Marcolta, *ml*

Acting Regional Director

cc: Mr. George Christopoulos, State Engineer, Barrett Building,
Cheyenne, Wyoming 82001
Mr. Warren Newfield, Secretary, Dept. of Natural Resources
Development, State Office Building No. 2, Pierre,
South Dakota 57501

RECEIVED
NOV 23 1979
DEPT. OF WATER &
NATURAL RESOURCES
NOV 26 1979



IN REPLY REFER TO: 400
511.

United States Department of the Interior

BUREAU OF RECLAMATION
Upper Missouri Region
Missouri-Oahe Projects Office
P.O. Box 825
Huron, South Dakota 57350
JUL 19 1978

RECEIVED

JUL 20 1978

DEPT. OF NATURAL
RESOURCE DEVELOPMENT

Mr. Vern W. Butler, Secretary
Department of Natural Resource Development
Pierre, South Dakota 57501

Dear Mr. Butler:

A release of Keyhole Reservoir water has been requested by the Belle Fourche Irrigation District under the provisions of Contract No. 14-06-600-6979.

The release will begin July 20, 1978, at the rate of 100 c.f.s. and will likely continue at varying rates during the balance of the irrigation season.

We solicit your assistance in preventing any unauthorized diversion of the released water from the Belle Fourche River to insure proper delivery of the water to the Belle Fourche Irrigation District. We appreciate your cooperation in this matter.

Sincerely yours,

Ray H. DeKramer
Acting Project Manager

cc: George L. Christopoulos, Wyoming State Engineer
Barrett Bldg. - Second Floor
Cheyenne, Wyoming 82002

Harold D. Skjoldal, Manager
Belle Fourche Irrigation District
Newell, South Dakota 57760





IN REPLY REFER TO: 400
511.

United States Department of the Interior

BUREAU OF RECLAMATION
Upper Missouri Region
Missouri-Oahe Projects Office
P.O. Box 825
Huron, South Dakota 57350

JUN 17 1977

RECEIVED

JUN 20 1977

DEPT. OF NATURAL
RESOURCE DEVELOPMENT

Mr. George L. Christopulos, Wyoming State Engineer
Barrett Bldg. - Second Floor
Cheyenne, Wyoming 82002

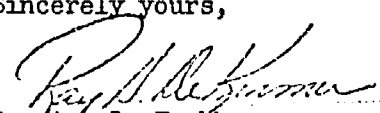
Dear Mr. Christopulos:

A release of Keyhole Reservoir water has been requested by the Belle Fourche Irrigation District under the provisions of contracts Nos. 14-06-600-6979 and 14-06-600-8970 and Amendment No. 1 thereto.

The release began June 15, 1977, at the rate of 100 c.f.s. and will likely continue at varying rates during the balance of the irrigation season.

We solicit your assistance in preventing any unauthorized diversion of the released water from the Belle Fourche River to insure proper delivery of the water to the Belle Fourche Irrigation District. We appreciate your cooperation in this matter.

Sincerely yours,


Preston L. Funkhouser
Project Manager

cc: Vern W. Butler, Secretary ✓
Department of Natural Resource Development
Pierre, South Dakota 57501

Harold D. Skjoldal, Manager
Belle Fourche Irrigation District
Newell, South Dakota 57760

A. C. Waters, Water Commissioner
Moorcroft, Wyoming 82721





Department of
Natural Resources
Development
WATER RIGHTS
COMMISSION
Office Building 2
Pierre, SD. 57501
Ph. 224-3151

November 26, 1973

Mr. Preston L. Funkhouser, Jr.
Project Manager
Bureau of Reclamation
P.O. Box 825
Huron, South Dakota 57350

Dear Mr. Funkhouser, Jr.:

The Belle Fourche Project water rights were adjudicated by the Eighth Judicial Circuit Court as follows:

1. 1904 WATER RIGHT
U.S. FILING NO. 0377-1
- Priority Date: August 5, 1904,
- Amount of Water: Not to exceed diversion rate of 1440 cubic feet per second, including diversions from Crow Creek, and collection of all unappropriated waters of Owl Creek in and at the Belle Fourche Dam and Reservoir,
- Purpose: Existing irrigation, municipal and domestic uses and not to exceed 185,170 acre-feet of stored water annually in Belle Fourche Reservoir for later uses, for existing irrigation, municipal and domestic purposes,
- Periods of Use: May to November, inclusive, of each year for irrigation purposes; entire year for other purposes,
- Place of Use: Within the area served by facilities of the Belle Fourche Project, but as to irrigation use, not to exceed use on the 57,183 acres of land specifically entitled to water service through the project works,

Mr. Preston L. Funkhouser, Jr. Page 2.

Conditions: Subject to domestic use and prior water rights requirements, subject to continued beneficial use.

2. KEYHOLE WATER RIGHT

Priority Date: April 25, 1950,

Amount of Water: Not to exceed 130,000 acre-feet of stored water for subsequent use or such portion thereof, as may be covered in contracts with the United States Bureau of Reclamation,

Purpose: Irrigation, municipal, domestic, stock-water, mining and industrial uses, or any of them,

Periods of Use: May to November, inclusive, for irrigation; entire year for other purposes.

Place of Use: Within the area served by facilities of the Belle Fourche Project, but as to irrigation use, not to exceed use on the 57,183 acres of land specifically entitled to water service through the project works,

Conditions: Subject to domestic use and prior water rights requirements, subject to continued beneficial use.

This adjudication is contained in the Conclusions of Law, of "BELLE FOURCHE IRRIGATION DISTRICT -vs- R.A. SMILEY", dated November 1, 1967 and has been confirmed by the State Supreme Court.

Sincerely,

Donald Driscoll

Donald Driscoll
Chief Engineer

DD/Ed

July 15, 1940

Hon. Francis Case
Congress of the United States
House of Representatives
Washington, D. C.

Dear Mr. Case:

Replying to your inquiry of July 10th just received. We are enclosing, herewith, information relative to the appropriations of the water of the Belle Fourche River that were originally made for the Belle Fourche Irrigation Project. These appropriations were, of course, made prior to the passage of the irrigation laws of 1907 so were not filed in this office as now required. However, our records do contain certified copies of the old rights as filed with the Register of Deeds of Butte County.

Under No. 18874 the following appropriations were made.

Belle Fourche River - 310 cu. ft. per second
Stinking Water Creek - all or 200 cu. ft. per second
Cottonwood Creek - all or 200 cu. ft. per second

Water to be used for irrigation, domestic, power, mechanical and other beneficial uses in and upon lands situated in Butte and Meade Counties to be used for direct irrigation or to be stored in reservoirs to be hereafter located. The notices were posted on the third day of August 1904, and "Notice of Water Appropriation" is signed by Raymond P. Walter and executed by a Notary Public.

Under No. 18875 the following appropriations were made. All of the unappropriated waters of the following streams:

Belle Fourche River	Indian Creek
Crow Creek	Horse Creek
Owl Creek	Dry Creek
Willow Creek	

The appropriations include both surface and under-flow more specifically stated as amounting to 2026 cu. ft. per sec. from the Belle Fourche River and 1000 cu. ft. per sec. from each of the above creeks named.

Water to be used for irrigation, domestic, power, mechanical and other beneficial uses. The notices were posted by W. C. Woods on the 28th day of July 1904. The "Notice of Appropriation" is signed by W. C. Woods.

Hon. Francis Case

-2-

July 16, 1940

Under No. 18874 the notice was posted on the South bank of the Belle Fourche River about 500 feet West of the South quarter corner of Sec. 11, T.8N., R.4E., and under No. 18875 the notice was posted on the North bank of the Belle Fourche River in Section 2, T.8N., R.2E.

The actual amount of the appropriation in effect at the present time would necessarily be established by the law relating to beneficial use. In 1937 the Belle Fourche Irrigation District diverted 105,600 acre-feet of water and irrigated 33,050 acres. The source of the water was from the Belle Fourche River and from storage in the Orman Reservoir. Five per cent of the land used direct flow and ninety-five per cent used storage water.

Hoping that this information will be useful to you and that we may be of any further service.

Respectfully yours,

Dean W. Loucks,
State Engineer.

DWL:dn

FRANCIS CASE
23 DIST. SOUTH DAKOTA

MEMBER
APPROPRIATIONS
COMMITTEE

Congress of the United States
House of Representatives
Washington, D. C.

7-10-1940.

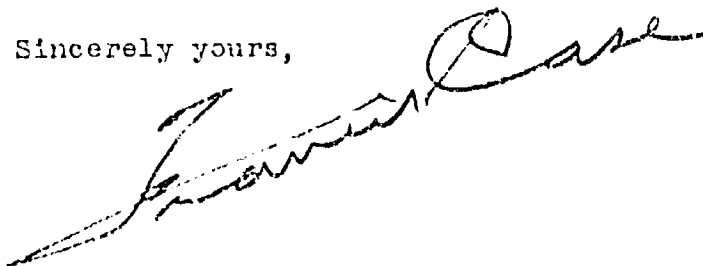
Mr. D. W. Loucks,
State Engineer,
Pierre, South Dakota.

Dear Mr. Loucks:

As you probably know, the Bureau of Reclamation and the Army Engineers have been studying the possibility of developing additional storage for the flood waters of the Belle Fourche River upstream from the present inlet canal.

In connection with this matter, the question has arisen as to the water rights that were filed at the time of the construction of Ocran Dam. Will you kindly advise me what appropriation of the waters of the Belle Fourche River were made for the Belle Fourche Project?

Sincerely yours,



FC/MMS

RECEIVED
JUL 15 1940

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

FRANCIS CASE
2D DIST. SOUTH DAKOTA

MEMBER
APPROPRIATIONS
COMMITTEE

Congress of the United States
House of Representatives
Washington, D. C.

RECEIVED
AUG 5 1940

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.
July 30, 1940.

Mr. Dean W. Loucks,
State Engineer,
Pierre, South Dakota.

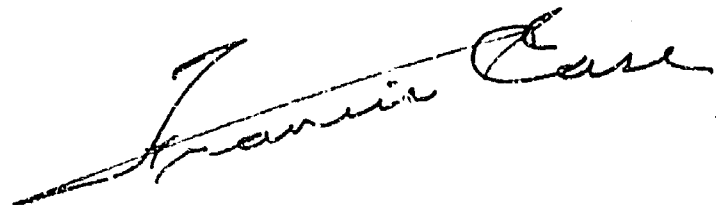
Dear Mr. Loucks:

Thank you for your letter of July 15th, with its information of the appropriations of water on the Belle Fourche River. I am taking this up with the Bureau of Reclamation to see what the effect is, if any, of the recent Wyoming legislation.

I have been advised by the Army Engineers that the Flood control study is now expected about August 25th.

Thanking you for the information supplied, I am,

Sincerely yours,



Fc:elb.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Newell, South Dakota,
January 10, 1935.

Mr. Chas. A. Trimmer,
State Engineer,
Pierre, S. Dak.

Dear Mr. Trimmer:

On July 28, 1904 Mr. R. F. Walter filed water rights for all unappropriated waters in and above section 2-8-2, being on the water shed of the Belle Fourche River and tributaries. This filing was made for the benefit of the Belle Fourche Irrigation Project and appears to be your No. 19075. B. M. Co.

The records in this office are not entirely complete and we would appreciate very much if you will send us a complete record of the filing as recorded in your office.

Yours very truly,

F. C. Youngblutt
F. C. Youngblutt,
Superintendent.

RECEIVED
JAN 11 1935
OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Continental Hydro Corporation

)

Project No. 3825-000

ORDER ISSUING PRELIMINARY PERMIT

(Issued May 29, 1981)

The Permittee 1/ filed an application for preliminary permit under Section 4(f) of the Federal Power Act (Act), 16 U.S.C. §797(f), for the proposed water power project, to be located at an existing dam, as described in the attached public notice. 2/

Notice of the application was published in accordance with Section 4(f) of the Act and the Commission's regulations. All protests that have been submitted, petitions to intervene that have been granted, together with all comments filed by Federal, State, and local agencies have been fully considered in determining whether to issue this permit. No party or agency commenting on the application objected to the issuance of the permit.

EFFECTS OF THIS PRELIMINARY PERMIT:

The purpose of any preliminary permit is to maintain priority of application for a license during the term of the permit while the Permittee conducts investigations and secures data necessary to determine the feasibility of the proposed project and to prepare an acceptable application for license. A preliminary permit does not authorize construction of any project works. This permit does require the Permittee to conduct certain studies, but under conditions which will assure that those studies cause no significant adverse environmental impacts. For these reasons, the issuance of this preliminary permit is not a major Federal action significantly affecting the quality of the human environment.

Any concerns raised in the comments, protests, or petitions to intervene addressing the potential effects of actually constructing and operating the proposed project are not affected by the issuance of a preliminary permit.

1/ In this, "Permittee" refers to the applicant or applicants named in the caption for this proceeding.

2/ Authority to act on this matter is delegated to the Director, Division of Hydropower Licensing, under Section 375.308 of the Commission's regulations, 45 Fed. Reg. 21216 (1980), as amended by Order No. 112 in Docket No. RM81-5, issued November 21, 1980, (45 Fed. Reg. 79024).

It is concluded that the standard permit articles and Articles 7 through 10 of this permit provide for studies, in coordination with the appropriate agencies, to address the technical, economic, and environmental considerations related to the proposed project. Should the Permittee find the project to be feasible and file an application for a license, all interested persons and agencies will be given notice and have an opportunity to review the application, present their comments concerning the project and the effects of its construction and operation, and seek to participate in the licensing proceeding.

TERM OF PERMIT:

The proposed project would utilize an existing dam and is considered a small scale development. Feasibility studies for small projects are limited in scope and should not require the maximum term for a preliminary permit (36 months) permitted under the Act. Therefore, the term of this permit is limited to 18 months. Review of this project indicates that this permit term should be fully adequate to complete the necessary studies if they are pursued expeditiously. Extension of the term of this permit will not be granted, except in unusual circumstances where good cause for extension is clearly demonstrated.

It is ordered that:

(A) A preliminary permit is issued to the Permittee for the proposed project as described in the attached notice, for a period effective the first day of the month in which this permit is issued, and ending either 12 months from the effective date or on the date that an application for license submitted by the Permittee has been accepted for filing, whichever occurs first. This permit is subject to the terms and conditions of the Federal Power Act (Act), which is incorporated by reference as part of this permit, and subject to the regulations the Commission issues under the provisions of the Act.

(B) This permit is also subject to Articles 1 through 6 set forth in Form P-1 (revised October 1975), entitled "Terms and Conditions of Preliminary Permit," attached to and made a part of this permit, and subject to the following special conditions set forth as additional articles:

Article 7. In the interest of protecting and developing the natural resources and other environmental values of the project area, the Permittee shall consult with the appropriate Federal, State, and local agencies in their fields of responsibility and expertise, shall conduct its project investigations in a manner which protects the environmental integrity of the area, and shall fully explore all feasible alternatives to the project and alternative project designs, taking into account impacts on natural resources and other environmental values. These resources and values include, but are not limited to: forests, land management and treatment, fish, wildlife, recreation and public use, flood regulation, water and air quality (including water supply, groundwater studies, waste treatment and disposal), public health and safety, archeological, historic and cultural sites, threatened or endangered species of flora and fauna, and scenic and aesthetic values. The Permittee shall initiate and conduct, or have conducted, any studies that may be necessary to determine the impact of the construction and operation of the proposed project on these natural resources and values and measures needed to protect and develop them or to provide for their mitigation or replacement, including alternative designs and operational measures, and shall utilize the results of these studies in the preparation of the relevant exhibits or reports required to accompany any application for a license to construct and operate the project. In connection with studies pertaining to archeological and historic and cultural sites, the Permittee shall consult with the State Historic Preservation Officer for each state in which any part of the project would be located, and the Heritage Conservation and Recreation Service of the U. S. Department of the Interior.

Article 8. The Permittee shall submit in triplicate at the close of each six-month period from the effective date of this permit, to the Director, Office of Electric Power Regulation, with a copy to the FERC Regional Engineer for the Region in which the proposed project would be located (the Commission's authorized representative for the purposes of this permit), or to any other officer the Commission may designate, and a copy, if requested, to any agency consulted, accurate statements of the progress of all investigations, consultations, and studies accomplished during the period and of work contemplated under this permit for the ensuing period.

Article 9. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping appropriate Federal, State, and local agencies specified in this permit currently informed about the progress of investigations throughout the term of the permit. The liaison officer shall communicate with those agencies within 60 days from the date of issuance of this permit.

Article 10. The Permittee shall, during the term of this permit, consult with the U. S. Fish and Wildlife Service of the Department of the Interior, the National Marine Fisheries Service of the Department of Commerce (if anadromous, estuarine, or marine fisheries may be affected), and the State agencies that have responsibility for fish and wildlife resources in each state in which any part of the project would be located, to obtain their views and recommendations on the need for a study of the effects that the proposed project might have on fish and wildlife resources, and the facilities or measures needed to conserve and develop those resources. A copy of the study report, or copies of letters from the above agencies indicating that a study is not needed, shall be filed as part of the fish and wildlife exhibits or reports of any subsequent application for license.

(C) This order is final unless a petition appealing it to the Commission is filed within 30 days from the date of its issuance, as provided in Section 1.7(d) of the Commission's regulations, 18 C.F.R. 1.7(d) (1979), as amended, 44 Fed. Reg. 46449 (1979). The filing of a petition appealing this order to the Commission or an application for rehearing as provided in Section 313(a) of the Act does not operate as a stay of the effective date of this permit or of any other date specified in this order, except as specifically ordered by the Commission.

(S E A L)

Ronald A. Corso

Ronald A. Corso
Director, Division of
Hydropower Licensing

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Continental Hydro Corporation)

Project No. 3825-000

NOTICE OF APPLICATION FOR PRELIMINARY PERMIT

(March 9, 1981)

Take notice that Continental Hydro Corporation (Applicant) filed on December 4, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§791(a) - 825(r)] for proposed Project No. 3825 to be known as Belle Fourche Dam located at the Water and Power Resources Service Belle Fourche Dam on the Belle Fourche River in Butte County, Fruitdale, South Dakota. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. A. Gail Staker, 141 Milk Street, Suite 1143, Boston, MA 02109. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description - The proposed project would utilize a Water and Power Resources dam. Project No. 3825 would consist of: 1) proposed modification of the two existing intake and outlet works with the installation of a penstock approximately 500 feet long running from the headworks, through the existing outlet conduit, to a powerhouse located at or near the existing valve house; 2) two proposed powerhouse each with one generating unit at each of the existing valve houses with a total installed capacity of 715 kW; 3) proposed transmission lines; 4) and appurtenant facilities.

The proposed project is located on Federal lands.

The applicant estimates that the average annual energy output would be 3,360,000 kWh.

Purpose of Project - The applicant proposed to sell the generated output of energy to the Water and Power Resources Service, or other public institutions or industrial users.

Proposed Scope and Cost of Studies under Permit - The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, state, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be \$19,500.

Purpose of Preliminary Permit - A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments - Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications - Anyone desiring to file a competing application must submit to the Commission, on or before May 7, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than July 6, 1981. A notice of intent must conform with the requirements of 18 C.F.R. §4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 C.F.R. §4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene - Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 C.F.R. §1.8 or §1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in §1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before May 7, 1981.

Filing and Service of Responsive Documents - Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", NOTICE OF INTENT TO FILE COMPETING APPLICATION", COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3825. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D. C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N. W., Washington, D. C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb
Secretary

FEDERAL ENERGY REGULATORY COMMISSION
TERMS AND CONDITIONS OF
PRELIMINARY PERMIT

Article 1. The Permittee shall make such engineering and other investigations, secure such data, and perform such acts as are necessary to determine the feasibility of the proposed project and, if said project is found to be feasible, to prepare an application for license for the project that will be in conformance with current rules and regulations of the Commission. In carrying out the requirements of this permit the Permittee shall:

A. Install as soon as practicable, and thereafter maintain, such stream gages and stream-gaging stations as the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region shall designate as necessary and best adapted for the purpose of determining the stage and flow of the stream or streams affected by the proposed project, and shall provide for the required reading of such gages and for the adequate rating of such stations. The number, design, location, and time of installation of gages and stations, the rating of such stations, and the determination of the flow of the affected stream or streams, shall be made under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging in the region of said project; and the Permittee shall advance to said Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Permittee shall, to the satisfaction of the Commission, keep accurate and sufficient records of the stage and flow of the affected stream or streams, and shall make such records available to the Commission at such times as the Commission may prescribe.

B. Sink such test pits or make such borings or other foundation explorations, and make such detailed geologic studies and tests on foundations and fill materials, as are necessary to support preliminary engineering designs and cost estimates.

C. Begin the required investigations within 60 days after acceptance of the permit, and thereafter prosecute said investigations in such manner and at such rate as in the judgment of the Commission will ensure their completion within the period of the permit.

D. Furnish with any application for license subsequently filed with the Commission copies of engineering and geologic reports, results of tests and analyses, and any other information secured in connection with the investigations, examinations and surveys conducted under this permit.

E. Exercise appropriate measures at all times during field studies to prevent irreparable damage to the environment of the proposed project. All test sites shall be restored as closely as possible to their original condition, and to the satisfaction of the Commission's authorized representative, or, where Federal lands are affected, to the satisfaction of the agency administering such lands.

Article 2. A license will be issued for the proposed project only if in the judgment of the Commission said project will be best adapted to a comprehensive plan for the improvement or development of a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes. In reaching a decision on the desirability of issuing a license, the Commission will consider, among other things:

A. Whether the maps, plans, and specifications are such:

(1) That full, practicable utilization will be made of the water, storage possibilities, and head at the site to be developed;

(2) That the structures will be safe and constructed in accordance with good engineering practice; and

(3) That all unnecessary energy losses, whether in hydraulic works or in mechanical or electrical equipment, will be avoided.

B. Whether in relation to existing or probable future projects upon the same or adjacent streams, the potential for the fullest practicable utilization of the available water, storage possibilities, and head will be maintained.

C. Whether said project will be in general accord with the most beneficial utilization of the water for navigation, water power, irrigation, or other public uses, and for aiding flood control, reclamation, and similar developments.

D. Whether proper provision is made for present or future electrical interconnection with other projects or systems in order to take advantage of diversity of streamflow and of power demands.

E. Whether the use to which the power will be devoted is, in general, in accord with the public interest.

F. Whether the applicant is financially able to carry out the development.

G. Whether the construction, maintenance, and operation of the proposed project works will interfere or be inconsistent with the purpose for which any reservation, as defined in the Federal Power Act, was created or acquired.

Article 3. The priority granted under the permit shall be lost if the Permittee fails to fulfill the requirements of the permit, if the permit is canceled by order of the Commission, or if the Permittee fails, on or before the expiration date of the permit, to file with the Commission or its designated agent an application for license for the proposed project in conformity with the Commission's rules and regulations then in effect.

Article 4. The Permittee shall keep accurate records of all expenditures made for the purposes authorized by the permit, together with all vouchers and other supporting data relating to such expenditures, which records and related materials shall be retained by the Permittee.

Article 5. The permit confers no authority upon the Permittee to undertake construction of the proposed project, or any part thereof, or to occupy or use lands or other property of the United States for the purposes of construction, unless specific permission is given by the Commission for such occupancy or use; and neither the granting of such authority nor the performance of construction work, whether with or without such authority, shall be deemed to have created any equities or to have established any rights with respect to issuance of a license for the proposed project, beyond what would have been created or established had such authority not been given or such work not been performed.

Article 6. The permit is not transferable and may be canceled by order of the Commission upon failure of the Permittee to begin in good faith, or to prosecute diligently, the investigations, examinations, and surveys contemplated under the permit, or to comply with any other conditions therein, or for any other good cause shown after notice and opportunity for hearing.

FEDERAL ENERGY
REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

POSTAGE AND FEES PAID
FEDERAL ENERGY
REGULATORY COMMISSION
FERC 351



Dept. of Water and Natural
Resources, P-3825
Joe Kennedy
Silver, N. D. 58501



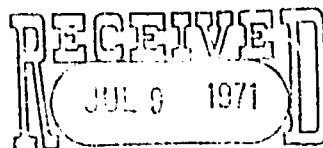
IN REPLY REFER TO: 400

United States Department of the Interior

BUREAU OF RECLAMATION
Region 6

MISSOURI-OAHE PROJECTS OFFICE
P. O. BOX 825
HURON, SOUTH DAKOTA 57350

JUL 8 1971



STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

Mr. J. W. Grimes
Chief Engineer and Executive Officer
State Water Resources Commission
Pierre, South Dakota 57501

Dear Mr. Grimes:

Our Field Solicitor, Mr. Bielefeld, had discussions with Mr. Jones in your office on November 22, 1969, relative to the perfection of water rights for Bureau of Reclamation water development facilities. We have since furnished information to your office for perfecting water rights U.S. 509-2, 581-2, 579-2, and 594-1 for Deerfield, Pactola, Angostura, and Shadehill Reservoirs, respectively.

In response to Mr. Jones' request for "as built" information concerning Belle Fourche Reservoir, enclosed are copies of the following drawings and tables to supplement the water right (Permit No. 18875) previously perfected under Section 61.0137, S.D.C. 1939:

1. General Plan, Section, and Details for Belle Fourche Dam, Drawing No. 1-E-12, revised 12-10-53.
2. Reservoir Topography with Belle Fourche Dam superimposed, Drawings Nos. 1-602-9 and -10.
3. Area-Capacity Curves for Belle Fourche Reservoir, Drawing No. 1-600-2 dated 4-7-50.
4. Capacity Table, Belle Fourche Reservoir (2 sheets).
5. Reservoir Capacity Allocation for Belle Fourche Reservoir.

Keyhole Reservoir, located on the Belle Fourche River near Moorcroft, Wyoming, provides supplemental irrigation water storage for the Belle Fourche Project. Enclosed are copies of the following drawings, tables, and water right information pertaining to Keyhole Reservoir:

1. General Plan and Sections for Keyhole Dam, Drawing No. 486-D-26, revised 3-16-54.
2. Keyhole Reservoir Topography with Keyhole Dam location superimposed, Drawing No. 486-602-96, dated 3-20-70.
3. Area-Capacity Curves for Keyhole Reservoir, Drawing No. 486-600-81, dated September 1966.
4. Area-Capacity table for Keyhole Reservoir, dated December 1966.
5. Reservoir Capacity Allocations for Keyhole Reservoir.
6. Certificate of Construction of Keyhole Reservoir under Permit No. 5707, as issued by the Wyoming State Board of Control on August 18, 1965.

If additional information would be required, please advise.

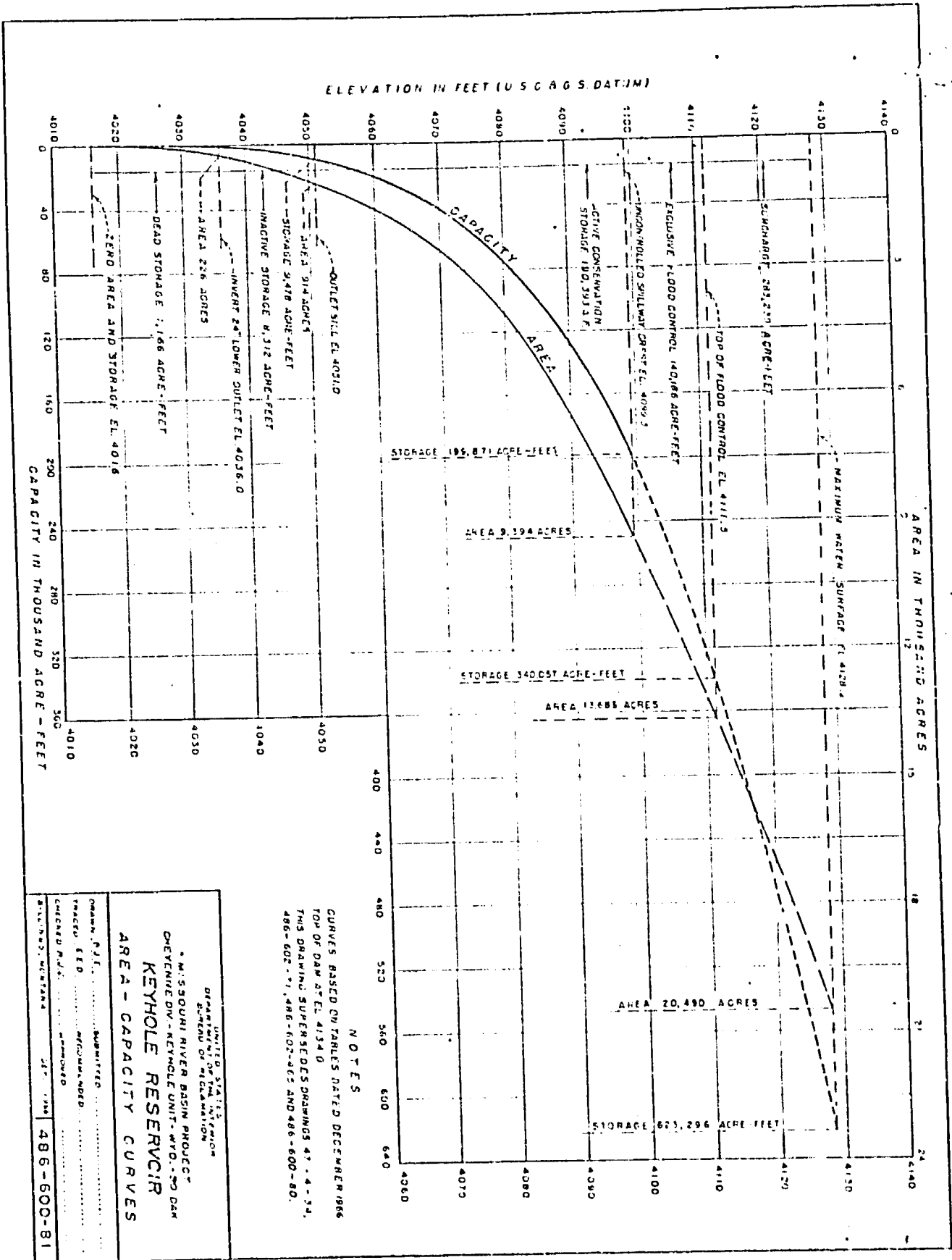
Sincerely yours,

Preston L. Funkhouser, Jr.
Project Manager

Enclosures

By *R. H. McNamee* Acting

**OVERSIZE
DOCUMENT IS
SUPPLEMENTARY
TO MICROFILM FILE**



KEYHOLE RESERVOIR CAPACITY IN ACRES FEET

ELEVATION FEET	0	.1	.2	.3	.4	.5	.6	.7	.8	.9
4050	8595	8593	8772	8860	8958	9036	9124	9213	9301	9389
1	8597	8595	8774	8862	8960	9038	9126	9215	9303	9391
2	8599	8597	8776	8864	8962	9040	9128	9217	9305	9393
3	8601	8599	8778	8866	8964	9042	9130	9219	9307	9395
4	8603	8601	8780	8868	8966	9044	9132	9221	9309	9397
5	8605	8603	8782	8870	8968	9046	9134	9223	9311	9400
6	8607	8605	8784	8872	8970	9048	9136	9225	9313	9402
7	8609	8607	8786	8874	8972	9050	9138	9227	9315	9404
8	8611	8609	8788	8876	8974	9052	9140	9229	9317	9406
9	8613	8611	8790	8878	8976	9054	9142	9231	9319	9408
4060	20777	20745	21114	21282	21450	21619	21787	21955	22123	22291
1	20779	20747	21116	21284	21452	21621	21789	21957	22125	22293
2	20781	20749	21118	21286	21454	21623	21791	21959	22127	22295
3	20783	20751	21120	21288	21456	21625	21793	21961	22129	22297
4	20785	20753	21122	21290	21458	21627	21795	21963	22131	22299
5	20787	20755	21124	21292	21460	21629	21797	21965	22133	22301
6	20789	20757	21126	21294	21462	21631	21799	21967	22135	22303
7	20791	20759	21128	21296	21464	21633	21801	21969	22137	22305
8	20793	20761	21130	21298	21466	21635	21803	21971	22139	22307
9	20795	20763	21132	21300	21468	21637	21805	21973	22141	22309
4070	41687	41748	42008	42268	42529	42789	43049	43309	43570	43830
1	41689	41750	42010	42270	42531	42791	43051	43311	43572	43832
2	41691	41752	42012	42272	42533	42793	43053	43313	43574	43834
3	41693	41754	42014	42274	42535	42795	43055	43315	43576	43836
4	41695	41756	42016	42276	42537	42797	43057	43317	43578	43838
5	41697	41758	42018	42278	42539	42799	43059	43319	43580	43840
6	41699	41760	42020	42280	42541	42801	43061	43321	43582	43842
7	41701	41762	42022	42282	42543	42803	43063	43323	43584	43844
8	41703	41764	42024	42284	42545	42805	43065	43325	43586	43846
9	41705	41766	42026	42286	42547	42807	43067	43327	43588	43848
4080	74251	74402	75103	75803	76504	77204	77905	78605	79306	79999
1	74253	74404	75105	75805	76506	77206	77907	78607	79308	80001
2	74255	74406	75107	75807	76508	77208	77909	78609	79310	80003
3	74257	74408	75109	75809	76510	77210	77911	78611	79312	80005
4	74259	74410	75111	75811	76512	77212	77913	78613	79314	80007
5	74261	74412	75113	75813	76514	77214	77915	78615	79316	80009
6	74263	74414	75115	75815	76516	77216	77917	78617	79318	80011
7	74265	74416	75117	75817	76518	77218	77919	78619	79320	80013
8	74267	74418	75119	75819	76520	77220	77921	78621	79322	80015
9	74269	74420	75121	75821	76522	77222	77923	78623	79324	80017
4090	97441	97773	98505	99237	99969	100701	101433	102165	102897	103629
1	97443	97775	98507	99239	99971	100703	101435	102167	102899	103631
2	97445	97777	98509	99241	99973	100705	101437	102169	102901	103633
3	97447	97779	98511	99243	99975	100707	101439	102171	102903	103635
4	97449	97781	98513	99245	99977	100709	101441	102173	102905	103637
5	97451	97783	98515	99247	99979	100711	101443	102175	102907	103639
6	97453	97785	98517	99249	99981	100713	101445	102177	102909	103641
7	97455	97787	98519	99251	99983	100715	101447	102179	102911	103643
8	97457	97789	98521	99253	99985	100717	101449	102181	102913	103645
9	97459	97791	98523	99255	99987	100719	101451	102183	102915	103647
4100	206496	207477	208457	209438	210419	211399	212379	213359	214339	215319
1	206498	207479	208459	209440	210421	211401	212381	213361	214341	215321
2	206500	207481	208461	209442	210423	211403	212383	213363	214343	215323
3	206502	207483	208463	209444	210425	211405	212385	213365	214345	215325
4	206504	207485	208465	209446	210427	211407	212387	213367	214347	215327
5	206506	207487	208467	209448	210429	211409	212389	213369	214349	215329
6	206508	207489	208469	209450	210431	211411	212391	213371	214351	215331
7	206510	207491	208471	209452	210433	211413	212393	213373	214353	215333
8	206512	207493	208473	209454	210435	211415	212395	213375	214355	215335
9	206514	207495	208475	209456	210437	211417	212397	213377	214357	215337
4110	319085	321117	323250	325383	327516	329649	331782	333915	336048	338181
1	319087	321119	323252	325385	327518	329651	331784	333917	336050	338183
2	319089	321121	323254	325387	327520	329653	331786	333919	336052	338185
3	319091	321123	323256	325389	327522	329655	331788	333921	336054	338187
4	319093	321125	323258	325391	327524	329657	331790	333923	336056	338189
5	319095	321127	323260	325393	327526	329659	331792	333925	336058	338191
6	319097	321129	323262	325395	327528	329661	331794	333927	336060	338193
7	319099	321131	323264	325397	327530	329663	331796	333929	336062	338195
8	319101	321133	323266	325399	327532	329665	331798	333931	336064	338197
9	319103	321135	323268	325401	327534	329667	331800	333933	336066	338199
4120	466469	471884	478403	485120	492037	499154	506471	513988	521705	529622
1	466471	471886	478405	485122	492039	499156	506473	513990	521707	529624
2	466473	471888	478407	485124	492041	499158	506475	514002	521709	529626
3	466475	471890	478409	485126	492043	499160	506477	514004	521711	529628
4	466477	471892	478411	485128	492045	499162	506479	514006	521713	529630
5	466479	471894	478413	485130	492047	499164	506481	514008	521715	529632
6	466481	471896	478415	485132	492049	499166	506483	514010	521717	529634
7	466483	471898	478417	485134	492051	499168	506485	514012	521719	529636
8	466485	471900	478419	485136	492053	499170	506487	514014	521721	529638
9	466487	471902	478421	485138	492055	499172	506489	514016	521723	529640

12

KEYHOLE RESERVOIR
AREA IN ACRES

DECEMBER 1966

ELEVATION FEET	0	1	2	3	4	5	6	7	8	9
4010										
4020	4	7	10	13	16	24	31	39	49	61
4030	74	92	112	135	161	192	226	266	310	359
4040	414	450	487	526	567	609	653	699	748	798
4050	849	914	981	1052	1126	1203	1284	1368	1456	1547
4060	1252	1322	1393	1467	1543	1621	1701	1784	1870	1958
4070	1656	1730	1803	1880	1959	2041	2125	2212	2302	2395
4080	2062	2140	2217	2298	2381	2466	2554	2644	2737	2832
4090	2469	2550	2630	2713	2798	2885	2974	3066	3160	3256
4100	2868	2952	3036	3122	3210	3299	3390	3483	3578	3675
4110	3259	3346	3433	3522	3612	3703	3795	3889	3984	4081
4120	3642	3732	3823	3915	4008	4102	4197	4293	4390	4488

KEYHOLE RESERVOIR
CAPACITY IN ACRE FEET

ELEVATION FEET	0	1	2	3	4	5	6	7	8	9
4010										
4020	25	31	39	51	68	89	117	153	197	250
4030	321	405	507	631	779	956	1165	1412	1709	2055
4040	2423	2555	3324	3831	4572	5655	7077	8842	10955	13517
4050	8595	9477	10425	11452	12532	13697	14941	16267	17680	19182
4060	20777	22450	24223	26069	27959	30016	32133	34321	36613	39001
4070	24467	26391	28350	30342	32369	34431	36523	38645	40793	42967
4080	28261	30367	32500	34657	36839	39041	41263	43505	45763	48037
4090	32071	34316	36590	38887	41209	43550	45913	48293	50683	53083
4100	35896	38260	40642	43037	45447	47873	50313	52763	55223	57693
4110	39739	42136	44542	46957	49383	51813	54253	56703	59163	61633
4120	43592	45993	48403	50813	53233	55653	58073	60503	62933	65363

KEYHOLE RESERVOIR
CAPACITY IN ACRE FEET

ELEVATION FEET	0	.1	.2	.3	.4	.5	.6	.7	.8	.9
4020	25	25	26	26	27	28	28	29	29	30
1	31	32	32	33	34	34	35	35	36	36
2	39	41	42	43	44	45	47	48	49	50
3	51	53	55	58	59	60	61	63	65	66
4	68	70	72	74	76	79	81	83	85	87
5	89	92	95	98	100	103	105	109	112	114
6	117	121	124	128	131	135	139	142	146	149
7	157	161	165	169	173	177	181	185	189	193
8	197	203	207	214	220	225	231	236	242	247
9	253	260	267	273	280	287	294	301	307	314
4030	321	329	338	346	355	363	371	379	388	396
1	405	415	425	435	445	456	466	476	486	496
2	507	519	532	544	556	569	581	593	605	618
3	631	645	660	675	690	705	720	733	749	764
4	779	797	815	832	850	868	885	903	921	938
5	956	977	998	1019	1040	1061	1082	1103	1124	1145
6	1165	1190	1215	1240	1264	1289	1314	1338	1363	1388
7	1412	1441	1470	1497	1524	1551	1578	1605	1632	1659
8	1709	1741	1773	1804	1836	1868	1900	1931	1963	1995
9	2055	2094	2133	2172	2210	2249	2288	2326	2365	2403
4040	2423	2464	2509	2552	2594	2639	2683	2726	2769	2812
1	2555	2602	2649	2695	2740	2785	2829	2873	2917	2960
2	3324	3375	3425	3475	3524	3573	3622	3670	3718	3766
3	3831	3885	3939	3992	4045	4097	4149	4201	4253	4304
4	4572	4636	4695	4754	4813	4872	4931	4989	5048	5107
5	5655	5729	5802	5875	5948	6021	6094	6167	6239	6312
6	7077	7155	7233	7311	7389	7467	7545	7623	7701	7779
7	8842	8932	9021	9110	9199	9288	9377	9466	9555	9644
8	10955	11057	11159	11261	11363	11465	11567	11669	11771	11873
9	13517	13632	13747	13862	13977	14092	14207	14322	14437	14552

0377-1

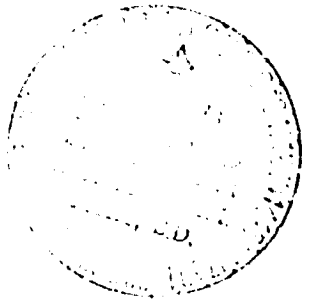


IN REPLY REFER TO: 400
840./870.

United States Department of the Interior

BUREAU OF RECLAMATION
Upper Missouri Region
Missouri-Oahe Projects Office
P.O. Box 325
Huron, South Dakota 57350

APR 2 1976



Mr. Thomas E. Carr
Stephens, Quinn, Carr & Tschatter, P.C.
P.O. Box 580
Belle Fourche, South Dakota 57717

Dear Mr. Carr:

This will supplement our response of January 26, 1976, to your letter of December 24, 1975, regarding the availability of municipal water for the city of Belle Fourche under the Bureau of Reclamation water permit No. 0377-1 for the Belle Fourche Project.

The Bureau is agreeable to considering a water service contract arrangement with the City; however, we believe further consideration should be given to the points of diversion or withdrawal of the water supply. It appears this would involve consideration of existing water rights with the Water Rights Commission. It is our understanding that all ground water and surface water in the gallery collection area for the City is now appropriated. Additionally, there are water rights on Spearfish Creek and Redwater Creek downstream from the gallery area that are senior to the Bureau's water right. This includes the Redwater Association which diverts water from Redwater Creek for irrigation.

The City may wish to investigate the possible development of a water supply along Redwater Creek on the easterly side of Belle Fourche and downstream from existing water rights or withdrawal of water from the Belle Fourche River. This would consider the use of stored water from Keyhole Reservoir to replace water the City may withdraw which would normally be diverted into the Belle Fourche Reservoir for irrigation use on the Belle Fourche Project.

We would be pleased to further review municipal water development for the city of Belle Fourche with you and representatives of the City.

Sincerely yours,

Preston L. Funkhouser, Jr.
Project Manager

By: *[Signature]*



cc: Burton Jones, Water Rights Commission, Pierre, South Dakota 57501



IN REPLY REFER TO
GP-2500

United States Department of the Interior

BUREAU OF RECLAMATION

Great Plains Region
P.O. Box 36900
Billings, Montana 59107-6900



JUN 22 2000

Mr. Garland Erbele
Chief Engineer
South Dakota Department of Environment
and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

Subject: Belle Fourche Project Water Rights

Dear Mr. Erbele:

This is in regard to the water rights for our Belle Fourche Project. These water rights were adjudicated by the South Dakota Eighth Judicial Circuit Court in 1967, and confirmed by the State Supreme Court in 1970. The Supreme Court also concluded that the Circuit Court has jurisdiction to hear and determine questions necessary for adjudication of water rights in South Dakota (SDCL 46-10). This adjudication is contained in Belle Fourche Irrigation District v. M. A. Smiley, dated November 1, 1967. The Circuit Court determined that the Belle Fourche Irrigation District's (Plaintiff) rights were derived through contracts with the United States Bureau of Reclamation (Reclamation). Reclamation appropriated these rights by filings made August 5, 1904, pursuant to Chapter 142, Laws of Dakota 1881, and Chapter 105, Session Laws of 1890.

In its Conclusion of Law the Circuit Court stated:

"The Court concludes, as a matter of law, that the Plaintiff's water rights are as set forth below and subject to the following conditions, to-wit:

1.

1904 WATER RIGHT

Priority date:

August 5, 1904,

Amount of Water:

Not to exceed diversion rate of 1440 cubic feet per second, including diversions from Crow Creek, and collection of all unappropriated waters of Owl Creek in and at the Belle Fourche Dam and Reservoir.

Purpose: Existing irrigation, municipal and domestic uses and not to exceed 185,170 acre feet of stored water annually in Belle Fourche Reservoir for later uses, for existing irrigation, municipal and domestic purposes.

Periods of Use: May to November, inclusive, of each year for irrigation purposes; entire year for other purposes.

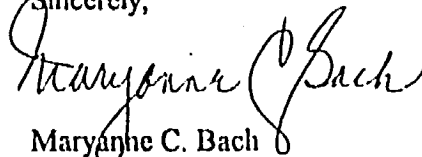
Place of Use: Within the area served by facilities of the Belle Fourche Project, but as to irrigation use, not to exceed use on the 57,183 acres of land specifically entitled to water service through the Project works.

Conditions: Subject to domestic use and prior water rights requirements, subject to continued beneficial use."

We concur with the findings of the Circuit Court and support their decision. We believe that the above is an accurate description of the water rights held in South Dakota by the United States Bureau of Reclamation for the Belle Fourche Project. We also believe this Court adjudication makes it unnecessary to review these rights under the ongoing water right claims validation process. We would, however, be willing to provide data on water use, place of use, and the diversion and storage facilities to assist in updating the water rights records for the Belle Fourche Project.

We hope this clarifies our position concerning the Belle Fourche Project water rights. If you have any questions, please contact Gordon Aycock at (406) 247-7756.

Sincerely,



Maryanne C. Bach
Regional Director

cc: Randy Oliver
Belle Fourche Irrigation District
P.O. Box 225
Newell, SD 57760



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

July 10, 2000

Maryanne C. Bach
Regional Director
U.S. Bureau of Reclamation
PO Box 36900
Billings, MT 59107-6900

Dear Ms. Bach:

This letter is in reference to your June 12, 2000, letter discussing the water rights held by the Bureau of Reclamation for the Belle Fourche Irrigation Project. During the past several months, the Bureau of Reclamation and DENR have been discussing the need for validation of the water rights for the Belle Fourche Irrigation District. Your letter indicates Reclamation concurs with the 1967 Circuit Court decision that adjudicates these rights. The department agrees that there are valid reasons to accept this court decision and will acknowledge the adjudicated rights.

As you know, the state has jurisdiction over these water rights and as a part of that needs to quantify the claims from the Belle Fourche River. Therefore, we need to get current information on acreage and diversion rate for the Belle Fourche Irrigation District.

We would like to work with Reclamation and the Belle Fourche Irrigation District on this project. In order to facilitate the process, we believe it is appropriate for a representative from your Rapid City Field Office and the department to meet with the Belle Fourche Irrigation District Board of Directors. We need to discuss with them the effects this process has on the status of the water rights and to update our records. We have contacted the District and are scheduled to meet with their Board on August 1, 2000 at 10:00 am at the District office in Newell.

Belle Fourche Irrigation District
P.O. Box 225
Newell, SD 57760
(605) 456-2541 (605) 456-2697 (Fax)

RECEIVED
DEC - 9 2005
WATER RIGHTS
PROGRAM

December 7, 2005

SD DENR
Mark Rath
Joe Foss Building
523 E Capitol
Pierre, SD 57501

Dear Mr. Rath:

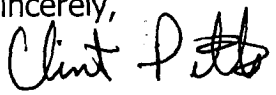
Below is a list of concerns regarding the pumping from the South Dakota state line to the point of diversion.

- Non enforcement to individual pumpers from South Dakota state line to Diversion.
- The state line to Diversion needs to be policed to assure that the Belle Fourche Irrigation District receives a higher percentage of the release from Keyhole.
- We would like to see South Dakota's DENR progress in the direction that the State of Wyoming is beginning to; such as measuring devices at every diversion point, fines for not ordering the water and monitoring the water disappearances.

We would appreciate a response back to let us know the steps that will be taken prior to May 2006 water run.

Thank you for your time and cooperation in this matter.

Sincerely,

 for Board of BFID

Belle Fourche Irrigation District
Board of Directors

Cc: State's Attorney General Office
(Larry Long)
Bureau of Reclamation
(Jeff Nettleton)



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

December 15, 2005

450377-1

Clint Pitts, Manager
Belle Fourche Irrigation District
PO Box 225
Newell, SD 57760

Dear Mr. Pitts:

This letter is in regards to your December 7, 2005 letter about a list of concerns on water use from the Belle Fourche River upstream of the diversion dam. You listed three specific concerns and I will address each one.

1 - Enforcement of individual pumpers from South Dakota state line to Diversion.

We have identified three existing upstream water rights to the diversion dam. One is senior and two are junior in priority date to the water right for the irrigation district. Two years ago we flew the Belle Fourche River with the manager of the Belle Fourche Irrigation District to verify that only permitted water right holders were irrigating from the river, which was the case. This past summer when it was determined that there was zero natural flow coming from Wyoming we contacted each irrigator to determine if they were pumping and subsequently the Chief Engineer issued shutoff orders to all of them.

Based upon discussion we had with the Wyoming State Engineers Office at the recent Belle Fourche River Compact meeting, we will hold a coordinating meeting with that office this spring. The intent of this meeting will be to coordinate management of the river in both states, determining natural flow availability to aid in regulating water rights and developing methodologies for keep lines of communication open between both states and river irrigators during the irrigation season.

2 - The state line to Diversion needs to be policed to assure that the Belle Fourche Irrigation District receives a higher percentage of the releases from Keyhole. As discussed in the previous question better coordination and communication between the water rights staff from the two states and irrigators from both states should address much of the concern of water taken out of priority. The water lost in transit to evaporation, evapotranspiration and alluvial storage will still be lost or unusable. Since the amount of alluvium adjacent to river between Keyhole and the diversion dam is relatively large, transit losses can be significant particularly during the mid to late summer period. South Dakota's water rights staff will contact the water right holders to verify pumping capability and then make site visits as needed to establish compliance with their water

right limitations. If shutoff orders are warranted, they will be issued. Also if an individual is found to be pumping from the river without a water permit and the use is not covered under the domestic use definition, we will deal with that individual appropriately.

3 - We would like to see South Dakota's DENR progress in the direction that the State of Wyoming is beginning to; such as measuring devices at every diversion point, fines for not ordering the water and monitoring the water disappearances. Except in limited cases the South Dakota Water Management Board has not required measuring devices when issuing water rights. We believe that with the limited number of upstream Belle Fourche River water rights our intent is to work with the existing water right holders and requiring measuring devices is not warranted.

The ongoing drought has brought many of these issues to the forefront. Our intent is to continue to work with Belle Fourche Irrigation District and improve our coordination with the Wyoming State Engineers Office to ensure the water supply is distributed appropriately.

If you have any additional questions, please contact me at phone (605) 773-3352.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark D. Rath', with a stylized, cursive script.

Mark D. Rath
Natural Resources Engineering Specialist
Water Rights Program

Cc: Diane Best, Assistant Attorney General
Jeff Nettleton, Office Manager U.S. Bureau of Reclamation

USO 377-1



United States Department of the Interior

BUREAU OF RECLAMATION

Dakotas Area Office
Rapid City Field Office
515 9th St., Room 101
Rapid City, SD 57701

FEB - 2 2007



IN REPLY REFER TO:

DK-700
PRJ 13.00

RECEIVED

FEB 05 2007

**WATER RIGHTS
PROGRAM**

Mr. Garland Erbele
Chief Engineer
Water Rights Division
South Dakota Department of Environment and Natural Resources
523 E. Capitol
Pierre, South Dakota 57501-3181

Subject: Request for Junior Water Rights Shut Off Order – Belle Fourche Reservoir, Belle Fourche Project, South Dakota

Dear Mr. Erbele:

We request that the State of South Dakota's Department of Environment and Natural Resources, Water Rights Division issue shut off orders to junior water right holders on the Belle Fourche River above Belle Fourche Reservoir. Belle Fourche Reservoir is presently at elevation 2955.3, which is a little over 19 feet down from full (top of conservation or full is at elevation 2975.0). The storage in Belle Fourche Reservoir on January 30, 2007, is about 68,000 acre-feet, which is 124,000 acre-feet from full. If the spring weather continues to be dry, the water right at Belle Fourche will not be satisfied.

If you have questions, please contact Curt Anderson or me at 605-394-9757.

Sincerely,

Jeffrey L. Nettleton
Rapid City Field Office Manager

cc: Ms. Sue Lowry
Administrator
Interstate Streams Division
Wyoming State Engineer's Office
Herschler Building 4E
Cheyenne, WY 82002

Mr. Clint Pitts
Manager
Belle Fourche Irrigation District
P.O. Box 346
Newell, SD 57760

IN CIRCUIT COURT
EIGHTH JUDICIAL CIRCUIT

BELLE FOURCHE IRRIGATION DISTRICT,
A Corporation,
Plaintiff,

Plaintiff,

VS.

R. A. SMILEY,

Defendant,

and

vs.

STATE OF SOUTH DAKOTA and WATER
RESOURCES COMMISSION of the STATE
OF SOUTH DAKOTA,

Intervenors.

* * * * *

The above entitled matter coming on regularly to be heard before the Court in the Courtroom in the Court House at Belle Fourche, South Dakota on the 4th day of November, 1964; the Plaintiff originally appearing by STERLING H. CLARK, Lawyer, of the law firm of CLARK & HILL, Belle Fourche, South Dakota, and WALTER MUELLER, Lawyer of the law firm of OVERPECK, HAMBLIN & MUELLER, Belle Fourche, South Dakota, and STEPHENS & BRANDENBURG, attorneys at law, Belle Fourche, South Dakota, the latter firm replacing former counsel of Plaintiff; the Defendant appearing by ROBERT E. DRISCOLL, Jr., Lawyer of the law firm of KELLAR, KELLAR & DRISCOLL, Lead, South Dakota, and WILLIAM E. ANDERSON, Lawyer of the law firm of SMILEY & ANDERSON, Belle Fourche, South Dakota; and Intervenors appearing by WALTER WEYGINT, Assistant Attorney General of the State of South Dakota, Pierre, South Dakota, witnesses having been sworn and evidence adduced; the Court having considered said evidence together with all the stipulations, files, records, and exhibits in said case, having heard the arguments of counsel, and being fully advised in these premises, makes the following:

FINDINGS OF FACT

The Court finds as a matter of fact:

6147 48 Judgment Recd. p. 95
Nov 25, 1967 Maryella C Arnold

I.

That the above entitled action is a controversy over which this Court has jurisdiction.

II.

That stipulations among the parties litigant state voluminous facts in this case and by reference such stipulations are made a part of these findings.

III.

That Plaintiff has valid water rights in the waters of the Belle Fourche River and its tributaries, Crow Creek and Owl Creek, through contracts with the United States Bureau of Reclamation for irrigation and other beneficial uses in the Belle Fourche Project under (1) appropriative water rights filing made August 5, 1904, pursuant to Chapter 142, Laws of Dakota 1881, and Chapter 105, Session Laws of 1890, and (2) application for permit made on April 25, 1950, and permit issued on May 22, 1950, by the State Engineer of the State of Wyoming for storage of water in Keyhole Reservoir pursuant to Chapter 117, Session Laws of Wyoming, 1943, and lawfully established for use of such stored water for irrigation and other beneficial uses in South Dakota pursuant to the Belle Fourche River Compact (Ch. 64, 58 Stat. 94).

IV.

A.

That the Defendant has no appropriative water rights of records pursuant to statute for irrigation of any of the lands which have come into issue and which are situated upon and adjacent to the Belle Fourche River and owned by the Defendant or the Defendant and his wife, Mary H. Smiley.

B.

That the Defendant did divert water from the Belle Fourche River and use the same for irrigation of lands owned and controlled by the Defendant, at his exclusive option and discretion as to time and amount and irrespective of regulatory orders issued to him by the Intervenor, and that said water would have been diverted and used beneficially by electors of Plaintiff, particularly those electors who irrigate lands in that portion of the Belle Fourche

Irrigation Project known as the "Inlet Canal and Johnson Lateral Lands", who depend entirely upon the flow of the Belle Fourche River or releases from Keyhole Dam of stored water for their irrigation water supply.

C.

The defendant has no riparian rights to use the water of the Belle Fourche River for irrigation purposes, except for domestic use as defined in South Dakota Code 1960 Supplement 61.0102 (4) , because his lands were patented after March 3, 1877.

D.

Defendant has no private ownership of water in the Belle Fourche River as shown by the evidence submitted.

E.

Defendant has failed to establish that he has any vested rights as defined by SDC 1960 Suppl. 61.0102 (7) to use the water of the Belle Fourche River by reason of claim of diversion and use of such water by his predecessors, evidence being too indefinite and vague to establish such rights, which would be prior to the rights of the Plaintiff in this action.

F.

The Defendant has valid vested rights as defined by SDC 1960 Suppl. 61.0102 (7) (a) and 61.0102 (7) (c), because of his diversion and beneficial use for irrigation purposes during the period May 1953 to June 30, 1955, inclusive, and July 1, 1955, to October 31, 1961, inclusive, the latter period being a reasonable time to construct the irrigation works and to put the water to beneficial use as provided by SDC 1960 Suppl. 61.0102 (7) (c), 61.0106 and 61.0113, the priority dates to be as found and determined by the Water Resources Commission which are as follows:

Priority Date:

May 1, 1953, (SDC 1960 Suppl. 61.0102 (7) (a), 61.0109) with a maximum diversion rate of 2.78 cubic feet per second, diverted at a number of locations along the reach of the Belle Fourche River contained within the limits of Defendant's land, and irrigation of 195 acres of his ownership, as described in the Stipulation in this case, during the annual period May to October, inclusive, subject to domestic use (SDC 1960 Suppl. 61.0101 (5) (b), (61.0107) and to prior rights

of the United States and Plaintiff, which latter rights preclude as a practical matter diversion by Defendant except during those periods when water is passing over the Belle Fourche Project Diversion Dam, located across the Belle Fourche River and subject to more specific determinations as to Defendants diversion points and lands irrigated.

G.

That Defendant does not share in the water rights acquired by the United States Bureau of Reclamation under provisions of the laws of the State of Wyoming and the Belle Fourche River Compact through contracts with the United States Bureau of Reclamation covering water service from Keyhole Dam and Reservoir.

CONCLUSIONS OF LAW

The Court concludes as a matter of Law:

I.

The State of South Dakota has authority under Chapter 430, Session Laws of 1955 (SDC 1960 Suppl. 61. 01) to regulate and control the use of public water. The constitutionality of Chapters 430 and 431, Session Laws of 1955, (SDC 1960 Suppl. 61. 01 and 61. 04) has been upheld by the South Dakota Supreme Court in the case of Knight -vs- Grimes (124 NW (2) 708), specifically as these statutes apply to "ground water under the surface whatever the geologic reservoir in which it is standing or moving" and generally as these statutes apply to all of the water supply of the State.

The Court concludes that Chapter 430, Session Laws of 1955, (SDC 1960 Suppl. 61. 01) is constitutional as it applies to the waters flowing in streams. Hence, Defendant has no riparian rights in the flows of the Belle Fourche River, except for domestic use and except as determined by Intervenor, the Water Resources Commission, under the law cited.

II.

The Court specifically finds and adjudges that the Defendant, R. A. Smiley, has water rights as found and determined by the South Dakota Water Resources Commission and subject to the following limitation, to-wit:

Priority date: May 1, 1953

Amount of water: Not to exceed diversion rate of 2.78 cubic feet per second.

Purpose: Irrigation

Periods of Use: May to October, inclusive, each year.

Place of Use: On a portion of the lands owned by Defendant, not exceeding 195 acres irrigated.

Conditions: Subject to domestic use and prior water rights requirements, including those of Plaintiff, which as a practical matter limits diversion and use by Plaintiff, to those periods of time when water is passing over Plaintiff's diversion dam, subject to proper record being made in the office of the Water Resources Commission as to specific location of Plaintiff's diversion points along the Belle Fourche River,

Subject to proper record being made in the office of the Water Resources Commission as to the specific tracts of irrigated land to which the water is appurtenant, and

Subject to continued beneficial use on said irrigated land by Plaintiff.

III.

That the use of water for irrigation purposes by Daniel L. Evans and others dating back to approximately 1900, established no right to the use of water by appropriation thereof, said persons having failed to comply with the laws of the State of South Dakota for acquiring water through a process of appropriation thereof, and the evidence as to use of water by prior owners is too uncertain to prove prior appropriations for use sufficient to establish any right to use of water upon said property by R. A. Smiley.

IV.

Plaintiff, in its first cause of action seeks a permanent injunction against Defendant's diversion and use of waters of the Belle Fourche River above the diversion point of Plaintiff. The Court concludes as a matter of law that a permanent injunction must be granted in favor of Plaintiff, prohibiting Defendant from diverting waters of the Belle Fourche River, except as authorized by the State Water Resources Commission and in the manner and within the limits and conditions set out in Conclusion Number II above.

V.

The Defendant has no right to use of water impounded in the Keyhole Dam and that Defendant has no right to divert any water which is being conveyed from the Keyhole Dam to the canal of the Belle Fourche Irrigation District and should be enjoined from diverting or using any of said water as the same may pass across property owned by Defendant.

VI.

The Court concludes, as a matter of law, that the Plaintiff's water rights are as set forth below and subject to the following conditions, to-wit:

1. 1904 WATER RIGHT

Priority date: August 5, 1904,

Amount of Water: Not to exceed diversion rate of 1440 cubic feet per second, including diversions from Crow Creek, and collection of all unappropriated waters of Owl Creek in and at the Belle Fourche Dam and Reservoir,

Purpose: Existing irrigation, municipal and domestic uses and not to exceed 185,170 acre feet of stored water annually in Belle Fourche Reservoir for later uses, for existing irrigation, municipal and domestic purposes,

Periods of Use: May to November, inclusive, of each year for irrigation purposes; entire year for other purposes,

Place of Use: Within the area served by facilities of the Belle Fourche Project, but as to irrigation use, not to exceed use on the 57,183 acres of land specifically entitled to water service through the project works,

Conditions: Subject to domestic use and prior water rights requirements, subject to continued beneficial use.

2. KEYHOLE WATER RIGHT

Priority date: April 25, 1950,

Amount of Water: Not to exceed 130,000 acre feet of stored water for subsequent use or such portion thereof, as may be covered in contracts with the United States Bureau of Reclamation,

Purpose: Irrigation, municipal, domestic, stockwater, mining and industrial uses, or any of them,

Periods of Use: May to November, inclusive, for irrigation; entire year for other purposes,

Place of Use: Within the area served by facilities of the Belle Fourche Project, but as to irrigation use, not to exceed use on the 57,183 acres of land specifically entitled to water service through the project works,

Conditions: Subject to domestic use and prior water rights, requirements, subject to continued beneficial use.

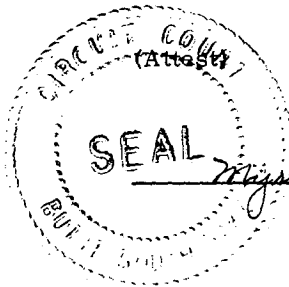
VII.

That Judgment should issue in favor of the Plaintiff and against the Defendant as to both causes of action, Number 1 and Number 2.

Dated this 28th day of November, 1967.

BY THE COURT:

Clarence P. Cooper
CLARENCE P. COOPER, JUDGE



Myrtle C. Arnold
Clerk of Courts

STATE OF SOUTH DAKOTA, COUNTY OF BUTTE, SS
CASE 6143 FILED 48 RECORDED Judgment Rec'd p. 101
FILED Nov 28, 1967 CLERK OF COURT Myrtle C. Arnold

#10574-r & rem-EDR

Supreme
Court
1970
CASE

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

* * * *

BELLE FOURCHE IRRIGATION DISTRICT,
a Corporation,

Plaintiff and Respondent,

and

STATE OF SOUTH DAKOTA and WATER
RESOURCES COMMISSION OF THE STATE
OF SOUTH DAKOTA,

Interveners and Respondents,

vs.

R. A. SMILEY,

Defendant and Appellant.

* * * *

APPEAL FROM THE CIRCUIT COURT OF

BUTTE COUNTY, SOUTH DAKOTA

HON. CLARENCE P. COOPER, JUDGE

Opinion Filed 'APR - 7 1970'

STATE OF SOUTH DAKOTA, COUNTY OF BUTTE) ss

CASE 6147 FILE 47 RECORDED

FILED May 5, 1970 CLERK OF COURT Myrtle C. Arnold

#10574

Kellar & Kellar & Driscoll
Lead, South Dakota
Smiley & Anderson
Belle Fourche, South Dakota

Attorneys for defendant
and appellant.

Gordon Mydland, Attorney General
Pierre, South Dakota

Attorney for interveners
and respondents.

Stephens & Brandenburg
Belle Fourche, South Dakota

Attorneys for plaintiff
and respondent.

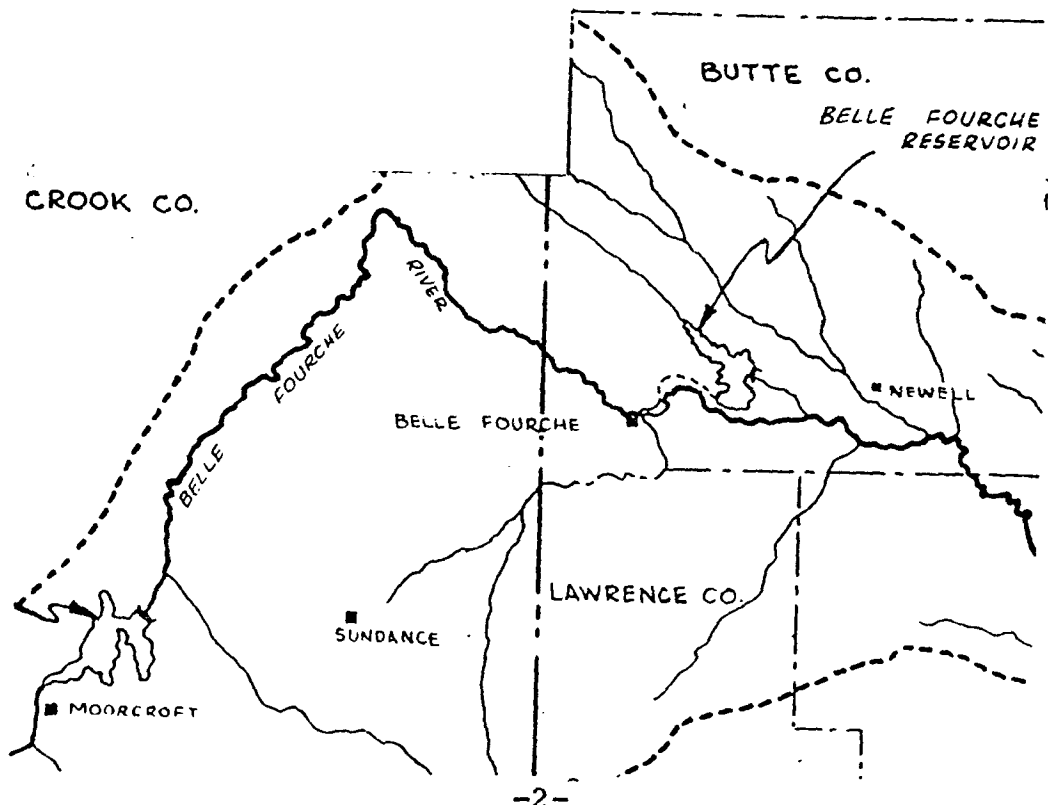
* * * *

ROBERTS, Presiding Judge.

This action was brought by plaintiff Belle Fourche Irrigation District against defendant R. A. Smiley to enjoin him from interfering with the rights of the plaintiff in the waters of the Belle Fourche River and from diverting for irrigation waters impounded by the Keyhole Dam in Crook County, Wyoming, and released by the Bureau of Reclamation through the channel of the Belle Fourche River for the use of the plaintiff. The State of South Dakota and the water resources commission, with leave of court, intervened and filed a complaint in intervention alleging that the commission is authorized by law to regulate and control the development, conservation and allotment of the waters of the state according to principles of beneficial use and priority of appropriation and that defendant without right of appropriation diverts waters from the Belle Fourche River for the irrigation of lands owned by him which are upstream from plaintiff's diversion point and thereby unlawfully interferes with the irrigation of lands in plaintiff district and with interveners in administering

the water laws of the state. Following trial, the court made findings of fact and conclusions of law and entered judgment enjoining defendant from diverting waters of the Belle Fourche River for the irrigation of land owned and controlled by him and his wife, except that the defendant has water rights with priority date of May 1, 1953, which entitle him to divert 2.78 feet per second of water from such river for the irrigation of a portion of his land not to exceed 195 acres during the period of May 1 to October 31, each year. From the judgment, defendant appeals.

The Belle Fourche River, a nonnavigable stream, whose headwaters are in the State of Wyoming, flows in this state southeasterly across Butte County to its junction with the Cheyenne River in Meade County. For an understanding of the locale, a photostatic copy of a sketch map of a part of the Belle Fourche River basin is here inserted.



The pertinent stipulated facts are summarized as follows:

The Belle Fourche Project is a federal irrigation works authorized by the Reclamation Act of June 17, 1902 (43 U.S.C.A. § 371 et seq.). The Secretary of Interior pursuant to the provisions of that act entered into a contract on October 25, 1905, with the Belle Fourche Valley Water Association, a corporation, for supplying water for the benefit of shareholders and for the guaranty of payment of construction costs and operation and maintenance charges apportioned to shareholders. The Belle Fourche Irrigation District was thereafter formed under the laws of this state providing for the organization and management of irrigation districts. Plaintiff entered into a contract with the Secretary of Interior, dated November 26, 1923, providing that cooperation with the United States thereafter be had through the district and that payments of construction costs and operation and maintenance charges be made through the district utilizing its powers of assessment and levy conferred by state law. Effective January 1, 1949, there was a transfer of the maintenance and operation of the irrigation works to plaintiff district. The operation of the project has continued under the 1949 agreement and water for domestic and municipal uses and the irrigation of lands of water users within the district is presently provided by plaintiff.

Plaintiff obtains most of its water supply from the Belle Fourche River. A concrete dam, situate one and one half miles down stream from the City of Belle Fourche, has a diversion capacity of

#10574

1440 cubic feet of water per second through an inlet canal, which is six and one half miles long, either into the Belle Fourche reservoir or into a canal known as the Johnson Lateral. Ormond Dam, which is situate about nine miles east and three miles north of Belle Fourche, is an earthen structure extending across Owl Creek. Waters of the Belle Fourche Reservoir are impounded behind this dam and the area irrigated by water so stored lies easterly of the reservoir.

The Keyhole Dam across the Belle Fourche River in Crook County, Wyoming, was authorized to be constructed under federal reclamation laws and was completed in 1952. A contract was entered into between the Federal Bureau of Reclamation and plaintiff district for the release of water stored in such reservoir for reasonable and beneficial use in plaintiff district.

The lands owned by appellant across which the Belle Fourche River flows are situate about four miles west of the City of Belle Fourche. The lands were purchased by appellant and conveyed to him in the years 1940, 1943 and 1951. All the lands in question were settled upon and patents issued to predecessors in interest subsequent to the enactment by Congress of the Desert Land Act of March 3, 1977 (43 U.S.C.A. § 321 et seq.).

The appellant since purchase of the land here involved has used varied amounts of water from the Belle Fourche River for domestic and livestock requirements and since 1953 has pumped water from the river, including waters released from the Keyhole Reservoir, for

irrigation of his lands. The waters diverted and used by the defendant would have been beneficially used by the plaintiff district during those times when the flow of water at the diversion dam did not exceed 1440 cubic feet of water per second except when the Belle Fourche Reservoir was full or there existed an emergent situation in the irrigation works. The appellant diverted water from the river at times when the flow at the diversion dam was below its capacity and the reservoir was not full and there was no emergency of the nature indicated.

The plaintiff district at all times herein material had ample storage facilities in the reservoir behind Ormond Dam to store and use for beneficial purposes all of the waters of the Belle Fourche River to which it claims a right. The plaintiff district and its water users have been and will continue to be deprived by the acts of the defendant of amounts of water to which they would otherwise have been or will be entitled to use for the annual wetting, irrigation and fertilization of their irrigable land.

It was further stipulated that A. M. Blackford, if called as a witness for the plaintiff, would testify as follows: "I came to the Smiley place in the Spring of 1946. I was there until the Fall of 1955. I was a partner in the livestock end of the farming operation and crops raised and on part of the equipment. However, when I came on the place, the equipment and machinery which was there belonged to Mr. Smiley. There was no pump or irrigation equipment or

#10574

irrigating being done at that time, namely, in 1946. There was an old ditch which came out of a reservoir across the road South and West of the buildings one mile. That ditch terminated in a field just North of and adjacent to the farm buildings. It did not appear to have been used for many years. It was washed out and filled up and part of it was obliterated. This field I would estimate was about 30 acres. I believe it was in 1952 when Mr. Smiley said we should get some irrigating going and he started looking into and investigating rights and so forth. In the Spring of 1953 he told me it was okay to go ahead and that he figured he had the right to pump water out of the Belle Fourche River. So we bought a pump, being either a 6 inch or 8 inch pump, I forget which, and about 800 feet of aluminum piping, fitted with about 35 or 40 sprinkler heads".

Appellant's witness, James N. Eaton, testified that an irrigation pump was hauled to the property possibly in 1902 and for a number of years he observed irrigation being carried on by prior owners. Appellant testified that he observed at the time of purchase ditches on a portion of the land and an engine and a pump near the river.

This court in Cook v. Evans, 45 S.D. 31, 185 N.W. 262, and Haaser v. Englebrecht, 45 S.D. 143, 186 N.W. 572, decided in 1924, held that the Desert Land Act of 1877 effected a severance of all waters upon the public domain and that a patent issued thereafter under the laws of the United States carried with it no common law

right to the waters flowing over the land conveyed. The Cook and Haaser cases were cited by the Supreme Court in California-Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142, 55 S.Ct. 725, 79 L.Ed. 1356 (1935). It was there established that the United States as owner of the public domain has the power to dispose of land and water together or separately and that the Act of 1877 did not pass title to appurtenant water rights. The court stated, however, that it did not intend to suggest that water rights shall not be determined by the laws of the respective states and territories. It said: "What we hold is that following the act of 1877, if not before, all non-navigable waters then a part of the public domain became public, subject to the plenary control of the designated states, in those states created out of the territories named, with the right in each to determine for itself to what extent the rule of appropriation or the common-law rule in respect of riparian rights should obtain. * * * The Deseret Land Act does not bind or purport to bind the states to any policy. It simply recognizes and gives sanction, in so far as the United States and its future grantees are concerned, to the state and local doctrine of appropriation, and seeks to remove what otherwise might be an impediment to its full and successful operation."

It does not appear that appellant or any of his predecessors in interest ever sought under the laws of this state appropriation rights in the waters of the Belle Fourche River. Appellant contends

that as a riparian owner he is entitled to the natural flow of the river across his land and the rights of a riparian proprietor recognized by territorial and state statutes and decisions of this court.

The following amendment was added to the Constitution of this state, § 7, Art. XXI, by a proposal submitted by Chap. 229, Laws 1915, and adopted in 1916:

"The irrigation of agricultural lands is hereby declared to be a public purpose and the Legislature may provide for the organization of irrigation districts for the irrigation of land, and may vest the corporate authorities thereof and the corporate authorities of counties, townships and municipalities with the power to construct, operate and maintain irrigation dams, reservoirs, canals, flumes, ditches and laterals, and to keep in repair all irrigation dams, reservoirs, canals, flumes, ditches and laterals heretofore constructed, under the laws of the state, by special assessments upon the property benefited thereby, according to the benefits received."

The irrigation of agricultural lands is thus declared to be a public purpose and the legislature is expressly authorized to provide for the organization of irrigation districts. The Constitution contains no specific provision relating to the dedication or control of either surface or underground waters.

Section 255, Revised Civil Code 1877 (originated as § 256, Civil Code, Laws 1866) provided:

"The owner of the land owns water standing thereon, or flowing over or under its surface, but not forming a definite stream. Water running in a definite stream, formed by nature over or under the surface, may be used by him as long as it remains there; but he may not prevent the natural flow of the stream, or of the natural spring from which it commences its definite course, nor pursue nor pollute the same."

In Redwater Land & Canal Co. v. Reed, 26 S.D. 466, 128 N.W. 702, it is stated that this section was the same as section 256 of the New York Civil Code as proposed by the Code Commission of that state and is declaratory of the common law doctrine applicable to the rights of riparian owners. The section as combined with other statutes and revised for clarity was included in the South Dakota Code of 1939, § 61.0101.

Section 1, Chap. 142, Laws 1881(C.L. 1877, § 2029; Pol. Code 1903, § 2563) provided:

"That any person or persons, corporation or company, who may have or hold a title or possessory right or title to any mineral or agricultural lands within the limits of this Territory, shall be entitled to the usual enjoyment of the waters of the streams or creeks in said Territory for mining, milling, agricultural or domestic purposes; Provided: That the right to such use shall not interfere with any prior right or claim to such waters when the law has been complied with in doing the necessary work."

This court held that the Act of 1881 did not impliedly repeal the provisions of section 255, supra, and that a riparian owner had a right to use waters of a stream for irrigation not previously appropriated. Lone Tree Ditch Co. v. Cyclone Ditch Co., 15 S.D. 519, 91 N.W. 352, modified and remanded with directions on rehearing, 26 S.D. 307, 128 N.W. 596; see also Sturr v. Beck, 6 Dakota Rep. 71, 50 N.W. 486, affirmed 133 U.S. 541, 33 L.Ed. 761.

A statute was enacted in 1907 prescribing regulations for the appropriation, distribution and use of water for irrigation and other beneficial uses. Chap. 180, Laws 1907. Section 1 of the act

provided: "All the waters within the limits of the state from all sources of water supply belong to the public and, except as to navigable waters, are subject to appropriation for beneficial use." Section 19 of the act required a permit from the state engineer to authorize appropriation of waters to a beneficial use. These and other parts of the statute were declared unconstitutional to the extent that they infringed vested rights to use waters for domestic and irrigation purposes. *St. Germain Irrigating Ditch Co. v. Hawthorne Ditch Co.*, 32 S.D. 260, 143 N.W. 124. This court in that case said: "The right of a riparian owner to make a reasonable beneficial use of the waters of a flowing stream for domestic and irrigation purposes is a vested property right and is entitled to protection to the same extent as property rights generally." The act there considered contained no provisions comparable to existing statutory provisions defining, determining and protecting vested rights as we will hereinafter point out.

This court in *Platt v. City of Rapid City*, 67 S.D. 245, 291 N.W. 600, referred to many of the earlier decisions of this court pertaining to water rights and observed that under the territorial statutes, above quoted, water rights in the streams of the state could be acquired either by settlement or appropriation. This court concluded that it had erred in its holding in *Cook v. Evans*, *supra*, to the effect that the Desert Land Act prevented vesting of riparian rights as to lands settled upon or entered after March 3, 1877. *California-Oregon Power Co. v. Beaver Portland Cement Co.*, *supra*, held as

indicated that it is the right of each state to determine for itself to what extent the rule of riparian rights should obtain. Since predecessors in interest had under the laws of this state acquired riparian rights through settlements, it was the holding of this court that the vested rights of plaintiff Platt to use the waters of Lime Creek to irrigate her lands could not be impaired by defendant city. It should be noted that plaintiff in that case made beneficial use of the waters of the stream and riparian rights to unused waters were not involved.

The legislature enacted Chapter 430, Laws 1955, recognizing the right of riparian owners and other appropriators to continue use of water actually applied to beneficial use and amending and repealing prior statutory provisions. Using section numbers in the South Dakota Compiled Laws 1967, we refer to and quote pertinent provisions:

"46-1-1. Use of water of state--Paramount interest of people--Conversion to public use.--It is hereby declared that the people of the state have a paramount interest in the use of all the water of the state and that the state shall determine what water of the state, surface and underground, can be converted to public use or controlled for public protection."

"46-1-2. Development of water resources of state for public benefit.--It is hereby declared that the protection of the public interest in the development of the water resources of the state is of vital concern to the people of the state and that the state shall determine in what way the water of the state, both surface and

underground, should be developed for the greatest public benefit."

"46-1-3. Water as property of people--Appropriation of right to use.--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."

"46-1-4. Beneficial use of water resources--Prevention of waste--Right to water from natural stream or watercourse.--It is hereby declared that because of conditions prevailing in this state the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable * * *."

"46-1-6. Definition of terms.--Terms used in this title, unless the context otherwise plainly requires, shall mean: * * * (6) 'Beneficial use,' any use of water that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public in the best utilization of water supplies; * * *."

"46-1-8. Beneficial use--Measure and limit of right to use of waters.--Beneficial use is the basis, the measure and the limit of the right to the use of waters described in this title."

"46-1-9. Vested rights defined.--The term 'vested rights' used in this title, unless the context otherwise requires, shall mean:

- (1) The right of a riparian owner to continue the use of water

having actually been applied to any beneficial use on March 2, 1955 or within three years immediately prior thereto to the extent of the existing beneficial use made thereof;

- (2) Use for domestic purposes as that term is defined in § 46-1-6;
- (3) The right to take and use water for beneficial purposes where a riparian owner was engaged in the construction of works for the actual application of water to a beneficial use on March 2, 1955, provided such works shall be completed and water is actually applied for such use within a reasonable time thereafter;
- (4) Rights granted before July 1, 1955 by court decree;
- (5) Uses of water under diversions and applications of water prior to the passage of the 1907 water law and not subsequently abandoned or forfeited."

"46-5-5. Waters flowing in definite stream subject to appropriation--Beneficial use--Excessive appropriation not allowed. Subject to vested rights and prior appropriations, all waters flowing in definite streams of the state may be appropriated as herein provided. Such appropriation shall not constitute absolute ownership of such water, but shall remain subject to the principle of beneficial use. Appropriation in excess of the reasonable needs of the appropriators shall not be allowed."

As previously indicated riparian rights at common law exist independently of use or appropriation, and a riparian owner may

indefinitely retain riparian rights in a stream though he takes no water therefrom for irrigation of his abutting land. The right passes with title to the land and is not gained by use or lost by disuse. *St. Germain Irrigating Ditch Co. v. Hawthorne Ditch Co.*, supra. The declared purpose of Chapter 430, Laws 1955, is the maximum utilization of the water resources of the state. The first section of that act expressly repealed SDC 61.0101 containing the provisions originally enacted in 1866 and above quoted which were declaratory of the common law rights of riparian owners and thus modifying the doctrine of common law riparian rights and abrogating many decisions made thereunder the legislature has substituted the doctrine of prior appropriation and application to beneficial use of unused and unappropriated waters.

It is clear that the commission and the water engineer in regulating and controlling irrigation perform ministerial duties only and must give full recognition and effect to existing vested rights as defined by the statute. From its decisions there is a right of appeal and review to the circuit court.

In *Knight v. Grimes*, 80 S.D. 517, 127 N.W.2d 708, this court held adversely to the claim that Chapter 431, Laws 1955, specifically providing that beneficial use shall be the basis and limit to the use of underground water, is invalid. The statute there considered also recognizes and affords protection to vested rights. Plaintiff therein was at the time of passage of the statute applying underground waters to the irrigation of a four acre tract. That was a right that had

under the statute become vested by reason of application to a beneficial use. This court held that the state could apply the doctrine of prior appropriation and application to beneficial use to unappropriated underground waters so long as protection was afforded to vested rights which a landowner had initiated and acquired at the time of passage of the statute. Decision in the Knight case concerned with underground waters is equally applicable to surface water. *Williams v. City of Wichita*, 190 Kan. 317, 374 P.2d 578; see also *Baeth v. Hoisveen*, N.D., 157 N.W.2d 728; *Hutchins, Riparian-Appropriation Conflicts in the Upper Midwest*, 38 N. Dak. L.Rev. 278 (1962); *Munro, South Dakota and the Water Impasse*, 11 S.D. L.Rev. 255 (1963).

The trial court found in substance that defendant has no appropriation rights of record for irrigation of lands owned by him and adjacent to the Belle Fourche River; that defendant diverts waters from the Belle Fourche River and uses the same for irrigation of his land "at his exclusive option and discretion as to time and amount and irrespective of regulatory orders issued to him by the Intervenor"; that such waters would have been diverted and used beneficially by water users in plaintiff district, particularly by users who irrigate lands in that portion of the irrigation project known as the "Inlet Canal and Johnson Lateral Lands", who depend entirely upon the flow of the Belle Fourche River or releases from the Keyhole Dam of stored water for their water supply and that "defendant does not share in the water rights acquired by the United States Bureau of Reclamation

under provisions of the laws of the State of Wyoming and the Belle Fourche River Compact (SDCL 1967, 46-30) through contracts with the United States Bureau of Reclamation covering water service from Keyhole Dam and Reservoir." The court further found that defendant has vested rights as defined by the provisions of SDCL 1967, Title 46, by reason of diversion and beneficial use for irrigation purposes during the period of May 1953 to June 30, 1955, inclusive, and that July 1, 1955 to October 31, 1961, inclusive, was a reasonable period of time within which to complete construction of works for the application of water to beneficial use. The evidence, as we view it, sustains the foregoing findings.

Appellant contends that the findings and judgment limiting the quantity of water that may be diverted by him during a specified period each year and to be used upon a portion of his land, not to exceed 195 acres, are not sustained by the evidence.

Water flowing in definite streams of the state may be appropriated through proper administrative procedure, subject to vested rights and prior appropriations. Section 46-5-5, supra. It is thus a prerequisite to the determination of the availability of unappropriated waters in approving applications for water right permits to recognize existing water rights. It is the contention of interveners that in the allotment of unappropriated waters the commission must necessarily make determinations of existing water rights including extent of vested rights. While rights may be regulated and supervised by administrative process for the protection of appropriators of water, we do

not think that such process can operate to divest rights that have already vested.

The trial court in a memorandum opinion states that the water resources commission has found "a vested right for irrigation dating back to May 1, 1953, based upon beneficial use by defendant, and set forth on pages 8 and 9 of Intervenor's brief, which in the view of this Court is fully supported by the evidence." The decision of the commission purporting to determine priorities and the quantity of water that may be diverted by appellant is not a part of the record and the basis of such action and adherence to statutory provisions do not appear. We are impelled to conclude that the findings in question are not sustained by the record.

The circuit court has jurisdiction to hear and determine questions necessary for the adjudication of water rights. SDCL 46-10. The statute is designed to afford a litigant in an action involving water rights adequate and complete relief.

We have previously held that an action may be remanded for determination of a single issue. *Petersen v. Kemper*, 70 S.D. 427, 18 N.W.2d 294; *J. H. Larson Electrical Co. v. Vander Vorste*, 81 S.D. 296, 134 N.W.2d 500. We think that the ends of justice will be better served by limiting the issue upon remand to an adjudication of the extent of the existing rights of appellant to the use of waters of the Belle Fourche River.

The judgment is reversed and the cause remanded for

#10574

introduction of evidence and further proceedings consistent with this opinion and for judgment accordingly. No costs to be taxed.

All the Judges concur.

t the initial reorganization of the executive branch contemplated by Section 8, Article IV of the Constitution is a matter of legislative rather than executive duty and authority, any answer by me to the questions propounded in your letter of February 8, 1973, would be academic. Accordingly, I must respectfully decline to answer those questions.

Respectfully submitted this 12th day of February, 1973.

ROGER L. WOLLMAN Associate Justice

87 S.D. 151, 204 N.W.2d 105 BELLE FOURCHE IRRIGATION DIST. V. SMILEY (S. Ct. 1973)

BELLE FOURCHE IRRIGATION DIST., Respondent

vs.

SMILEY, Appellant

No. 11099

SUPREME COURT OF SOUTH DAKOTA

87 S.D. 151, 204 N.W.2d 105

February 07, 1973, Opinion filed

Appeal from Circuit Court of Butte County; Hon. Clarence P. Cooper, Judge.

COUNSEL

Kellar, Kellar & Driscoll, Lead, R. A. Smiley, Belle Fourche, for defendant and appellant.
Stephens & Brandenburg, Belle Fourche for plaintiff and respondent.
William J. Srstka, Jr., Sp. Atty. Gen., Gordon Mydland, Atty. Gen., Pierre, on the brief, for interveners.

JUDGES

HANSON wrote the opinion.
All the Justices concur.

AUTHOR: HANSON

OPINION

{*153} HANSON, Justice.

This action was commenced in 1961 by the Belle Fourche Irrigation District to restrain defendant, R. A. Smiley, from diverting water from the Belle Fourche River for irrigation purposes. The State and the Water Resources Commission of the State were allowed to intervene and file a Complaint in Intervention. Following trial, the court entered findings of fact, conclusions of law and a judgment enjoining defendant from diverting waters of the Belle Fourche River except for limited irrigation purposes with a priority date of May 1, 1953. On appeal by defendant this court rendered its opinion reversing and remanding the action for the determination of a single issue, i.e., "to an adjudication of the extent of the existing rights of appellant to the use of waters of the Belle Fourche River." See Belle Fourche Irrigation Dist. v. Smiley, 84 S.D. 701, 176 N.W.2d 239. The limited remand was necessary because there was no evidence to sustain the findings of the trial court relative to priorities and quantity of water defendant could lawfully divert. Our prior opinion is referred to for a statement of the ultimate facts involved.

On remand, the parties entered into a supplemental stipulation of facts to cure the deficiency in the evidence as follows:

(1) The defendant, R. A. Smiley, has 207.8 described acres of land, and the water rights appurtenant are the subject of this action.

(2) That at all times pertinent to the subject matter of this action, and especially as of May 1, 1953, the defendant, { *154 } R. A. Smiley, had a pump that had a maximum capacity of 1200 gallons per minute, which converts to approximately 2.67 cubic feet per second.

(3) That at all times pertinent to this action, and especially as of May 1, 1953, the defendant was irrigating his property, shown by and limited to the land described in paragraph (1) above, at the rate of 1200 gallons per minute, which converted to approximately 2.67 cubic feet per second.

Based upon such additional facts the trial court entered its supplemental findings of fact, conclusions of law, and judgment enjoining defendant from diverting waters of the Belle Fourche River for the irrigation of real property owned by him, except defendant was determined to have a vested water right with a priority date of May 1, 1953, allowing him the right to divert not to exceed 1200 gallons of water per minute which converts to 2.67 cubic feet of water per second from the Belle Fourche River for irrigation purposes during the period May 1st to October 31st inclusive, each year, on not to exceed 207.8 acres of certain described property owned by defendant. The judgment further provided defendant's right to divert water was subject to domestic use of the public and to the prior appropriative rights of plaintiff.

Defendant has appealed from the Supplemental Judgment contending the trial court erroneously granted him a limited appropriative water right whereas he has a vested riparian right to use and divert water from the Belle Fourche River for domestic and irrigation purposes by virtue of his ownership of land contiguous to the river. This riparian right, defendant asserts, became an inseparable incident of his land when it was settled; use did not create it and disuse cannot destroy it; and to deny such right deprives him of property without due process of law and without just compensation.

The same contentions were presented and considered in the prior appeal of this action. All were determined adversely to defendant. No useful purpose would be served in reviewing and restating those settled issues. See Belle Fourche Irrigation District { *155 } v. Smiley, supra, in which the conclusion of the Court is distilled in the following portion of the opinion:

"In Knight v. Grimes, 80 S.D. 517, 127 N.W.2d 708, this court held adversely to the claim that Chapter 431, Laws 1955, specifically providing that beneficial use shall be the basis and limit to the use of underground water, is invalid. The statute there considered also recognizes and affords protection to vested rights. Plaintiff therein was at the time of passage of the statute applying underground waters to the irrigation of a four acre tract. That was a right that had under the statute become vested by reason of application to a beneficial use. This court held that the state could apply the doctrine of prior appropriation and application to beneficial use to unappropriated underground waters so long as protection was afforded to vested rights which a landowner had initiated and acquired at the time of passage of the statute. Decision in the Knight case concerned with underground waters is equally applicable to surface water."

Our decision again upheld and gave effect to the comprehensive water law enacted in 1955 (Chap. 430, Laws 1955, now SDCL 46-1-1 et seq.), which declares "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." SDCL 46-1-3. Following the trend of several other western states the act, in effect, limits the riparian doctrine in this state to accrued rights thereunder. By nonrecognition it also prevents the accrual of unused riparian rights which have not become vested by actual appropriation to a beneficial use prior to the passage of the act. Therefore, the mere ownership of land contiguous to a stream no longer carries with it a vested right to divert water from a stream for irrigation. Appropriation and application to a beneficial use is now the basis, measure, and limit of the use of all waters in the state, SDCL 46-1-8. Accordingly, as a riparian claimant defendant's vested rights consist of those defined by SDCL 46-1-9(1) as follows:

{*156} "The right of a riparian owner to continue the use of water having actually been applied to any beneficial use on March 2, 1955 or within three years immediately prior thereto to the extent of the existing beneficial use made thereof".

On remand, the trial court correctly determined the extent of defendant's vested riparian right to use water from the Belle Fourche River for irrigation purposes in accordance with the above provision and granted him the right to continue using such waters for that purpose. In addition, as a riparian owner, defendant has a vested right to take and use water from the Belle Fourche River for domestic use which includes water for drinking, washing, sanitary, culinary purposes, and other ordinary household purposes; irrigation of a family garden, trees, shrubbery or orchard not greater in area than one-half acre; and stock watering. SDCL 46-1-9(2). Such use "takes precedence over all appropriative rights", SDCL 46-1-5(1).

Affirmed.

All the Justices concur.

Affirmed.

Water Rights Program - DENR

File Documentation

File No. 0376-1 & 0377-1

County: Butte

Name of Person: Belle Fourche Irrigation District

Address: Newell SD

Date: 8/1/2000

RE: USBOR Water Right Status

Comments:

Garland Erbele and Mark Rath from Water Rights, Diane Best from the Attorney General's Office and Curt Anderson and Gary Velder from the US Bureau of Reclamation met with the Board of Directors for the Belle Fourche Irrigation District to discuss updating water rights for the irrigation project. The Bureau of Reclamation holds a water right for the project dating back to 1904 for the irrigation of 57,183 acres, a diversion rate of 1440 cubic feet per second and storage of 185,170 acre-feet. Methods for updating this water right to current irrigation levels were discussed. It was explained to the Board that Reclamation holds the water rights for the project and there are three methods to update the water rights. First would involve a basin wide adjudication, which at this time, is not feasible. Second would involve Reclamation filing a vested right claim for the project. It was explained this method would be time consuming and could potentially open the issue up to outside opposition. Third would involve accepting the 1967 court adjudication from the Smiley Case then reviewing the past 33 years of information and updating the files. If problems exist between the 1967 adjudication and current levels of irrigation, a new permit(s) may need to be applied for. Garland Erbele told the Board that Reclamation and DENR have agreed the third method is the preferred alternative and that we would like a resolution from the District supporting this decision.



Mark D Rath
Natural Resources Engineer

RESOLUTION NO. 0002

Be it resolved that the Belle Fourche Irrigation Board of Directors moves to support the 1967 court decision for water based on 57,183 acres at 300 cfs.

Dated, at Newell, Butte County, South Dakota, this 5th day of September, 2000.

By order of the Board of Directors
Belle Fourche Irrigation District

Gary Brunner, President Gary Brunner

Darrel Cox Darrel Cox

Laurie Barnaud _____

John Heisler John Heisler

Robert Ruff Robert Ruff

Harlan Palo Harlan Palo

Del Raisanen _____

ATTEST:

Brenda Eichler
Brenda Eichler, Secretary





United States Department of the Interior

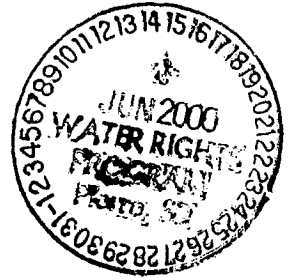
BUREAU OF RECLAMATION

Great Plains Region

P.O. Box 36900

Billings, Montana 59107-6900

IN REPLY REFER TO:
GP-2500



JUN 12 2000

Mr. Garland Erbele
Chief Engineer
South Dakota Department of Environment
and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

Subject: Belle Fourche Project Water Rights

Dear Mr. Erbele:

This is in regard to the water rights for our Belle Fourche Project. These water rights were adjudicated by the South Dakota Eighth Judicial Circuit Court in 1967, and confirmed by the State Supreme Court in 1970. The Supreme Court also concluded that the Circuit Court has jurisdiction to hear and determine questions necessary for adjudication of water rights in South Dakota (SDCL 46-10). This adjudication is contained in Belle Fourche Irrigation District v. R.A. Smiley, dated November 1, 1967. The Circuit Court determined that the Belle Fourche Irrigation District's (Plaintiff) rights were derived through contracts with the United States Bureau of Reclamation (Reclamation). Reclamation appropriated these rights by filings made August 5, 1904, pursuant to Chapter 142, Laws of Dakota 1881, and Chapter 105, Session Laws of 1890.

In its Conclusion of Law the Circuit Court stated:

"The Court concludes, as a matter of law, that the Plaintiff's water rights are as set forth below and subject to the following conditions, to-wit:

1. 1904 WATER RIGHT

Priority date: August 5, 1904,

Amount of Water: Not to exceed diversion rate of 1440 cubic feet per second, including diversions from Crow Creek, and collection of all unappropriated waters of Owl Creek in and at the Belle Fourche Dam and Reservoir.

Purpose: Existing irrigation, municipal and domestic uses and not to exceed 185,170 acre feet of stored water annually in Belle Fourche Reservoir for later uses, for existing irrigation, municipal and domestic purposes.

Periods of Use: May to November, inclusive, of each year for irrigation purposes; entire year for other purposes.

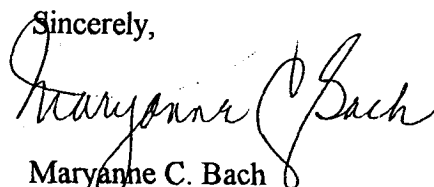
Place of Use: Within the area served by facilities of the Belle Fourche Project, but as to irrigation use, not to exceed use on the 57,183 acres of land specifically entitled to water service through the Project works.

Conditions: Subject to domestic use and prior water rights requirements, subject to continued beneficial use."

We concur with the findings of the Circuit Court and support their decision. We believe that the above is an accurate description of the water rights held in South Dakota by the United States Bureau of Reclamation for the Belle Fourche Project. We also believe this Court adjudication makes it unnecessary to review these rights under the ongoing water right claims validation process. We would, however, be willing to provide data on water use, place of use, and the diversion and storage facilities to assist in updating the water rights records for the Belle Fourche Project.

We hope this clarifies our position concerning the Belle Fourche Project water rights. If you have any questions, please contact Gordon Aycock at (406) 247-7756.

Sincerely,



Maryanne C. Bach
Regional Director

cc: Randy Oliver
Belle Fourche Irrigation District
P.O. Box 225
Newell, SD 57760