

Considered: _____

WATER PERMIT NO. 1881-2

MAP No. 1881-2

Name of Applicant Mortenson Family Land Ltd Ptensp

Post Office Address Hayes, SD 57537

Amount of Water Claimed 17.50 acre feet annually Total Acres _____

Source of Water Supply Foster Creek

Water to be used for DOM REC County Stanley

About _____ miles _____ of _____

PROOF OF PUBLICATION: Received Aug. 27, 1984 Not Received _____

APPLICATION: Approved 9-26-84 Subject to _____

F.F. & C.L. Adopted _____ Not Approved _____ Deferred _____

PRIORITY 7/2/84 Date Received July 2, 1984 Fee 150.00 Remarks also for possible recharge of underground aquifer along Creek bottom and erosion control on the creek bottom.

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

WATER QUALITY APPROVAL RECEIVED _____ APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as Application YES NO REMARKS not applicable

Diversion Points a series of five dams ~~xxxx~~ located between NW $\frac{1}{4}$, Section 27 to the SE $\frac{1}{4}$ of Section 33 on Foster Creek in T9N R25E

			27		
		33	34		

Land to be Irrigated _____

Well Log: Driller _____ Licensed YES NO

Depth of Well _____ REMARKS 14' high dams

Type of Map topo PREPARED BY Gale Selken, Hydrologist, III Reviewed and the Number

assigned on 7/6/84 By Betty Westlund Betty Westlund, NRA III

cc Hansen/Nelson

No. 1881-2 Hydrologic Unit 10130105
Map No. 1881-2 Basin M1
Newspaper Capitol Journal, Box 878, Pierre 57501

Daily

Application For Permit To Appropriate Water Within The State Of South Dakota

- Check use of water: Industrial Commercial Municipal Other Common Distribution System
 Rural Water System Suburban Housing Geothermal Heat Institutional Recreational
 Domestic (above 18gpm) Other

Type of Application: Check one or more of the following

- New Vested Right Future Use Change Use
 Amend Permit No. _____ with old priority date retained
 Change diversion point(s) Add diversion point(s) Other _____
 Application to: Change diversion point(s) Add diversion point(s) on Permit No. _____
 Construction to use water reserved by Future Use Permit No. _____



1. Name of Applicant Mortenson Family Land Limited Partnership Phone No. 567-3516
 Post Office Address Hayes SD State 57537
(Street, RR or Box) Zip Code
2. Amount of water claimed (c.f.s) 17 1/2 acre feet
3. Source of water supply Foster Creek - Stanley County
4. Location of point of diversion Series of 5 dams from the NW 1/4 Section 27 to the SE 1/4
Section 33 on Foster Creek in Township 9 North, Range 25 East BHM
 _____ County Stanley
5. Counties where water will be used Stanley
6. Annual period during which water is to be used 12 month
7. Give a brief description of proposed project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

See attachment

Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach map (see instruction)
 STATE OF SOUTH DAKOTA) Mortenson Family Land Limited Partnership
 County of Hughes) ss

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

Signed Carena Mortenson

Subscribed and sworn to before me this 2nd day of July 1984

Karen Schlaak
 Notary Public (or other qualified officer)

WATER PERMIT

The Water Management Board hereby approves Water Permit Application No. 1881-2

Mortenson Family Land LTD
(Applicant)

Hages
(Post Office Address)

South Dakota
(State)

57537
(Zip Code)

With the following qualifications.

Date of first receipt of application July 2, 1984.

Date of return to applicant for correction, amendments or changes required —, 19—.

Date of receipt of corrected application —, 19—. Approved September 26, 1984.

The Water Management Board hereby approves this Water Permit No. 1881-2 authorizing the construction of the water use system and the placing of water to beneficial use as stated in the Application and as qualified in the Water Permit approval, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is July 2, 1984.

2. The equivalent of at least one-fifth of the specified work is to be completed on or before March 26, 1987.

3. The whole of said work is to be completed on or before September 26, 1989.

4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is September 26, 1993.

5. The water appropriated shall be used for the purpose of Domestic, recreation

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

7. The amount of the appropriation herein granted shall not exceed 17.5 Acre Feet annually ~~cubic feet per second~~; neither shall it exceed the capacity of the above described water supply system nor shall it exceed the amount of water needed for beneficial uses served and to which water is actually and beneficially applied for domestic & recreational use on or before September 26, 1993; said water to be used during the following described annual period: continuous

WATER MANAGEMENT BOARD

By: John Hatch
Chief Engineer
Division of Water Rights
Dept. of Water and Natural Resources

10 - 23, 1984

Supplemental Information

(type or print in ink)

1. Well Information - Proposed construction

- a) Drill Hole Diameter _____ Depth _____
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack Thickness _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth of Water (ground surface to water level) _____
- g) Distance to nearest existing domestic well:
 On applicants property _____ On property owned by others _____

2. Dugout Information Estimates

- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

3. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below. The locations of each dam should be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam please give their name and address

b) Freeboard _____ 5 foot _____

c) Crest Width _____ 12 foot _____

Crest Length _____ 100 foot _____

d) Height _____ 14 foot _____

e) Outlet Dimensions:
 Pipe diameter _____

Spillway width _____ 100 foot _____

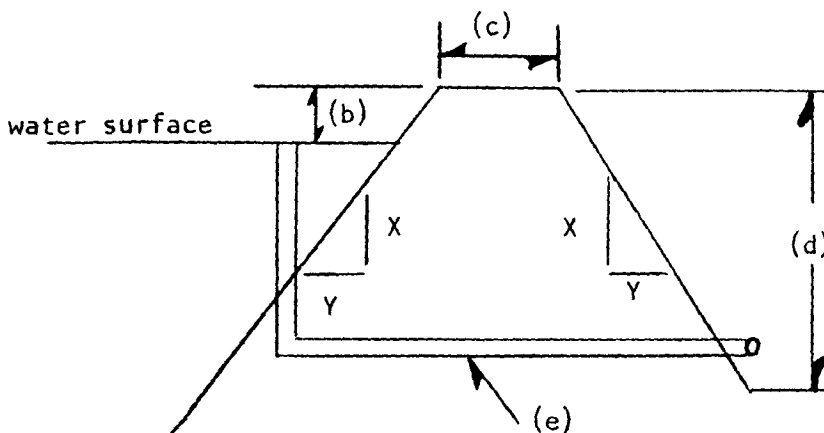
f) X & Y Slope
 Upstream _____ 2:1 _____

Downstream _____ 3:1 _____

Surface Area of Impoundment _____ 1.21 acres _____

Storage _____ 17.5 _____ acre feet _____

Drainage area above dam _____



Abrene M. ...
 Signature of Applicant

Foster Creek Project

The initial and basic purpose of the Project is erosion control and healing the washout in the creek bottom.

Additional beneficial uses will include stock water, recreational use, recharge of underground aquifer along creek bottom which will return the bottom to a subirrigated condition with the restoration of the original plant community including native trees.


As envisioned at this time, the project will eventually include 5 dams on the main channel of Foster Creek storing water only in the washed out creek bed area.

Some water spreading may be necessary for erosion control on the creek bottom in the future however this will probably not be necessary once the creek bed is restored to its former overflow - subirrigated condition.

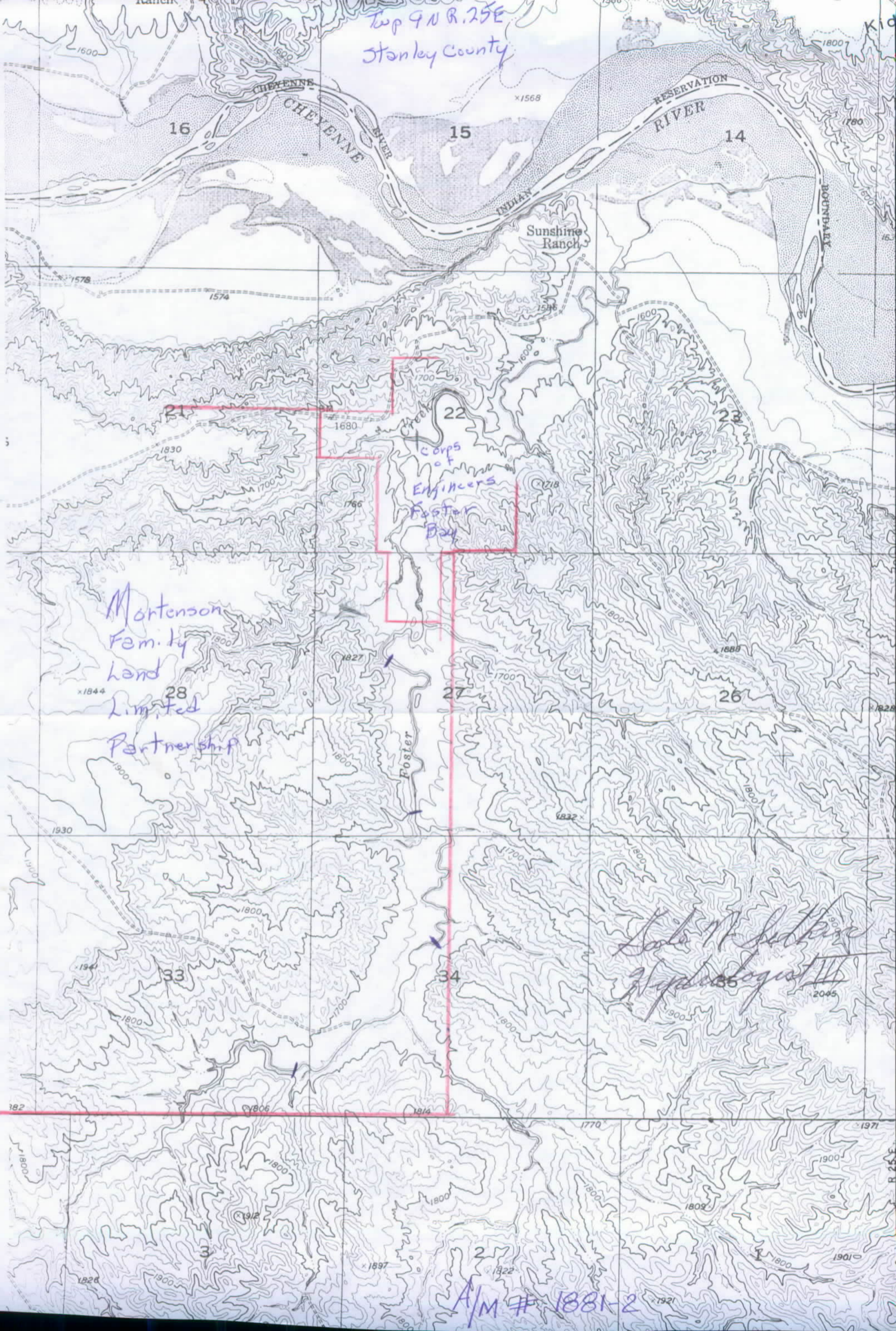
this is an experimental project
attempting to restore the creek bottom
area to a climax range condition and
the final results are difficult to predict,

Based on results on a trial area
on a side draw, significant improvement
can be achieved at a minimum cost.
The project will be developed over a
10 year period.

Sincerely,
Mortenson Family Land
limited Partnership


Clarence Mortenson
General Partner
Hogee, S.D. 57537

Top 9 N R. 25 E
Stanley County



Mortenson
Fam. ly
land
limited
Partnership

Corps
of
Engineers
Foster
Bay

State of Oklahoma
Hydrologist III

A/M # 1881-2

RECEIPT

Division of Water Rights

No 4 9699

South Dakota Department of Water and Natural Resources

Pierre, July 2, 1984

RECEIVED OF Mortenson Family Land Limited Partnership, Hayes SD 57537

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

Fee for Application for Permit No. <u>1881-2</u> to Appropriate Water, to construct works and to put water to beneficial use _____	150	00
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for _____		
(Any Other Work Provided by Law)	Total	150 00

By John Hatch
Chief Engineer

JOHN HATCH

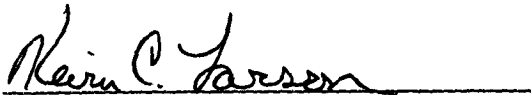
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REPORT ON PERMIT APPLICATION NO. 1881-2
MORTENSON FAMILY LAND LIMITED PARTNERSHIP
July 31, 1984

This permit application is to construct five dams on Foster Creek in northern Stanely County. The purpose of the dams is to reduce the velocity of the stream flow so the silt can settle out behind the dams. This will eventually lead to stabilization of the creek channel and restoration of stream side vegetation. Other uses include recreation and stockwater. Approximately 18 acre feet of water will be stored.

Conclusions

1. Construction of these dams and storage of water is a beneficial use.
2. Water is available
3. No existing water rights will be unlawfully impaired.



Kevin Larson
Natural Resources Engineer

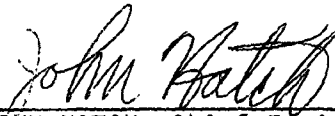
RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT

APPLICATION NO. 1881-2

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Water Permit Application No. 1881-2, Mortenson Family Land Limited Partnership, Hayes, South Dakota.

The Chief Engineer is recommending APPROVAL of Application No. 1881-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) in the public interest.

See attached report for additional information.



JOHN HATCH, Chief Engineer
Water Rights Division
August 10, 1984

Instruction to Newspaper - Publish first publication of the following Notice on or before August 15, 1984 with 2nd publication 1 week later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 1881-2 to Appropriate Water ~~and/or to Amend Water Permit or Water Rights No. _____~~

Notice is hereby given that Mortenson Family Land Limited Partnership whose mailing address is Hayes, South Dakota has made an application for a permit

to construct 5 erosion control dams in Foster Creek in Stanley County. Other uses include recreational and domestic stock watering. The five dams will be located in Foster Creek between the SE $\frac{1}{4}$ Section 33, T9N, R25E and the NW $\frac{1}{4}$ Section 27, T9N, R25E. These dams will impound approximately 18 acre feet of water.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends APPROVAL of Application No. 1881-2 because 1) unappropriated water is available, 2) will be no unlawful impairment of existing rights, 3) is beneficial use of water and 4) is in the public interest.

This application will be considered by the Water Management Board at the Civil Defense Room, Capitol Building, Pierre, South Dakota, September 26 19 84 at 10:00 am.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to make a determination on this application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the Applicant and the Chief Engineer by September 14, 1984. The petition may be informal, but it must include a statement describing the petitioner's interest in the application, the reason for the petitioner's opposition to or support of the application, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The applicant need not file a petition.

This application is made pursuant to the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17, 46-5-1 thru 46-5-16, 46-5-24, 46-5-25, 46-5-30.2, 46-5-31; 46-2A-1 thru 46-2A-10, 46-2A-12; (ground) ~~46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14; (future use) 46-5-38 thru 46-5-40; (transfer lands) 46-5-30.4, 46-5-33 thru 46-5-35, (10,000 AFA) 46-5-20.1, 46-5-8.1; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; (future use) 74:02:01:24 thru 74:02:01:25, (10,000 AFA) 74:02:01:15.02 thru 74:02:01:15.05.~~

This hearing is an adversary proceeding. The applicant or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this application or to assure access to the hearing by the handicapped can contact the Water Rights Division, DWNR, Joe Foss Bldg, Pierre SD (605 773-3352) for assistance prior to the hearing date. The time of the hearing will be automatically extended for at least twenty days upon written request of the applicant or any person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by September 14, 1984.

Mail to office

Form 8 - Proof of Publication - Notice of Intent to Appropriate Water

No. 1881-2

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Hughes) ss.

I, CAROL JOHNS hereby

certify that the annexed printed copy of Notice of Intent to Appropriate Water was taken from the Daily Capital Journal

A newspaper which during the whole time of publication of said notice herein after stated, has been and is printed and published in the Pierre of South Dakota

County of Hughes and State of South Dakota; that the said notice was published in said newspaper on the following two dates:

August 15, 1984

August 22, 1984

Carol Johns
(Signature)

(Title)

Aug 23, 1984
(Date Signed)

Cost of Printing: _____
104 lines @ .391 = 40.66

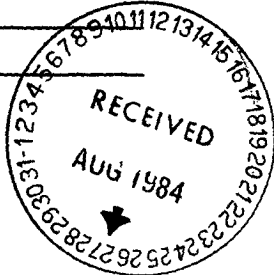
No. 7664 2tdly 8-15, 8-22
NOTICE OF HEARING
on Application No. 1881-2
to Appropriate Water

Notice is hereby given that Mortenson Family Land Limited Partnership whose mailing address is Hayes, South Dakota, has made an application for a permit to construct five erosion control dams in Foster Creek in Stanley County. Other uses include recreational and domestic stock watering. The five dams will be located in Foster Creek between the SE 1/4 Section 33, T9N, R25E and the NW 1/4 Section 27, T9N, R25E. These dams will impound approximately 18 acre feet of water.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends approval of Application No. 1881-2 because 1) unappropriated water is available, 2) will be no unlawful impairment of existing rights, 3) is beneficial use of water and 4) is in the public interest.

This application will be considered by the Water Management Board at the Civil Defense Room, Capitol Building, Pierre, South Dakota, September 26, 1984, at 10:00 a.m.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to make a determination on this application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the Applicant and the Chief Engineer by September 14, 1984. The petition may be informal, but it must include a statement describing the petitioners interest in the application, the reason for the petitioner's opposition to or support of the application, and the signature and mailing address of the petitioner or his



legal counsel if legal counsel obtained. The applicant need not file a petition.

This application is made pursuant to the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17, 46-5-1 thru 46-5-16, 46-5-24, 46-5-25, 46-5-30.2, 46-5-31; 46-2A-1 thru 46-2A-10, 46-2A-12; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

This hearing is an adversary proceeding. The applicant or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this application or to assure access to the hearing by the handicapped can contact the Water Rights Division, DWNR, Joe Foss Bldg., Pierre, S.D. (605 773-3352) for assistance prior to the hearing date. The time of the hearing will be automatically extended for at least twenty days upon written request of the applicant or any person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by September 4, 1984.



Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

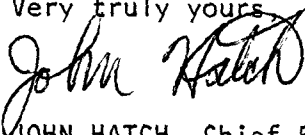
October 23, 1984

Mortenson Family Land Limited Partnership
Hayes,
South Dakota 57537

Dear Sirs:

Enclosed herewith is your Water Permit No. 1881-2 as approved by the Water Management Board authorizing you to construct your water diversion system and the water to beneficial use, not exceeding the limits as specified in said Water Permit No. 1881-2.

Also enclosed is Form 10, Notice of Completion of Works and Application of Water to Beneficial Use, which you are to complete and submit to the Chief Engineer when you have completed the system and/or have put the water to beneficial use. An inspection can then be scheduled so that your Water License may be issued to you, thus completing your acquisition of a Water Right.

Very truly yours


JOHN HATCH, Chief Engineer
Water Rights Division

JH: ks

enclosure

PLEASE NOTE: Certain changes can be made in your permit within the five year construction period, usually without affecting the priority date provided an application to amend your permit is made within the five year period-i.e. changes in location or number of diversion points (wells) or location of land to be irrigated. Well locations for wells into the same aquifer can be moved up to 660 feet without application.

Applications to amend a permit after the five year construction period will be assigned a new priority date. Applications to change water sources, to add lands or increase original diversion rates, if approved will usually receive the date of the new application as a priority date regardless of the five year construction period.

WNR-809-5/83

Water Rights Division - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit No. 1881-2, Mortenson Family

ADDRESS: 207 E. Capitol Av., Pierre, SD COUNTY: Stanley

DATE: 8/18/92 TELEPHONE: 224-2465

RE: Discussion with Clarence Mortenson to line up an inspection

COMMENTS:

I called Mr. Mortenson to schedule an inspection of Water Permit No. 1881-2. He stated the 5 small dams were intended to be sediment control structures and that 2 of them had been constructed and a 3rd one was going to be constructed soon because the other two were close to being filled with sediment. I stated that time to complete construction of works was September 26, 1989. I stated that it was likely that a permit was not required for these small structures and that location notice filings would be all that is necessary.

Mr. Mortenson gave me permission to go out on the land and look at the two construction structures. I told him I would get back to him on whether we would need to move forward with licensing or if we could cancel this permit and the additional sediment control structures could be done under normal location notices if they are not greater in size than 25 acre feet.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: Eric Genlund

Water Rights Division - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit No. 1881-2, Mortenson Family Land Ptshp
ADDRESS: 207 E. Capitol Ave., Pierre, SD COUNTY: Stanley
DATE: 8/18/92 TELEPHONE: 224-2465
RE: Inspection of Water Permit No. 1881-2

COMMENTS:

On August 19, 1992 I inspected Water Permit No. 1881-2. Mr. Mortenson had previously told me that only two of the five sediment retention structures had been completed (See File Documentation date 8/18/92). During my inspection I located only one of the two structures. The following is a synopsis of my field notes from my visual inspection of the structure:

- Dam appears to be more of a berm with an approximate length of 800 feet along a draw that feeds into Foster Creek. This structure is nearly full of sediment and acts more as a sediment control structure than a impoundment for water. The crest width is 12 feet (trail goes across it) and the height of the dam is 10 feet in the eroded cut which the structure is intended to stop for increasing. Generally, the dam/berm is only 2.5 feet in height. The actual amount of water impounded at the time of inspection is very small, I would estimate the surface area of the water impound would be only 50' X 30' with a depth no greater than 2 feet.

I was not able to find the other structure that Mr. Mortenson said had been constructed. This may be due to the large expansive area or the fact that the structure has filled with sedimented like Mr. Mortenson eluded to and it was not easily noticeable. Since the construction period is past, the other three structures that were included on the original water permit are no longer authorized.

From what I can determine from looking at the permit, I do not believe a water permit is required for the Mortenson's sediment control structures. General Rule 74:02:01:03 states a water permit is not required to construct a dam or dugout on either a dry draw as defined by SDCL 46-1-6(3) or a nonnavigable watercourse if it stores 25 acre-feet or less of water. This situation meets that criteria. The dam/berms do not store greater than 25 acre-feet of water and there is no physical diversion of water for other purposes. The structures may provide incidental recreational, livestock watering and wildlife habitat uses.

When and if Mr. Mortenson plans to construct additional sediment control structures which are less than 25 acre-feet in capacity, he should be able to do so by completing and submitting a location notice. The two existing structures if still being utilized should have a location notice filed for them.

My recommendation is that Water Permit No. 1881-2 be cancelled based on the fact that they no longer meet criteria that requires water permits to be obtained and that in the future location notices can be filed on these small structures.

(continued)

I contacted Mr. Mortenson on September 2, 1992 regarding noticing this for cancellation. Mr. Mortenson stated that he agreed with cancellation and that he would file location notice for any other small structures he would construct. He asked that I send him location notice forms and the file documentation of my inspection.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: Eric Hamlund

South Dakota



GREAT FACES. GREAT PLACES.

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 2, 1992

Clarence Mortenson
Box 993
Pierre, SD 57501

Re: Water Permit No. 1881-2

Dear Mr. Mortenson:

Enclosed is a copy of my file documentation regarding my inspection of Water Permit No. 1881-2 and Location Notice forms as per our phone conversation.

Based on our conversation I am planning to schedule Water Permit No. 1881-2 for cancellation. You can expect to receive in the near future a Notice of Cancellation scheduling this permit for cancellation before the Water Management Board.

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

Sincerely,

Eric Gronlund
Eric Gronlund
Water Rights Division
605 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 29, 1992

NOTICE OF CANCELLATION

TO: Clarence Mortenson, PO Box 993, Pierre, SD 57501-0993

FROM: Ron Duvall, Natural Resources Engineer IV
for John Hatch, Chief Engineer
Water Rights Division

SUBJECT: Cancellation of Water Permit No. 1881-2

The Water Management Board will consider cancellation of Water Permit No. 1881-2 at 10:00 am, on December 2, 1992, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD.

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

The Chief Engineer of the Water Rights Division is recommending cancellation of Water Permit No. 1881-2 because the structures developed no longer require a water permit. Pursuant to Water Management Board Rule 74:02:01:03, a water permit is not required to construct a dam or dugout on either a dry draw or nonnavigable watercourse if it stores 25 acre-feet or less of water.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 1881-2 based upon facts presented at the public hearing. Our records show you to be the owner of property covered by Water Permit No. 1881-2. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by November 20, 1992. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained. The Board may consider any abandoned or forfeited water to be available for appropriation subject to the provisions of SDCL 46-1, 46-2, 46-2A and 46-5.

October 29, 1992
Clarence Mortenson
Page 2

These hearings are adversary proceedings. Any party has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Prior to November 20, 1992, contact the Water Rights Division, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting to be held in Pierre, SD on March 3-4, 1993. Any request for extension must be filed with the Chief Engineer by November 20, 1992.

Please note: Cancellation of the water permit/right does not prohibit a new application for this project in the future.

RECOMMENDATION OF CHIEF ENGINEER

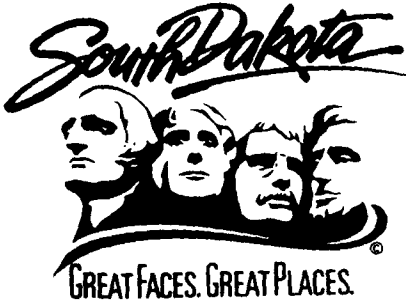
FOR WATER PERMIT NO. 1881-2, MORTENSON FAMILY LAND PARTNERSHIP

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Environment and Natural Resources concerning Water Permit No. 1881-2.

The Chief Engineer is recommending cancellation of the above Water Permit because an inspection by Eric Gronlund, August 19, 1992, found the water use system (sediment retention structures) that were developed are less than 25 acre feet. Water Management Board Rule 74:02:01:03 states a water permit is not required to construct a dam or dugout on either a dry draw as defined by SDCL 46-1-6(3) or a nonnavigable watercourse if it stores 25 acre feet or less of water.



RON DUVALL, Natural Resources Engineer IV
for JOHN HATCH, Chief Engineer
October 29, 1992



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

1881-2

December 2, 1992

NOTICE

Clarence Mortenson
PO Box 993
Pierre, SD 57501-0993

Dear Mr. Mortenson:

This will notify you that the Water Management Board cancelled your Water Permit No. 1881-2.

This action was taken under the conditions outlined in our notice to you dated October 29, 1992.

Very truly yours,

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