

Considered: _____

WATER PERMIT NO. 2052-2

HAP No. same 835-8578

Name of Applicant Harlan Opperman

Post Office Address RR1, Box 164, Gregory SD 57533

Amount of Water Claimed 0.10 cfs Total Acres NA

Source of Water Supply Lake Berry

Water to be used for gravel & sand washing County Gregory

About 10 miles W of Bonesteel

PROOF OF PUBLICATION: Received _____ Not Received _____

APPLICATION: Approved _____ Subject to _____

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

PRIORITY _____ Date Received Feb. 17, 1988 Fee 50⁰⁰ Remarks _____

2/17/88

Corrected Application Received _____ Period of Annual Use Mar 1 - Dec 15

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

WI-1 Description same as Application YES _____ NO _____ REMARKS _____

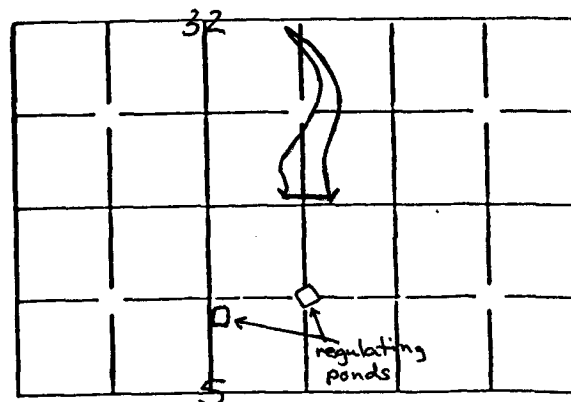
Diversion Point Lake Berry: SE 1/4 section 32

-T96N-R70W

Land to be irrigated regulating ponds and

operation site: N 1/2 section 5-T95N-

R70W



Well Log: Driller NA Licensed YES _____ NO _____

Depth of Well _____ REMARKS _____

Type of Map aerial photo PREPARED BY Kerry Stiner Reviewed and the Number

assigned on February 23, 1988 By Ron Durrall

Mail to: Water Rights Div.
DWNR, Foss Bldg.
Pierre, SD 57501
(605) 773-3352
P.L. 2/8/88

No. 2052-2 Hydrologic Unit 10150001
Map No. same Basin Niobrara Trib.
Newspaper Burke Gazette, Box 359 (Wed)

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 Harlan Opperman Phone No. 835-8578

Post Office Address RRI Box 164 Gregory State SD 57533
(Street, RR or Box) (City) Zip Code

2. Amount of water claimed (c.f.s) .10 cfs (45 gpm)

3. Source of water supply Lake Berry

4. Location of point of diversion SE 1/4 of 32-96-70, (location of Lake Bo)

N^{1/2} of 5-95-70 (location of storage areas)

County Gregory

5. Counties where water will be used Gregory

6. Annual period during which water is to be used approx. 3-1 to 12-15

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)

Sand & gravel washing operation: Dry material is removed from the bank and water is used to screen this material into various types.

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)
County of Gregory)^{SS}

I, Harlan Opperman the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Signed Harlan C. Popenoe

Subscribed and sworn to before me this 16th day of February 1988

Sally A. Miller
Notary Public

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 to 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 50' x 150' Depth 8'
- b) Depth to water (ground surface to water level) Deeper than 8'

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 _____

c) Crest Width _____

Crest Length _____

d) Height _____

e) Primary Outlet Capacity _____
If Pipe, diameter _____

f) Secondary Spillway Capacity _____
Spillway width _____

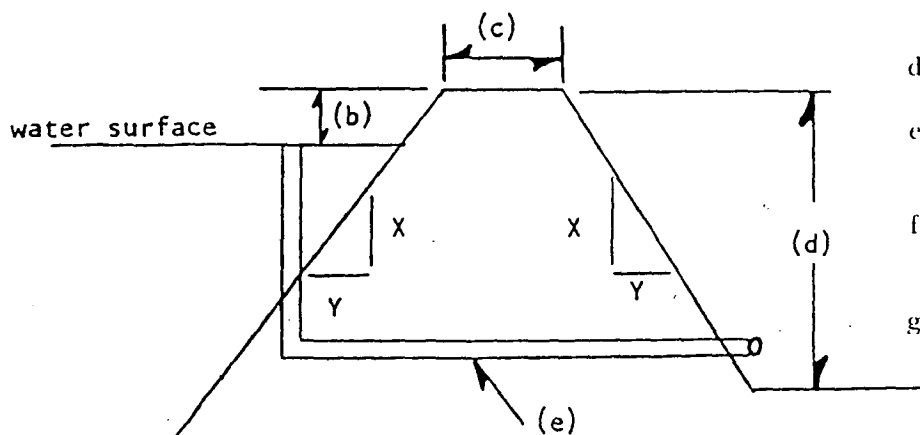
g) X & Y Slope
Upstream _____

Downstream _____

Surface Area of Impoundment _____

Storage _____ acre feet

Drainage area above dam _____



Harlan Opperman
Signature of Applicant

**SOUTH DAKOTA
WATER PERMIT**

Date of first receipt of application February 17, 1988

Date of return to applicant for correction, amendments or changes required _____

Date of receipt of corrected application _____

The Water Management Board approved Water Permit Application No. 2052-2

on May 11, 1988 for Harlan Opperman
(Applicant)

RR 1, Box 164 Gregory SD 57533
(Street, RR or Box) (City) (State) (Zip Code)

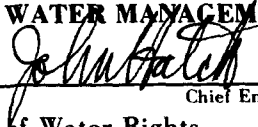
authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 2052-2 appropriates 0.10 cubic feet of water per second from Lake Berry Dam located in the SE 1/4 section 32-T96N-R70W. Water is to be diverted from Lake Berry Dam to two regulating ponds in the N 1/2 section 5-T95N-R70W
2. The water appropriated shall be used for the purpose of supplying a sand and gravel washing operation
and may not exceed the amount of water needed for beneficial use for industrial use
3. The water is to be used during the following described annual period: Mar 1 - Dec 15
4. The date from which applicant may claim the right is February 17, 1988
5. One-fifth of the construction is to be completed on or before November 11, 1990
6. All construction is to be completed on or before May 11, 1993
7. Water is to be put to beneficial use on or before May 11, 1997
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

The applicant surrenders any right to claim water from Lake Berry Reservoir should it be breached.

WATER MANAGEMENT BOARD

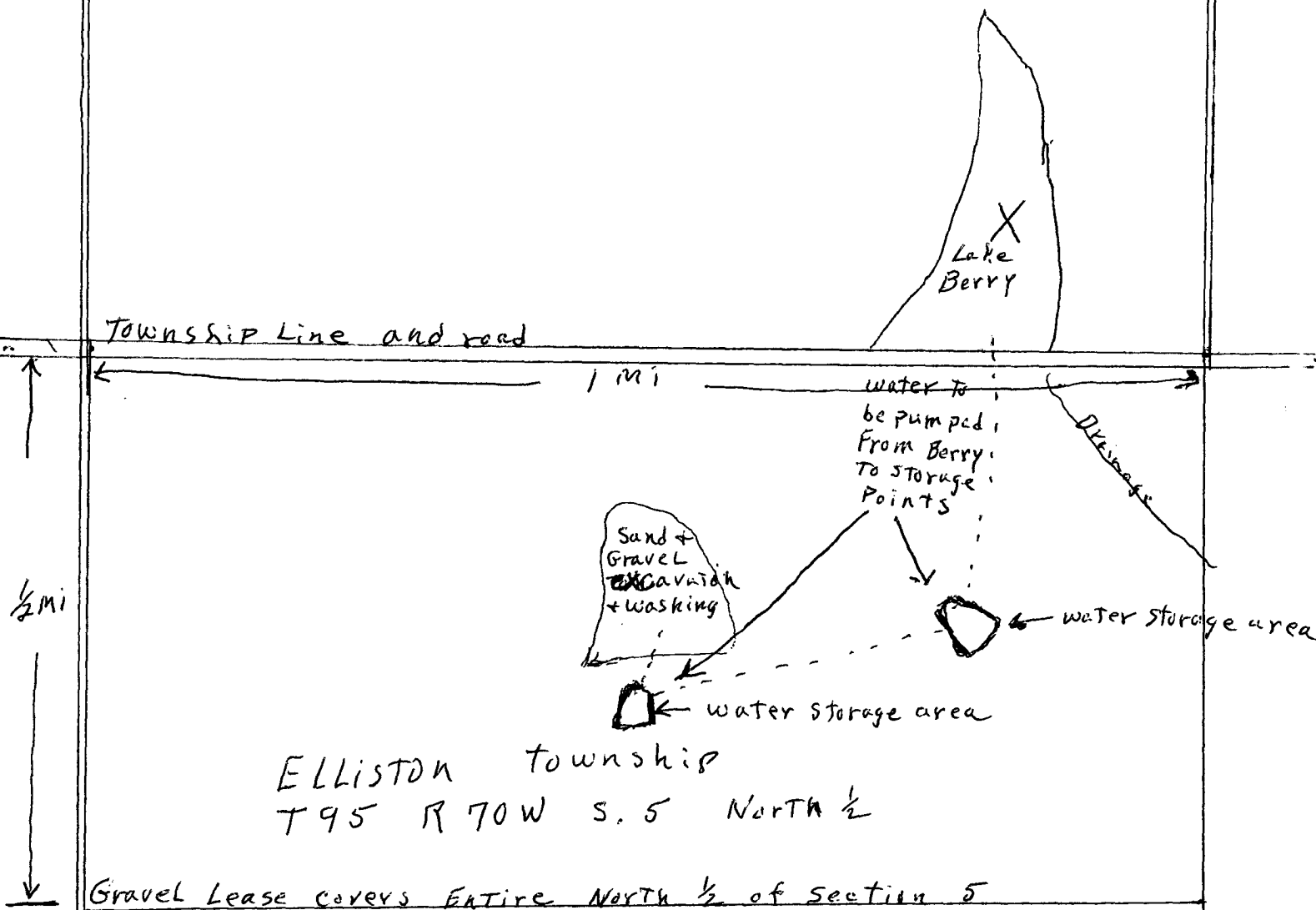
By: 
Chief Engineer

Division of Water Rights
Dept. of Water and Natural Resources

DEC 1 1988

St. Charles Township

32-96-70



X area of diversion

Opperman Sand & Gravel
Harlan Opperman owner

Appl No 2052-2

NOT TO SCALE



Appl. No. 2052-2

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

411151

Pierre, February 17, 1988

RECEIVED OF Harlan Opperman, Route 1, Box 164, Gregory, SD 57533

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use _____	50	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	50 00

By John Hatch
Chief Engineer JOHN HATCH (ms)

REPORT ON APPLICATION NO. 2052-2
Harlan Opperman
March 11, 1988

Water Permit Application No. 2052-2 requests 0.10 cubic feet of water per second (cfs) from Lake Berry Reservoir located in the SE1/4 of Section 32 - T96N - R70W, Gregory County. Water will be diverted to two regulation ponds located in the N1/2 of Section 5 - T95N - R70W. The water will be used in a sand and gravel operation.

DISCUSSION

Lake Berry Dam is located on Willow Creek which is a tributary of Ponca Creek. The Department of Game, Fish, and Parks (GF&P) has Water Right Claim No. 624-2 for the annual storage of water in Lake Berry with a priority date of 1935. The storage capacity of the dam is 148 acre feet at the spillway elevation. This dam is classified as a small size, category one dam. A category one dam is defined as a high hazard dam whose failure may cause loss of life. Lake Berry is managed as a fishery by GF&P. According to GF&P officials, the lake has a high winterkill potential due to its shallow depth (15 feet).

In a "NOTICE OF ORDER" to George Waterbury, Gregory County Commission Chairman, from John Hatch, Chief Engineer Water Rights Division, dated August 20, 1986, the following changes to the dam were to be completed to secure the safety of the dam.

1. Remove all trees and brushes growing on the embankment.
2. The cracks in the spillway chute slab needs to be sealed, and spalled or scaled areas patched.
3. Debris needs to be removed from the approach channel to the primary spillway.
4. The hydrologic capacity of the dam must be increased. This could be done by raising the embankment and/or increasing the spillway capacity.

Lake Berry Dam is considered to be seriously inadequate and hydrologically unsafe for a small size dam with a high downstream hazard potential. According to Safety of Dams Rules Chapter 74:02:08, a dam of this size and category must have sufficient spillway capacity to allow 50 percent of the Probable Maximum Flood (PMF) to safely pass through the dam without overtopping the structure. The PMF is defined as the flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are possible in the region. The current spillway capacity of the dam is 4250 cfs or approximately 30 percent of the PMF.

There is some question as to the ownership of the dam. An easement was granted to the State of South Dakota on May 26, 1934 for the right to build and construct an artificial lake in the SE1/4 of Section 32 - T96N - R70W. This easement also included a 12 foot wide strip above the high water contour of the lake for public use. An easement was also granted to Gregory County on December 8, 1933 for the construction of a high grade which would dam up water on the SE1/4 of Section 32 - T96N - R70W. Because of the question on ownership, no repairs have been made to this dam.

The above information is provided so the reader can see the future of this dam is unsure. In the "NOTICE OF ORDER" several alternatives were listed in case the repairs were not made. These are as follows:

1. Negotiate with the owner to move or abandon the downstream head start center that is the reason for the high hazard classification.
2. Permanently reduce the storage capacity of the dam.
3. Drain the dam and store no water until repairs, alterations and maintenance are completed.
4. Permanently breach the dam.
5. Abandon the easement interest in the dam and allow the dam to revert to the landowner, if the owner is willing to complete necessary repair, maintenance, and alterations of the dam.

In a conversation with the applicant, Mr. Opperman stated the regulation ponds have a limited drainage area, but would probably fill with rainfall and snowmelt runoff during the spring. The months he would need to pump from Lake Berry would likely be July, August, and September. He also stated he would normally pump three to four days a week for eight hours a day.

The amount of water pumped per eight hour day at a constant rate of 0.1 cfs would be 0.066 acre feet (21,500 gallons). A total of 3.4 acre feet (1,118,320 gallons) would be withdrawn from Lake Berry pumping at 0.1 cfs for four days a week, eight hours per day, through the months of July, August, and September. The surface area of Lake Berry at spillway elevation is 27 acres. Total diversion of 3.4 acre feet will lower the water level approximately 1.5 inches, assuming the beginning water level is at spillway elevation.

EXISTING WATER RIGHTS

There is currently one existing water right on Willow Creek and two water rights on Ponca Creek which are downstream from Lake Berry and are as follows:

626-2	GF&P (Indian Lake)	300 acre feet annually	Sec 8-T95N-R70W (Willow Creek)
1008-2	Leonard Zeisler	0.30 cfs	Sec 22-T95N-R70W (Ponca Creek)
1320-2	Logan Thoene	3.87 cfs	Sec 25-T95N-R70W (Ponca Creek).

CONCLUSIONS

1. GF&P has Water Right Claim No. 624-2 which allows an annual fill of Lake Berry up to 148 acre feet annually.
2. Lake Berry Dam is classified as a small size, category one high hazard dam which is currently hydrologically unsafe.
3. On August 26, 1986 Gregory County was ordered to repair the dam. Since this time questions have risen regarding ownership of the dam. It appears from easements in Division of Water Rights files, the dam is owned by the State of South Dakota.
4. The future of this dam is uncertain. There is a possibility the dam could be breached.
5. Existing water rights downstream from Lake Berry should not be adversely affected by approval of this application.
6. The State of South Dakota currently holds an easement for a strip of land surrounding the lake bed. If this application is approved, the applicant should obtain approval for access to the lake from the Dept. of School and Public Lands to allow the placement of a pump and pipeline.
7. It is recommended that if Water Permit Application 2052-2 is approved that it be subject to a qualification that the diversions of water from Lake Berry will not adversely impact the management of the lake as authorized by Game, Fish, and Parks Water Right No. 624-2. The following could be included in the qualifications to insure Water Right Claim No. 624-2 is not adversely affected.
 - a. Diversions can be made at any time from Lake Berry when water is flowing over the spillway.
 - b. Diversions from Lake Berry can be made at any time as long as the water level does not drop to two feet below spillway elevation. Diversions from Lake Berry at this small diversion rate will not adversely impact the Lake when the water level is at spillway elevation.

c. If the lake level would drop to two feet below spillway elevation, the applicant should then contact the local Game, Fish and Parks Conservation Officer to obtain possible permission from Game, Fish and Parks to continue diverting water from Lake Berry.



Tim Tollefsrud
Natural Resources Engineer

References:

Division of Water Rights; (1978) Phase I Inspection Report,
National Dam Safety Program, Lake Berry Dam, Gregory County,
South Dakota.

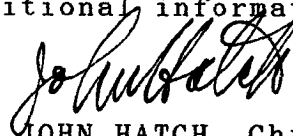
Division of Water Rights Records: Lake Berry Dam File, File No.
550.

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2052-2, Harlan Oppermann

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. 2052-2, Harlan Oppermann, RR 1, Box 164, Gregory SD.

The Chief Engineer is recommending DEFERRAL of Application No. 2052-2 because the future status of Lake Berry Dam, an UNSAFE HIGH HAZARD State owned dam is unknown. NO decision has been made on whether Berry Dam will be repaired or breached.

See the attached report for additional information.

A handwritten signature in black ink, appearing to read "John Hatch", is written over the typed name.

JOHN HATCH, Chief Engineer
April 1, 1988



Department of Water & Natural Resources

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

Water Rights Division
(605) 773-3352

NOTE:

TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT THE
NEWSPAPER RIGHT AWAY.

Harlan Opperman
Route 1, Box 164
Gregory, South Dakota 57533

Dear Mr. Opperman:

Your Application No. 2052-2 for a permit to appropriate water for

sand and gravel washing use, has been examined and found to
comply with the South Dakota Water Laws and applicable rules. A notice of
your intent to appropriate water has been sent to the Publisher of the

Burke Gazette

printed at Burke

South Dakota. For your information, a copy of this notice, the recommendation
of the Chief Engineer and a report on the application are enclosed. Please
review this notice prior to publication and notify this office, if you have
any corrections or questions.

BE SURE TO CONTACT THE ABOVE NEWSPAPER IMMEDIATELY TO AUTHORIZE PUBLICATION
OF YOUR NOTICE OF INTENT TO APPROPRIATE WATER AND TO ARRANGE FOR PAYMENT.
Early contact with the paper can eliminate delays. The publisher has been
instructed to publish your notice once each week for two consecutive weeks
with the last publication to occur at least twenty days before the board
meeting. We must receive Proof of Publication before the application can be
considered by the Water Management Board.

Sincerely,

RON DUVALL
Natural Resources Engineer

enclosures



Department of Water & Natural Resources

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

Burke Gazette
Box 359
Burke, South Dakota 57523

Dear Sir:

Enclosed is a Notice of Hearing on Application No. 2052-2 to be published twice. Please publish the first notice on or before April 13, 1988 with the second publication 7 days later.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make the first publication. Please BILL the APPLICANT for the cost of publication. The APPLICANT is Harlan Opperman, RR 1, Box 164, Gregory, South Dakota.

A copy of BOTH publications must be SENT to the WATER RIGHTS DIVISION. IMMEDIATELY return the FIRST publication with the FIRST Transmittal form on the bottom of this page. The first copy is needed to check the publication for errors so any corrections can be made in the second publication. Publication errors can invalidate the public notice and cause the applicant costly delays.

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. The permit application cannot be considered by the Water Management Board until proof of publication has been received.

Sincerely,

Ron Duvall
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

FIRST TRANSMITTAL NOTICE
No. _____

TO: Water Rights Division
Joe Foss Building
Pierre SD 57501-3181

Date _____

We are in receipt of your letter of _____ enclosing Notice of Hearing to Appropriate Water by Application No. _____ which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper

Instruction to Newspaper - Publish first publication of the following Notice on or before April 13, 1988 with 2nd publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 2052-2 to Appropriate Water

Notice is hereby given that Harlan Opperman whose mailing address is RR 1, Box 164, Gregory, South Dakota has filed an application for a permit to appropriate 0.10 cubic feet of water per second from Lake Berry Dam located in the SE 1/4 Section 32, T96N, R70W. Water is to be diverted from Lake Berry Dam to 2 regulating ponds for industrial use in a sand and gravel washing operation. The regulating ponds and the sand and gravel washing operation are to be located in the N 1/2 Section 5, T95N, R70W.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends DEFERRAL of Application No. 2052-2 because the future status of Lake Berry Dam, an UNSAFE HIGH HAZARD State owned dam is unknown. No decision has been made on whether Berry Dam will be repaired or breached.

The application will be considered by the Water Management Board in Room 216, Joe Foss Bldg, 523 E Capitol, Pierre SD, May 11, 1988 at 10:00 am.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the 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 April 29, 1988. The petition may be informal, but it must include a statement describing the petitioner's interest in the application, the reasons 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; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; 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 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, 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 person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by April 29, 1988.

No. _____

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Gregory) ss.

I, C. J. Fahrenbacher hereby
certify that the annexed printed copy of Notice of Intent to Appropriate
Water was taken from the Burke Gazette

A newspaper which during the whole time of publication of said notice
herein after stated, has been and is printed and published in the _____
Town _____ of Burke

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

Wednesday, April 13, 1988

Wednesday, April 20, 1988

C. J. Fahrenbacher
(Signature)

Publisher

(Title)

April 20, 1988

(Date Signed)



Cost of Printing: \$42.64

NOTICE OF HEARING
on Application No. 2052-2
to Appropriate Water

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Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends DEFERRAL of Application No. 2052-2 because the future status of Lake Berry Dam, an UNSAFE HIGH HAZARD State owned dam is unknown. No decision has been made on whether Berry Dam will be repaired or breached.

The application will be considered by the Water Management Board in Room 216, Joe Foss Bldg, 523 E Capitol, Pierre SD, May 11, 1988 at 10:00 am.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the 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 April 29, 1988. The petition may be informal, but it must include a statement describing the petitioner's interest in the application, the reasons 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; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; 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 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, 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 person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by April 29, 1988.

Apr.13-20

(102)



Water Management Board
Room 216
Joe Foss Bldg.
523 East Capital
Pierre, SD 57501

In re: Application No. 2052-2

Gentlemen:

I recently became aware of a Notice of Hearing on the above-entitled Application, which has been filed by Harlan Opperman, which has now been scheduled for hearing on May 11, 1988, at 10:00 o'clock A.M. I am opposed to the Application for the following reasons:

1. I presently am the owner of all of the real estate located in the East Half (E½) of Section Thirty-two (32), Township Ninety-six (96) North, Range Seventy (70), West of the 5th P.M., subject only to the Easement Contract for the construction of the artificial lake now known as Lake Berry. My grandfather, John C. Smith, entered into this Easement Contract with the State of South Dakota on May 27, 1934, and a copy of said Easement Contract is marked "Exhibit A" and is attached hereto and by reference the same is incorporated and made a part of these objections.

2. The construction of Lake Berry has provided the general public with excellent recreational and fishing facilities for over fifty years. I have great concern that to permit the withdrawal of water that is contemplated with the above-entitled Application could well affect the stability of the lake.

3. Neither my grandfather nor my father before me, and now I, together with members of my family, have ever made any demands upon the State of South Dakota for personal benefits from the lake in question and I have strong feelings that the entire lake project should remain committed to public use and should not be diverted to the private use of any individual or corporation.

4. I have no idea what the recommendations of the Chief Engineer of the Water Rights Division might be concerning said project, but I would sincerely hope that this Application be denied.

5. Exhibit A shows quite clearly that if the lake project in question should ever be abandoned in the future, the land where said lake is now constructed and all rights thereunder would then revert to the present title owner, which is myself, by reason of the terms and provisions of the Easement Contract.

I, therefore, feel that I probably have the greatest vested interest in this matter, other than the State of South Dakota, and I am opposed to the project and would hope that the State of South Dakota would deny said Application.

Dated at Boone, Iowa, this 26 day of April, 1988.

John S. Smith
John S. Smith
127 South Greene St.
Boone, IA 50036

EASEMENT CONTRACT

THIS AGREEMENT, made and entered into this 26 day of May
1934, by and between John C. Smith

of Herrick, South Dakota, (Party) (Parties) of the
First Part, and the State of South Dakota, Pierre, South Dakota, Party
of the Second Part,

WITNESSETH:

That for and in the consideration of the sum of One Dollar and other
valuable considerations, the receipt whereof is hereby acknowledged, the
party of the first part hereby grants, bargains and sells unto the party
of the second part the easement and right to build and construct an
artificial lake which will flow with water the following described land,
in Gregory County, South Dakota, to-wit:

Approximately forty acres in south east quarter
of section thirty-two (32), township ninety six
(96), range seventy (70) West of the 5th P. M.

In addition thereto, the party of the first part hereby grants,
bargains and sells to the party of the second part an easement and
right to dedicate to the public a strip of land Twelve (12) feet in
width lying above the highwater contour of the lake.

It is mutually understood and agreed that if said lake project
shall be abandoned, the land herein described and all rights hereunder
shall revert to the grantor, his successors and assigns.

In witness whereof, (WE) (I) have hereunto set our hands and seals
this 26 day of May, 1934

John C. Smith

STATE OF SOUTH DAKOTA)
COUNTY OF Gregory) SS

On this 26 day of May in the year 1934
before me personally appeared John C. Smith known to me or proved to
me on the oath of _____ to be the person or persons
who is described in, and who executed the within instrument, and acknow-
ledged to me that he (or they) executed the same.

H. D. Evland
Notary Public, Gregory County,
South Dakota

(SEAL)

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

Filed for Record the 29th day

May

1934

at 1:00 o'clock P. M.

and recorded in Book 16

of Mappel Page 340

Chas. E. Peterson

Register of Deeds.

By Wm. M. Frank Deputy

Fee 75¢



Department of Water & Natural Resources

Joe Foss Building

523 East Capitol

Pierre, South Dakota 57501-3181

April 29, 1988

Harlan Opperman
RR 1, Box 164
Gregory SD 57533

Dear Mr. Opperman:

Enclosed is a copy of a petition in opposition to Water Permit Application No. 2052-2. This letter is to inform you of opposition to the water permit application.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ron Duvall".

Ron Duvall
Natural Resources Engineer
605 773-3352

enc.

May 9, 1988
(date)

page

Parties of Record before Water Management Board regarding Water Permit
Application No. 2052-2, Harlan Opperman

For:

Against:

Harlan Opperman
RR1, Box 164
Gregory SD 57533

John S. Smith
127 South Greene St.
Boone, IA 50036



Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

Water Rights Division
605 773-3352

DEC 1 1988

Harlan Opperman
RR 1, Box 164
Gregory, South Dakota 57533

Dear Mr. Opperman:

Enclosed herewith is your Water Permit No. 2052-2 as approved by the Water Management Board authorizing you to construct your water diversion system and put the water to beneficial use, not exceeding the limits as specified in said Water Permit No. 2052-2.

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:ms

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



NOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USE

Date Dec. 9, 1988

TO: Water Rights Division, DWNR
Joe Foss Building
Pierre SD 57501-3181

FROM: Harlan Opperman R.R. 1, Box 164 Gregory, SD 57533
name address city

I have completed the construction of the water diversion system and I have put the water to beneficial use to the maximum extent it is going to be used. I have not exceeded the amounts specified in Water Permit No. 2052-2.

Water Permit No. 2052-2 states that the diversion system is to be constructed by May 11, 1993, and that the water it put to beneficial use by May 11, 1997.

The diversion system was completed on Aug. 24, 1988.

Applying the water to beneficial use was completed on Aug. 24, 1988.

You may schedule an inspection so that the Water License may be issued.

Harlan Opperman
signature

Nebraska Trib. Water District**Report Of Examination Of Works And/Or Application Of Water To Beneficial Use**

TO: Chief Engineer, Division of Water Rights, DWRN, Foss Bldg., Pierre, SD 57501

I have this day made a thorough examination of the water use system constructed by Harlan Opperman
 of RR1 Box 164 Gregory, SD holder of
 Permit No. 2052-2, bearing the priority of February 17 1988 authorizing
 the diversion of 0.10 cu. ft. per second of the waters of Lake Berry Dam
 for Sand & Gravel Washing purposes, in Gregory County.

I have to report on the conditions of the same as follows:

A. Works used to divert the water:

Berkley Centrifugal Pump with Ford Tractor PTO drive
Berkley Centrifugal Pump, Model - B3ERM CW with 2 cyl. Deutz Diesel Motor
Lighting Centrifugal Pump, Model - RV, Serial No. 2283 with 10Hp Lincoln Elec. Motor
Model - 215T

B. Works used to transport water to place of use:

Approx. 800 ft. PVC 1 1/2" Siphon Line &
Approx. 1/2 mile 4" Aluminum Pipe
3 Small Holding Ponds between Lake Berry Dam & Gravel Pit

C. Works used to apply water to beneficial use:

Sand & Gravel Washing Operation

The system is in the following condition GoodThe point of diversion is located 825 ft. West of SE Corner of Sec. 32-T96-R70
(SE 1/4 SE 1/4)The works are capable of diverting and conveying to the place of use 0.10
 cu. ft. per second of water which is to be used for Sand & Gravel WashingWater has been put to beneficial use to the maximum extent as follows: Sand & Gravel Washing Operationcomprising a total of _____ acres of land and the license should be issued for 0.10 cfsApplicable permit qualifications have been complied with ☒ Yes ☐ NoExceptions to compliance are: _____ Date July 31, 1991

Timothy G. Schae
 (signature)

LICENSE FOR PERMIT NUMBER 2052-2

1. Legal location of ^{Diversion Pt.} wells: 825 ft. West of the SE corner of
Sec. 32-T96N-R70W (SE1/4 SE1/4)
dams & structures: _____

2. Well Information: Well Drilling Firm _____

Completion Report Yes ___ No ___ No. of Wells _____ Depth _____

Casing a) diameter _____ Screen a) type _____
b) length _____ b) length _____
c) type _____ Static Water Level _____

Pump a) make Berkley Motor a) make 2nd. Deutz Diesel
b) model B 3ERM b) model No. _____
c) size _____ c) horsepower rating _____
d) capacity _____ gpm
e) turbine pump - no. of stages _____
f) operating PSI _____ Berkley Cent. Pump with Ford Tractor PTO

3. Distribution lines or canals

a) size 1 1/2" 4"
b) type PVC Aluminum
c) length ≈ 800 ft ≈ 1/2 mile

Lighting Cent. Pump, Model- RV, Serial
No. 2283 with 10 Hp Lincoln
Elec. Motor, Model- 215T

4. Dam Information: NA

a) height to crest _____ m) Outlet tubes:
b) height to primary spillway _____ 1) diameter _____
c) height to secondary spillway _____ 2) type _____
d) crest width _____ 3) valved (Y/N) _____
e) crest length _____ 4) valve type _____
f) spillway length _____ 5) location on structure _____
g) spillway width _____
h) approx. storage _____ n) Category of Dam _____
i) approx. storage to crest _____
j) date constructed _____
k) inspection sheet completed (Y/N) _____
l) Name of Contractor _____

5. System Type a) sideroll:

- 1) length _____ feet
- 2) diameter of pipe _____
- 3) make, model & number of
sprinklers _____
- 4) spacing of sprinklers _____
- 5) nozzle size _____

c) gun

- 1) make _____
- 2) nozzle size _____
- 3) capacity (GPM) _____
- 4) hose size _____
- 5) hose length _____

e) gated pipe

- 1) length _____
- 2) diameter _____
- 3) spacing of gates _____

f) portable boom

- 1) make _____
- 2) nozzle size _____
- 3) capacity (GPM) _____

b) towline:

- 1) length _____ feet
- 2) make, model & number of
sprinklers _____
- 3) spacing of sprinklers _____
- 4) nozzle size _____

d) center pivot

- 1) make _____
- 2) number of towers _____
- 3) distance between towers _____
- 4) overall length _____
- 5) end gun (Y/N) _____
- 6) high or low pressure _____
- 7) make & size of nozzles _____
- 8) capacity (GPM) _____

g) siphons

- 1) size _____
- 2) number _____

NOTE: For Permits with additional wells or changes in well locations, record the following for each well: pumping capacity, date constructed, well driller and if a well log is available.

Indicate any other permit(s) which are associated with project NA

Yes	No	Check Items
<u>NA</u>		1. Soil and water permit lands agree with lands being irrigated and lands listed on permit?
<u>X</u>		2. Special qualifications to permit being abided by?
<u>X</u>		3. All structures, wells and lands on map?
<u>NA</u>		4. Irrigation Questionnaires checked to determine if permit owner started irrigation by end of construction period?
<u>NA</u>		5. Is chemigation used?
<u>NA</u>		6. If yes, does equipment comply with chemigation rules?

REMARKS:



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

GREAT FACES. GREAT PLACES.

September 27, 1991

2052-2

Harlan Opperman
RR #1 Box 164
Gregory, SD 57533

Dear Mr. Opperman:

The inspection of your water use system and the inspection of the extent of application of water to beneficial use, as developed under Water Permit No. 2052-2, has been completed. Your final water right document, the Water License, can now be issued.

Statutes require that we charge a \$50.00 fee for the inspection and issuance of the Water License. Upon receipt of the \$50.00 fee from you, we will begin processing your Water License.

South Dakota Water Law 46-5-30.1 requires that a permit holder may not divert water until the \$50.00 license fee has been paid. Please contact us if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Genny McMath".

Genny McMath
Natural Resources Analyst
(605) 773-3352

NOTE: On check or money order, please specify your permit number. This will insure proper handling of the fee.

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

412859

Pierre, _____ October 3, 19 91

RECEIVED OF Harlan Opperman, Opperman Sand & Gravel, Rt 1, Box 164, Gregory, SD 57533

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use _____		
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. <u>2052-2</u>	50	00
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	50 00

By

John Hatch (Signature)

Chief Engineer

NOT TO SCALE



STATE OF SOUTH DAKOTA

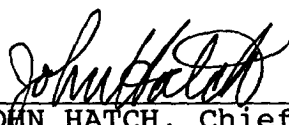
WATER LICENSE NO. 2052-2

(1) Harlan Opperman of RR 1, Box 164, Gregory, SD 57533 made Application No. 2052-2, February 17, 1988 for a water permit to appropriate 0.10 cubic feet of water per second from Lake Berry Dam, Gregory County, South Dakota for sand and gravel washing purposes. Permit No. 2052-2 with a priority date of February 17, 1988 was approved May 11, 1988 and issued to applicant(s) for diversion of water with construction of the described water supply system to be completed on or before May 11, 1993 and for the application to beneficial use of said water on or before May 11, 1997.

(2) It is certified that the applicant has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 0.10 cubic feet of water per second for beneficial use. The location of the diversion point is: 825'W of the SE corner of Section 32, T96N, R70W (SE 1/4 SE 1/4).

(3) The applicant has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use.

(4) Pursuant to Section 46-5-30.1 Harlan Opperman of RR 1, Box 164, Gregory, SD 57533 the holder(s) and/or owner(s) of Water Permit No. 2052-2 is issued a license to appropriate water, the right to use 0.10 cubic feet of water per second from Lake Berry Dam with a priority date of February 17, 1988 from the location specified in (2) of this license. The water is use for industrial purposes in a sand and gravel washing operation. This license is subject to any limitations or qualifications listed in Water Permit No. 2052-2 and subject to South Dakota State Law.

 FEB 17 1992
JOHN HATCH, Chief Engineer
Water Rights Division
Department of Environment and
Natural Resources



GREAT FACES. GREAT PLACES.

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

FEB 17 1992

2052-2

Harlan Opperman
RR 1, Box 164
Gregory, SD 57533

Dear Mr. Opperman:

Enclosed is Water License No. 2052-2. This is the final water right document completing your process of obtaining a water right. Enclosed is Receipt No. 412859 in the amount of \$50.00 which you paid for the inspection and issuance of this water license.

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

Very truly yours,

A handwritten signature in cursive script, appearing to read "John Hatch".

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

enclosures