

WATER PERMIT NO. 2878-2

Name of Applicant: City of Custer

Address: 622 Crook Street, Custer SD 57730

Phone: 605-673-4824

Amount of Water Claimed: 47.5

Total Acres: N/A

Source of Water Supply: Surface

Water to be used for: Rec/Fish & Wildlife

County: Custer

Type of Waste Disposal System:

Location: Southwest area of Custer SD

PRIORITY Date Received: 04-05-24

Application/License Fee: \$100.00

Corrected Application Received:

Period of Annual Use: January 1 – December 31

Remarks: Reinstatement of Permit 2751-2

Diversion Point: NE 1/4 SE 1/4 Sec 27-T3S-R4E

Land to be Irrigated: N/A

Depth of Well: N/A

Well Driller:

Remarks:

Type of Map: aerial

			27		

Reviewed and the Number Assigned on: 04-09-24

By: **Rachel Rodriguez**

Notice of Hearing - date to intervene: _____

SOUTH DAKOTA
WATER PERMIT NO. 2878-2

Date of first receipt of application April 5, 2024.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 2878-2 to City of Custer, 622 Crook Street, Custer SD 57730, 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. 2878-2 reinstates Water Permit No. 2751-2 for which the time to complete construction of works expired on July 6, 2021. This permit reinstates Permit No. 2751-2 to reconstruct Custer West Dam originally authorized by Water Right No. 298-2. Water Right No. 298-2 authorizes impoundment of 30 acre-feet of water by a dam on French Creek located in the NE 1/4 SE 1/4 Section 27-T3S-R4E. This permit authorizes reconstruction of the dam and increases the storage capacity an additional 47.5 acre-feet, with water to be impounded in the N 1/2 SE 1/4 Section 27-T3S-R4E. This permit authorizes impoundment of sufficient water to maintain water to an outlet elevation of 5,348.0 feet mean sea level with a normal storage capacity of 77.5 acre-feet at the primary spillway elevation. The water will be used for recreational, fish and wildlife propagation, and public safety purposes. This site is located in the southwest part of the City of Custer SD.
2. The water appropriated shall be used for the purpose of public safety, recreation, and fish and wildlife use and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date of approval of Permit No. 2878-2 is June 24, 2024.
5. The date from which applicant may claim right is April 5, 2024.
6. One-fifth of the construction is to be completed on or before December 24, 2026.
7. All construction is to be completed on or before June 24, 2029.
8. Water is to be put to beneficial use on or before June 24, 2033.
9. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Water Right No. 298-2 and Water Permit No. 2878-2, combined, authorize an impoundment with a storage capacity of 77.5 acre feet of water and sufficient water annually to maintain the water level to the outlet elevation of 5,348.0 feet mean sea level.
2. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
3. Plan and specifications for reconstruction of Custer West Dam were reviewed and approved by the Chief Engineer in 2016. Any changes the Chief Engineer considers to be significant changes to the 2016 reconstruction plans must be submitted to the Chief Engineer for review and approval for compliance with the Safety of Dams Rules (ARSD 74:02:08).

(continued)

4. The 2016 Emergency Preparedness Plan (EPP) must be updated to reflect current contact information for emergency services and emergency notification contacts and the updates provided to all plan holders prior to the start of reconstruction. The EPP must be reviewed annually and updated as needed with the updates provided to all plan holders.

WATER MANAGEMENT BOARD

By: Eric Gronlund
Eric Gronlund, Chief Engineer
Water Rights Program
Department of Agriculture and Natural Resources

JUL 12 2024
date



FORM 2: Application for uses other than irrigation
(type or print)

PAID

APR 05 2024

Ck# 132410

Rec't#

Mail to: SD DANR, Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>2878-2</u> Hydrologic Unit <u>10120109</u> Basin <u>Middle Cheyenne Spring</u> Newspaper <u>Custer Co. Chronicle</u> <u>Rapid City Journal</u> (office use only)
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Application for Permit to Appropriate Water in South Dakota

Check use(s) of water:

- | | | | |
|---|--|---|--|
| ☐ Municipal | ☐ Water Distribution System | ☒ Recreational | ☐ Institutional |
| ☐ Rural Water System | ☐ Commercial | ☒ Fish & Wildlife | ☐ Geothermal |
| ☐ Domestic (over 18 gpm) | ☐ Industrial | ☒ Other Public safety (flood mitigation), grassland, forest, and structure fire protection, and water quality | |

Type of Application:
(check one)

- ☒ New ☐ Vested Right (Use predates Mar 2, 1955) ☐ Future Use Reservation
☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____
☐ Amendment/Correction to Permit No. _____

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.)

This application is a request to reinstate the City's current water right permit #2751-2. Both the original and future uses remain consistent with item #7 below

- Name to Appear on Water Permit City of Custer
Mailing Address 622 Crook Street Custer SD 57730
(Address) (City) (State) (Zip Code)
Phone 605-673-4824 Mobile _____ Email Mayor (mayor@cityofcuster.com)
add'l to No. 298-2
2. Amount of water claimed _____ *CFS or _____ **GPM and 47.5 ***AF or _____ Gallons
Flow rate and volume are both required. (*Cubic Feet per Second) (**Gallons per Minute) (***Acre Feet - storage capacity of dam/dugout or annual use)
3. Source of water supply Little French Creek Drainage
4. Location of point of diversion NE 1/4 SE 1/4 Section 27 Twp. 3S Rg. 4E B.H. Meridian County Custer
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)
If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☐ Yes ☒ No
If "Yes," where will water be used? _____
(example - NW1/4 section 12-T104N-R53W)
5. County or counties where water will be used Custer County
6. Annual period during which water is to be used January 1 - December 31
7. Give a description of the 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)

Remove and replace Custer West Dam to develop and maintain an impoundment for recreational activities, public safety (flood attenuation), propagation of fish and wildlife, fire suppression, and improved water quality of French Creek below the dam. Historically, the water impounded has been used for emergency fire fighting purposes and used both by emergency pumper truck(s) and helicopters for wildfire suppression. New construction of entire dam, spillway and outlet works is proposed to comply with State Standards. A Design Report and 100% Plans will be submitted for review and approval when available.

phone: 605-381-0387

I, Stephen Bareis, PE (RESPEC) Engineer of Record _____, the applicant, certify under
Name of Person Title (if applicable)

penalty of perjury that I have read this application, examined the attached map, and that the matters stated are true. I further certify, if acting on behalf of an entity or individual other than myself, that I am authorized to submit this application.

2021-08

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Also, attach map and any other technical information. (see instructions)

Supplemental Information

(type or print)

N/A

1. Well Information (check one or both as applicable) ☐ Drilling new well(s) ☐ Using existing well(s)

- a) If new wells, how many _____ Have test holes been drilled? ☐ Yes ☐ No Drilled by _____
(if yes, please provide copies of logs)
- b) If existing wells, how many _____ Provide copy of log(s), if available. Drilled by _____

For either existing or proposed wells:

- c) Well Depth (required) _____ Depth to Top of Water Bearing Material _____ Depth to Water from Surface _____
- d) Distance to nearest domestic well on applicant's property _____ Property owned by others _____

2. Wastewater Disposal System Information N/A

- a) Type of System (i.e. septic tank, drain field) _____
- b) System Capacity (gallons) _____ Year Constructed _____
- c) Connected to the City of _____ Sanitary System

N/A

3. Dugout Information

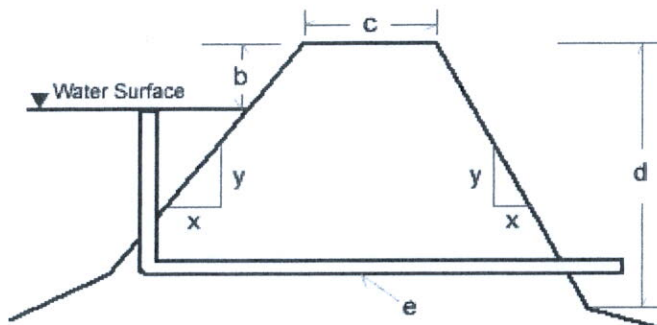
- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

4. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to 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:

RESPEC
3824 Jet Drive
Rapid City, SD 57703

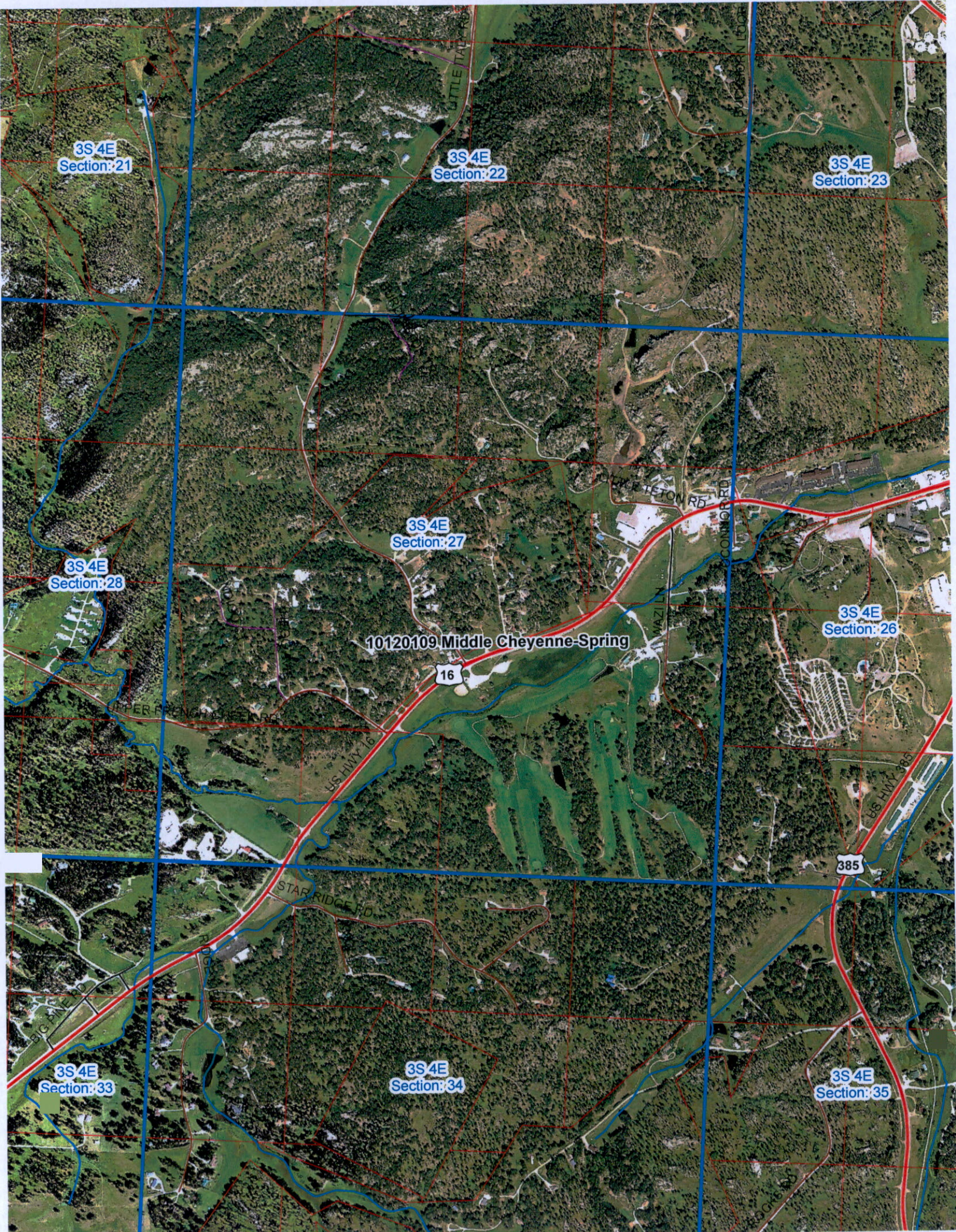


- b) Freeboard 2'
- c) Crest Width 20' (minimum)
Crest Length 500' +/-
- d) Height 13'
- e) Primary Outlet Capacity *TBD
If pipe, diameter *TBD
- f) Secondary Spillway Capacity *TBD
Spillway Width *TBD
- g) X & Y Slope (e.g. 3 to 1 is a typical slope)
Upstream 3 to 1
Downstream 3 to 1
- h) Area of Impoundment 7.3 acres
- i) Storage 77.5 Acre Feet
- j) Drainage Area Above Dam 23,300 Acres

Wetland Delineation

Custer West Dam
T-3S, R-4E, Sect-27
City of Custer
Custer County, South Dakota





Water Permit Application No. 2157-2
City of Custer
Custer West Dam - NID No. 5002616

Top of Dam Elev. - 5353
End Spillway Elev. - 5350
P. Spillway Elev. - 5348
Dis Emb Toe Elev. - 5340

Cat. 1 - High Hazard Dam

Ht = 13 ft.

Normal Storage Capacity - 77.5 Ac-Ft
Int Storage Capacity - 95
Max Storage Capacity - 125

Small Sec Cat. 1 - High Hazard Dam - 50% PMF Min. Spillway Design
unless designed to overtop w/out Failure (74:02:08:07)

Banner Associates, Inc. used the Army Corps HEC-HMS model along with HMR 55d to compute the peak flows for the 10 year thru 50% PMF events. They designed the Primary Spillway to pass the 10 yr event, the Secondary Spillway to pass the 100 yr event, and the dam embankment to overtop w/out Failure during the 50% PMF event.

Peak Flows

$Q_{10} = 792 \text{ cfs}$ $Q_{500} = 5551 \text{ cfs}$
 $Q_{100} = 2971$ 50% PMF = 15,288

NRCs Annual Yield

West Dam - ISO = $1\frac{1}{2}$ CN = 65
DID = 23278 Ac

Section 74:02:08:09

- 1) Topo Map - OK
- 2) Dam Axis Profile - OK
- 3) Dam Max X-Sn. - OK
- 4) Area Capacity - OK
- 5) Outlet Details - OK
- 6) Spillway Rating - OK
- 7) Spillway Details - OK
- 8) Specs - OK
- 9) EPP - Cat. 1 Dam - OK

80% chance = 0.03

$$0.03 \times \frac{23278}{12} = \underline{58 \text{ Ac-Ft}}$$

50% chance = 0.08

$$0.08 \times \frac{23278}{12} = \underline{155 \text{ Ac-Ft}}$$

10% chance = 0.65

$$0.65 \times \frac{23278}{12} = \underline{1260 \text{ Ac-Ft}}$$

Stockade - ISO = $1\frac{1}{2}$ CN = 65 DID = 48832 Ac

80% chance = 0.03

$$0.03 \times \frac{48832}{12} = \underline{122 \text{ Ac-Ft}}$$

50% chance = 0.08

$$0.08 \times \frac{48832}{12} = \underline{325 \text{ Ac-Ft}}$$

10% chance = 0.65

$$0.65 \times \frac{48832}{12} = \underline{2645 \text{ Ac-Ft}}$$

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date April 5, 2024

RECEIVED OF Respec for City of Custer 622 Crook Street Custer SD 57730

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

Fee for Application for Permit No. <u>2878-2</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>100.00</u>
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 _____	\$ _____
Fee for Issuing New Well Driller's License No. _____	\$ _____
Fee for Renewal of Well Driller's License No. _____	\$ _____
Fee for Issuing Well Pump Installer's License No. _____	\$ _____
Fee for Renewal of Well Pump Installer's License No. _____	\$ _____
(Any Other Work Provided by Law)	
TOTAL	\$ <u>100.00</u>

By

Eric Gronlund

Chief Engineer

VM

**SOUTH DAKOTA
WATER PERMIT NO. 2751-2**

Date of first receipt of application April 21, 2016.

The Water Management Board approved Water Permit No. 2751-2 on July 6, 2016 for the City of Custer, c/o Jared Carson, Mayor, 622 Crook St, Custer SD 57730 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. 2751-2 authorized reconstruction of Custer West Dam originally authorized by Water Right No. 298-2. Water Right No. 298-2 authorizes impoundment of 30 acre-feet of water by a dam on French Creek located in the NE 1/4 SE 1/4 Section 27-T3S-R4E. This permit authorizes reconstruction of the dam and increases the storage capacity an additional 47.5 acre-feet with water to be impounded in the N 1/2 SE 1/4 Section 27-T3S-R4E.
2. The water appropriated shall be used for the purpose of recreational, fish and wildlife propagation and fire suppression and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The dates from which applicant may claim right are April 23, 1943 (30 acre-feet) and April 21, 2016 (47.5 acre-feet).
5. One-fifth of the construction is to be completed on or before January 6, 2019.
6. All construction is to be completed on or before July 6, 2021.
7. Water is to be put to beneficial use on or before July 6, 2025.
8. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Water Permit No. 2751-2 and Water Right No. 298-2, combined, authorize an impoundment with a storage capacity of 77.5 acre feet of water and sufficient water annually to maintain the water level to the outlet elevation at 5,348.0 feet mean sea level.
2. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

WATER MANAGEMENT BOARD

By: *Jeanne Goodman*
Jeanne Goodman, Chief Engineer
Water Rights Program

Department of Environment and Natural Resources

JUL 21 2016
date





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

June 8, 2016

Jared Carson, Mayor
City of Custer
622 Crook St.
Custer, SD 57730

Dear Mayor Carson:

We have reviewed the plans and specifications and design report for the Custer West Dam Reconstruction Project located in the NE ¼ SE ¼ of Section 27-T3S-R4E, in Custer County. The plans and specifications for the reconstruction of the dam are approved. Approval of the plans and specifications does not authorize reconstruction of the dam. The reconstruction of the dam may not begin until Water Permit No. 2751-2 is approved.

Our review was to determine compliance with the requirements of the Water Management Board Safety of Dams Rules, Chapter 74:02:08. Approval of these plans and specifications does not release the City of Custer, as owner of the dam, from the responsibility for operating and maintaining the dam in good repair to ensure the safety of the dam.

The reconstructed Custer West Dam will be classified as a small size Category 1, High Hazard dam with a dam height of 13 feet and a normal storage capacity of 77.5 acre-feet and a maximum storage capacity of 125 acre-feet. It has been assigned a National Inventory of Dams (NID) ID No. SD02616.

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

Sincerely,

for Eric S. Schaal
Timothy G. Schaal, P.E.
Engineer IV
for Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

cc: David LaFrance, P.E., Banner Associates, Inc., 2201 Jackson Blvd, # 200, Rapid City SD 57701

Schaal, Tim

From: David LaFrance <davidl@bannerassociates.com>
Sent: Tuesday, May 24, 2016 2:22 PM
To: Schaal, Tim
Cc: Gronlund, Eric; Goodman, Jeanne
Subject: RE: 50% PMF- Custer Dam
Attachments: Request for Hearing, Revised 5-24-16.pdf

Tim,

Revised Mayor's Request Letter, deleting the variance request, is attached. A resubmit of the updated design report will come late this or early next week.

thank you,
D.LaFrance
Banner Assoc.

From: Schaal, Tim [<mailto:Tim.Schaal@state.sd.us>]
Sent: Tuesday, May 24, 2016 12:43 PM
To: David LaFrance
Cc: Gronlund, Eric; Goodman, Jeanne
Subject: RE: 50% PMF- Custer Dam

OK thanks Dave—we should have a summary of those calculations for the file. Also something from you or the City stating they are withdrawing their request for a variance from our spillway standards.

From: David LaFrance [<mailto:davidl@bannerassociates.com>]
Sent: Tuesday, May 24, 2016 11:26 AM
To: Schaal, Tim
Subject: 50% PMF- Custer Dam

Tim,

Per your call yesterday, I've talked with my hydraulics expert, and we have run the overtopping calcs. again this a.m. to check - and 'yes' we can revise the design report to show the embankment as being capable to handle the full 50% PMF event - as you suggested -- and avoid the process of going thru the 'variance request' at the Water Board for approval.

Thanks,

David LaFrance, PE
Project Manager

BANNER
Engineering | Architecture | Surveying

Banner Associates, Inc.
2201 Jackson Blvd., Suite 200
Rapid City, South Dakota 57702
Telephone | 855.323.6342
www.bannerassociates.com

Gronlund, Eric

From: David LaFrance <davidl@bannerassociates.com>
Sent: Tuesday, April 26, 2016 10:02 AM
To: Gronlund, Eric
Cc: Schaal, Tim
Subject: RE: water permit application for Custer

48 gpm and 77.5 ac-ft (per year) are equivalent on an annual basis. In other words, the 48 gpm is a request for the initial filling of the reservoir spread out over a year. No additional pump rate or withdrawal is being requested.

From: Gronlund, Eric [<mailto:Eric.Gronlund@state.sd.us>]
Sent: Tuesday, April 26, 2016 8:54 AM
To: David LaFrance
Cc: Schaal, Tim
Subject: RE: water permit application for Custer

Dave

The use of 18 gpm at a public recreation area which by definition includes golf courses open to the public is a domestic use and does not require a water permit. So the city has that ability now and it can not be taken away unless there is a change to state law or administrative rule. My question was whether there a desire on the part of the city to increase the pump rate from the dam for use of watering the golf course to 48 gpm. If so, that would require it be included as part of this application and could complicate matters from the perspective of impairment of existing downstream rights. Or if the 48 list in Item No. 2 was simply to represent the planned increase in the storage capacity of the dam.

Eric

From: David LaFrance [<mailto:davidl@bannerassociates.com>]
Sent: Tuesday, April 26, 2016 9:38 AM
To: Gronlund, Eric
Cc: Schaal, Tim
Subject: RE: water permit application for Custer

Eric,

I'm double-checking with Custer to see if the 18 gpm previously allowed for golf course green irrigation (under 298-2, p. 85 of 85) will be needed under this new permit application, before I answer. Or is an allowable 18 gpm diversion rate automatically to be re-instated under the current rules?

D.LaFrance
Banner

From: Gronlund, Eric [<mailto:Eric.Gronlund@state.sd.us>]
Sent: Tuesday, April 26, 2016 8:02 AM
To: David LaFrance
Cc: Schaal, Tim
Subject: water permit application for Custer

Dave – DENR is in receipt of the water permit application filed for the city of Custer.

The existing water right held by the city for the dam is 30 acre feet. Item No. 2 on the application (attached) states 48 gpm and 77.5 acre feet. My question is in regards to the 48 gpm. Is this intended to signify a pump rate out of the dam or is it intended to be the increase in the storage impoundment $[30 \text{ ac-ft (existing)} + 48 = \text{total storage impoundment of } 78 \text{ ac-ft}]$? If this is a pump rate out of the dam, what is the beneficial use to be made of the water?

Eric Gronlund
Water Rights Program, DENR
605 773-3352
Eric.gronlund@state.sd.us

Rodriguez, Rachel

From: Kilts, Whitney (DENR)
Sent: Tuesday, April 9, 2024 3:37 PM
To: Rodriguez, Rachel
Subject: RE: [EXT] Custer West Dam - Reinstatement Application

They are in the File for Water Permit No. 2751-2 pgs 81-86. That is all we have and there were not much for comments. I believe they were all addressed prior to the approval letter being signed.



Whitney Kilts
Office of Water-Water Rights Program
Department of Agriculture and Natural Resources
523 E. Capitol Ave. Pierre SD, 57501
605.773.3352
danr.sd.gov

From: Rodriguez, Rachel <Rachel.Rodriguez@state.sd.us>
Sent: Tuesday, April 9, 2024 3:30 PM
To: Kilts, Whitney (DENR) <Whitney.Kilts@state.sd.us>
Subject: FW: [EXT] Custer West Dam - Reinstatement Application

Hello Whitney,

Just checking to see if we have the completed Banner design for the dam, see Steve's question below.

Whitney, when Banner completed their designs for the dam in 2015-2016, they were approved by SOD. Do you have a copy of your office's comments, if there were any?

Thank you,

Rachel Rodriguez
DANR | Program Assistant
Rachel.Rodriguez@state.sd.us



From: Duvall, Ron <Ron.Duvall@state.sd.us>
Sent: Tuesday, April 2, 2024 8:27 AM
To: Steve Bareis <Steve.Bareis@respec.com>; Kilts, Whitney (DENR) <Whitney.Kilts@state.sd.us>
Cc: Alexis (Allie) Simons <Allie.Simons@respec.com>; Dewell, Amanda <Amanda.Dewell@state.sd.us>; Rodriguez, Rachel <Rachel.Rodriguez@state.sd.us>
Subject: RE: [EXT] Custer West Dam - Reinstatement Application



RECEIVED
MAY 24 2016
WATER RIGHTS
PROGRAM

622 Crook Street
Custer, SD 57730

Office of Mayor
Jared Carson

Phone: (605) 673-4824
Mayor@CityofCuster.com

April 16, 2016

South Dakota Department of Environmental and Natural Resources
Water Rights Division
Attention: Mr. Tim Schaal
Joe Foss Building
523 E. Capitol Avenue
Pierre, SD 57501

Re: Request for Hearing and Variance relating to minimum spillway design requirements ← Revised
Custer West Dam Re-Construction Project

Dear Mr. Schaal,

As required and in accordance with State Law requirement (46-7-5.3), we are initiating this petition to allow for the sizing of a spillway in accordance with the investigations and analysis performed by our Engineer, Banner Associates, Inc.

The Dam, Lake and Spillway Design Plans and Report are hereby attached in support of this request. Our Water Right Permit Application is also attached, corresponding to Banner's provided Plans and Analysis.

For your information, we are also currently working with Banner Associates in support of the preparation of the Emergency Action Plan for the project to be completed sometime in May of 2016, and will forward that to you when it is ready.

With this request, and supporting information, we respectfully ask for SD DNER consideration to be included on the Agenda for the July 7th, 2016 Water Board Hearing. Please do not hesitate to let me or our engineer know if you require any additional information or supporting information.

Sincerely,


Jared Carson
Mayor of Custer City

Cc: S. Zvejnieks, Banner Associates
D. A. LaFrance, Banner Associates

Rodriguez, Rachel

From: Duvall, Ron
Sent: Thursday, January 4, 2024 2:25 PM
To: Alexis (Allie) Simons
Cc: Dewell, Amanda; Rodriguez, Rachel; Gronlund, Eric; Kilts, Whitney (DENR)
Subject: RE: [EXT] Custer West Dam - Water Rights Reinstatement
Attachments: D1585LDV6-NONIRRIG.pdf

Allie,

The application for reinstatement is the same application as applying for a new permit (see attachment). In fact, you can use the existing [Permit No. 2751-2](#) with maps and attachments as your template for completing the new application. The "Type of Application" is "New" and in the "Description of amendment/correction" you can indicate that you are applying for a reinstatement of No. 2751-2. The benefit of reinstating is a reduced application fee which is \$100.00 – [see SDCL 46-2-13\(5\)](#). Your deadline to file the application to reinstate is within three years of expiration of the original construction period identified on No. 2751-2. The construction period expired July 6, 2021, so you have until July 6 this year to apply for the reinstatement.

Please let me know if you have any questions.

Thank you,

Ron Duvall
Dept. of Agriculture & Natural Resources
Office of Water, Water Rights Program
605.773.3352
danr.sd.gov



DANR
SOUTH DAKOTA

From: Alexis (Allie) Simons <Allie.Simons@respec.com>
Sent: Thursday, January 4, 2024 7:49 AM
To: Duvall, Ron <Ron.Duvall@state.sd.us>
Subject: [EXT] Custer West Dam - Water Rights Reinstatement

Hi Ron,

My team and I are working with the City of Custer on potentially reconstructing the Custer West Dam in Custer, SD and are wondering if you can direct us on which form we should fill out to reinstate/renew the current Water Rights permit (No. 2751-2) that exists for this location. This permit authorized the reconstruction of the Custer West Dam that was originally authorized by Water Right No. 298-2. Water Right No. 298-2 authorized the impoundment of 30 acre-feet of water by a dam on French Creek and Water Right No. 2751-2 authorized the reconstruction of the dam and increased the storage capacity to an additional 47.5 acre-feet with construction to be completed on or before July 6, 2021 and water put to beneficial use on or before July 6, 2025.

It is anticipated that the new dam would be the same footprint as the existing.

Thank you so much!

Allie

Rodriguez, Rachel

From: Duvall, Ron
Sent: Tuesday, April 2, 2024 8:27 AM
To: Steve Bareis; Kilts, Whitney (DENR)
Cc: Alexis (Allie) Simons; Dewell, Amanda; Rodriguez, Rachel
Subject: RE: [EXT] Custer West Dam - Reinstatement Application

Steve, see below for your responses concerning the application questions.

Thank you,

Ron Duvall
Dept. of Agriculture & Natural Resources
Office of Water, Water Rights Program
605.773.3352
danr.sd.gov



DANR
SOUTH DAKOTA

From: Steve Bareis <Steve.Bareis@respec.com>
Sent: Monday, April 1, 2024 10:31 AM
To: Kilts, Whitney (DENR) <Whitney.Kilts@state.sd.us>; Duvall, Ron <Ron.Duvall@state.sd.us>
Cc: Alexis (Allie) Simons <Allie.Simons@respec.com>
Subject: [EXT] Custer West Dam - Reinstatement Application

Good morning. I am putting two copies of the attached WR Permit Reinstatement Application in the mail to you tomorrow. I am applying on behalf of the City.

1. Address is SD DANR, Water Rights... Attention anyone?

Attention: Rachel Rodriguez

2. What is the reapplication fee?

Application fee is \$100.00. The license fee from the previous permit need not be resubmitted with your application to reinstate.

3. Make the check out to: ?

SD Water Rights Program.

Whitney, when Banner completed their designs for the dam in 2015-2016, they were approved by SOD. Do you have a copy of your office's comments, if there were any?

Thank you,
Steve Bareis, RESPEC



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2878-2, City of Custer**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 2878-2, City of Custer, c/o Mayor Bob Brown, 622 Crook Street, Custer SD 57730.

The Chief Engineer is recommending APPROVAL of Water Permit Application No. 2878-3 to reinstate Water Permit No. 2751-2 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 domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. Water Right No. 298-2 and Water Permit No. 2878-2, combined, authorize an impoundment with a storage capacity of 77.5 acre feet of water and sufficient water annually to maintain the water level to the outlet elevation of 5,348.0 feet mean sea level.
2. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
3. Plan and specifications for reconstruction of Custer West Dam were reviewed and approved by the Chief Engineer in 2016. Any changes the Chief Engineer considers to be significant changes to the 2016 reconstruction plans must be submitted to the Chief Engineer for review and approval for compliance with the Safety of Dams Rules (ARSD 74:02:08).
4. The 2016 Emergency Preparedness Plan (EPP) must be updated to reflect current contact information for emergency services and emergency notification contacts and the updates provided to all plan holders prior to the start of reconstruction. The EPP must be reviewed annually and updated as needed with the updates provided to all plan holders.

See report on application for additional information.

Eric Gronlund, Chief Engineer
May 29, 2024

Report to the Chief Engineer
Water Application No. 2878-2
City of Custer
May 17, 2024

Water Permit Application No. 2878-2, filed by the City of Custer, is to reinstate Water Permit No. 2751-2, for which the time to complete construction of works expired on July 6, 2021. This application is to reconstruct Custer West Dam and impound 47.5 acre-feet of water from French Creek in the N ½ SE ¼ Section 27-T3S-R4E. The water will be used for recreational, fish and wildlife propagation, and public safety purposes. This is in addition to the 30 acre-feet of water authorized for impoundment by the same dam on French Creek by Water Right No. 298-2. Combined this application and Water Right No. 298-2 would impound 77.5 acre-feet of water by a dam on French Creek in the N ½ SE ¼ Section 27-T3S-R4E to maintain water at an outlet elevation of 5,248.0 mean sea level (NAVD 88). The dam is located in the southwest part of the City of Custer in Custer County, South Dakota.

Water Source: French Creek

South Dakota Codified Laws (SDCL) and Administrative Rule of South Dakota (ARSD)

SDCL 46-2A-8.1

The Water Management Board may reinstate any water permit with a priority date after March 31, 1977, if unappropriated water is available and construction necessary to put water to beneficial use was not completed pursuant to SDCL 46-2A-8 or 46-5-26. Any application for reinstatement shall be made within three years of the expiration of the original construction period pursuant to chapter 46-2A. The priority date for the application to reinstate a permit shall be the date the application to reinstate is filed.

SDCL 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a reasonable probability there is unappropriated water available for the applicant's proposed use, the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, and the proposed use is a beneficial use and in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. This report will address availability of unappropriated water and potential for unlawful impairment to existing rights that are pertinent to this application.

ARSD Chapter 74:02:08 Safety of Dams

ARSD Chapter 74:02:08 provides the minimum design standards for dams that are 25 feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier or from the lowest elevation of the outside limit of the barrier or has an impounding capacity at maximum water storage elevation of 50 acre-feet or more. A barrier is not considered a dam for the purpose of this chapter if the height does not exceed 6 feet regardless of storage capacity or if the storage capacity at maximum water storage elevation does not exceed 15 acre-feet regardless

of height. Reconstruction of a dam regulated under the Safety of Dams rules cannot begin until plans and specifications have been approved by the Chief Engineer of the Water Rights Program and a water permit application, if needed, has been approved.

History

The Custer West Dam was originally constructed in 1943 and was permitted under Water Right No. 298-2 for 30 acre-feet of storage (Water Rights, 2024a). In 1981, Water Right No. 298-2 was inspected, and the earthen dam was licensed as 15 ft high with a storage of 30 acre-feet (Water Rights, 2024a). Around 2012, the outlet works for the dam became non-functional and the reservoir was drained. In 2015, the City of Custer retained Banner Engineering to conduct an assessment of the dam. During the assessment, Banner Engineering determined that the existing dam had a normal storage (storage at the primary spillway) of approximately 60 acre-feet (the date of the storage increase is unknown). In 2016, plans for the dam's reconstruction and a water permit for the additional storage to Water Right No. 298-2 were submitted to the Water Rights Program and approved (Water Permit No. 2751-2). The plans for dam reconstruction also included dredging a portion of the reservoir area for improved fish habitat for a normal storage at the outlet elevation of 77.5 acre-feet. The dam has not yet been reconstructed and the construction deadline (July 6, 2021) for Water Permit No. 2751-2 has passed, so an application is being made to reinstate the permit.

Review of the Water Source

French Creek is located in the southern Black Hills and listed as a perennial stream in the National Hydrography Dataset immediately upstream of the dam (USGS, 2020). French Creek is a tributary of the Cheyenne River with the confluence located near the Custer County-Oglala Lakota County line. The dam for this application is located in the N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 27-T3S-R4E on French Creek on the west side of Custer, SD. Upstream of this location, French Creek is formed by the confluence of the North and South Forks of French Creek with the other larger contributing tributary upstream of the dam being Ruby Creek (USGS, 2020). The headwaters of the North Fork French Creek (the longer of the two forks) is in the area south of Bear Mountain in southern Pennington County and the headwaters of the South Fork French Creek is the Round Mountain area in Custer County (USGS, 2020). The headwaters of both the North and South Forks of French Creek are along the edge of the Limestone Plateau area of the Black Hills (Martin et al., 2004). The available information for this portion of French Creek has not changed significantly since the review of Water Permit 2751-2 (Schaal, 2016).

The contributing drainage area for the dam was delineated using the United States Geological Survey (USGS) Streamstats Application, shown in Figure 1 (Ries, et al., 2024). The contributing drainage area for the dam is approximately 36.4 square miles. The drainage area of French Creek upstream of the dam is in an area of the Black Hill where it is common for spring flow to contribute to the baseflow of creeks based on the underlaying geology (Martin et al., 2004).

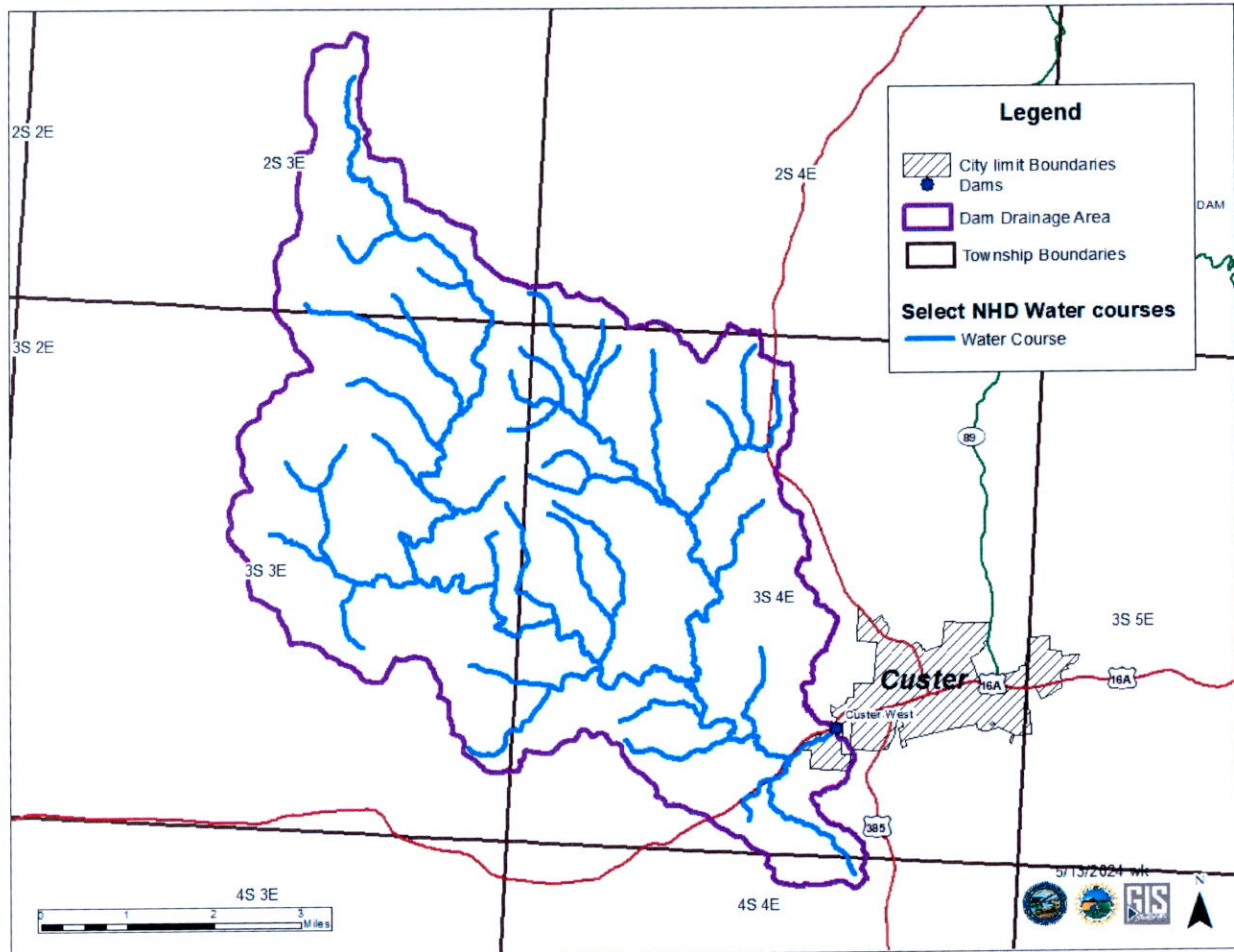


Figure 1: Contributing drainage area for the Custer West Dam (Ries, et al., 2024 and USGS, 2020a)

Water Availability

Stream Gage Data

The nearest stream gage to Custer West Dam with some amount of daily data is the USGS surface water site No. 06402995 French Creek above Stockade Lake near Custer, SD. This gage was operated from October 1, 1990, to September 30, 1997 (USGS, 2024). The gage is located approximately 6.1 stream miles downstream of the Custer West Dam with a contributing drainage area of 68.4 square miles (USGS, 2024). The approximate drainage area for the gage is shown in Figure 2 with the portion of the drainage area that is for Custer West Dam indicated. The drainage area for the Custer West Dam is about half of the drainage area above the gage. Based on the available information, the Custer West Dam was in operation and impounding water during the monitoring period for the gage. So, the gage data reflects the level of water retention at the dam site (unknown if the normal storage was 30 acre-feet or 60 acre-feet at the time). While the period of record on this gage is limited, the data is currently the best available information for this area and can provide some basic information on water availability.

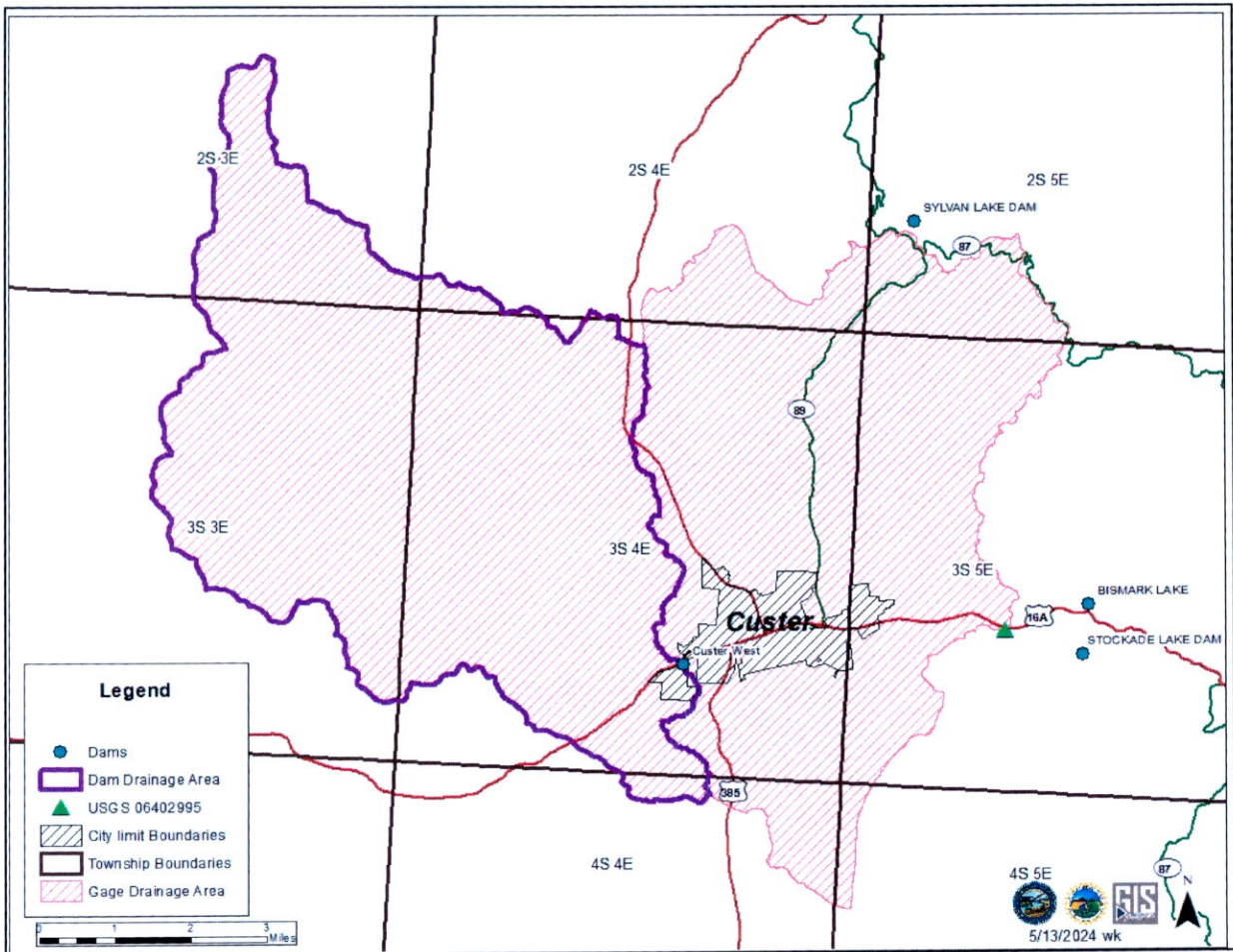


Figure 2: Contributing drainage area for USGS Gage No. 06402995 French Creek above Stockade Lake near Custer, SD (Ries, et al., 2024 and USGS, 2020a)

The daily percentile flow hydrographs for this gage at the 20th, 25th, and 50th percentiles are shown in Figure 3 by calendar year. Typically, for stream gage analysis the Water Rights Program looks at the 10th percentile data rather than the 20th percentile data. However, 10th percentile data was not available for this gage so the smallest percentile data available (20th) was presented instead. The 50th percentile shows the flow rate which is met or exceeded 1 out of every 2 years. The 25th percentile shows the flow rate which is met or exceeded 3 out of every 4 years. The 20th percentile shows the flow rate which is met or exceeded 8 out of every 10 years. Estimated annual volumes from the percentile data is 1,368 acre-feet at the 20th percentile, 1,820 acre-feet at the 25th percentile, and 5,163 acre-feet at the 50th percentile. So, based on the gage period of record, on average, 8 out of 10 years an annual volume of run off above the gage location of at least 1,368 acre-feet is estimated.

The average discharge for the gage for water years 1991 to 1997 are shown in Table 1. Also provided in Table 1 is the corresponding annual volume for the average discharge for the water year (October 1 to September 30). The total precipitation for the water year is provided in Table 1. For comparison, Figure 4 provides total precipitation by water year for Custer County

from water year 1896 to 2023 (NOAA, 2024). The average precipitation by water year during this time period is 17.8 inches. Two years during the gaging period fall below this average 1992 and 1994 (NOAA, 2024).

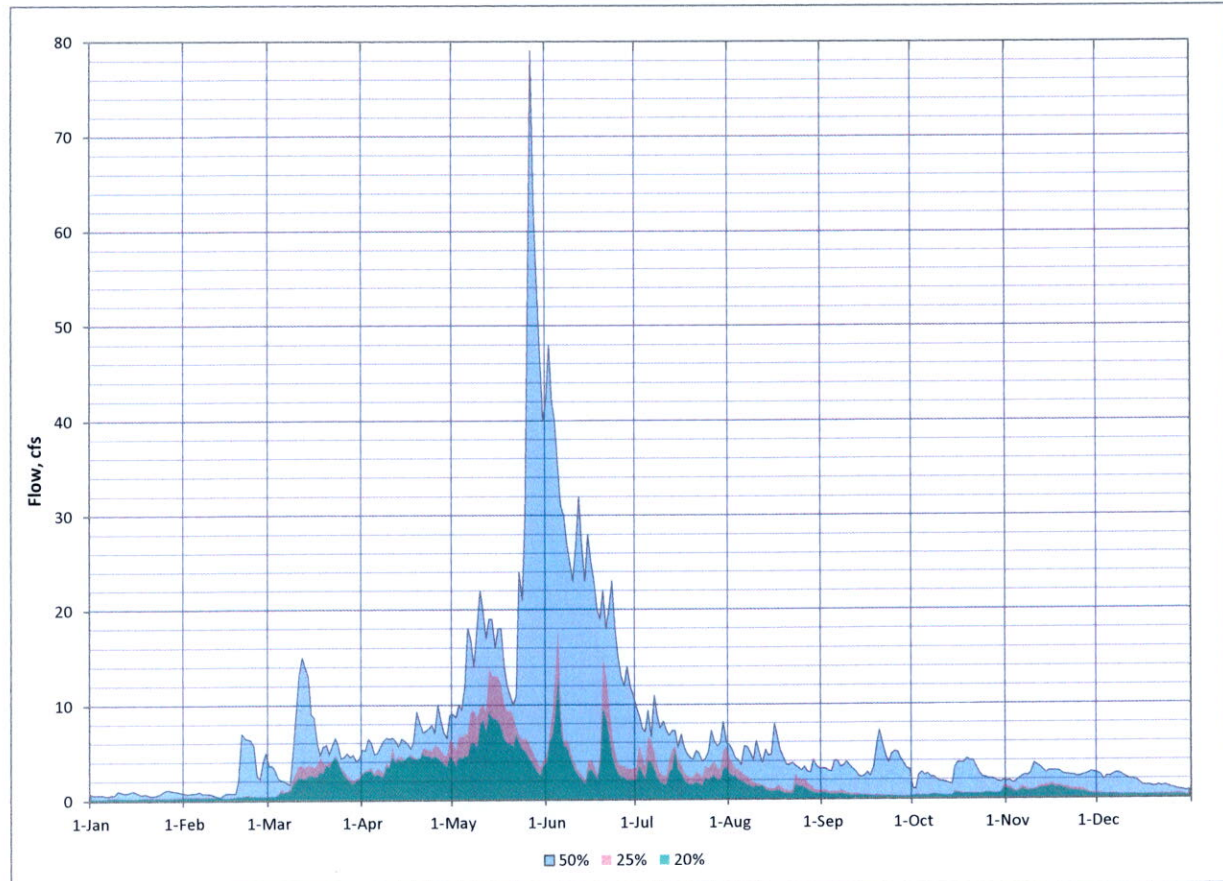


Figure 3: Daily percentile flow hydrographs for the USGS gage French Creek above Stockade (operated Oct 1, 1990 to Sept 30, 1997) (USGS, 2024).

Table 1: Average daily flow at gage by water year and calculated annual volume (USGS, 2024) (NOAA, 2024)

Water Year	Average Discharge (cfs)	Annual Volume (acre-feet)	Precipitation (inches)
1991	8.48	6,139	19.89
1992	2.64	1,911	17.67
1993	7.67	5,553	23.21
1994	4.86	3,518	12.61
1995	18.2	13,176	24.59
1996	10.0	7,240	20.50
1997	14.7	10,642	24.90

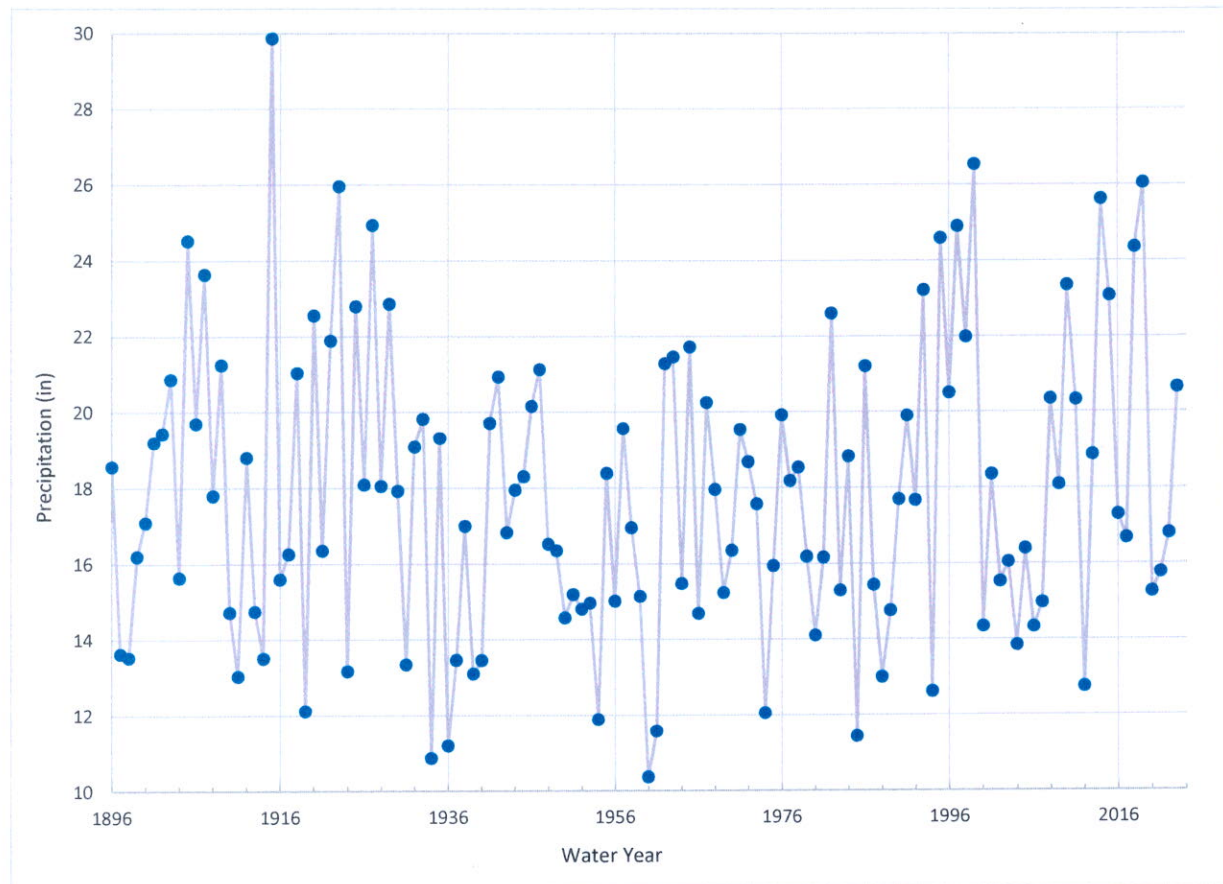


Figure 4: Total precipitation by water year for Custer County, SD from 1896 to 2023 (NOAA, 2024)

Once filled, annual water losses from the reservoir will be mainly due to evaporation, seepage, and domestic use. The reservoir created by the reconstructed Custer West Dam is anticipated to have a surface area of 7.3 acres. Using data from 1956 to 1970, NOAA (1982) provided annual free water surface evaporation data for the contiguous United States. Utilizing NOAA (1982), the estimated annual free water surface evaporation for the proposed dam site is 44 inches per year (approximately 3.7 ft per year). Average annual (calendar year) precipitation in the Custer, SD area is 19.65 inches per year (0.82 ft) (US Climate Data, 2024). So, net loss between direct precipitation on the reservoir and evaporation is estimated at 24.35 inches (2 ft). Applying this over the anticipated surface area results in an estimated annual net loss to evaporation of 14.8 acre-feet. Information is not available to estimate losses to seepage since what is average loss to seepage for a dam is usually not known until after years of operation and is typically not measured. The city's domestic use of the reservoir is limited to not exceeding 18 gallons per minute on an average daily basis (or up to 25,920 gallons per day), which is up to approximately 29 acre-feet per year. Since this domestic use of water is part of supplying a public recreation area, actual use will likely be much less since the use will likely be seasonal in nature and not constant pumping.

Existing Users

The nearest appropriative user downstream of the Custer West Dam is the South Dakota Department of Game, Fish, and Parks for Stockade Dam. Stockade Dam is located approximately 7 stream miles downstream of Custer West Dam. The USGS gage on French Creek above Stockade Dam is approximately 0.3 stream miles upstream of backwater for the reservoir created by Stockade Dam. The South Dakota Department of Game, Fish, and Parks holds Vested Water Right Claim No. 734-2 for 400 acre-feet per year to fill the reservoir to the spillway outlet. Vested Water Right Claim No. 734-2 was filed in 1961 asking for a priority date of 1933. The amount of appropriation, approximately 400 acre-feet, is based on estimated evaporation losses of three feet per year over the surface area of the reservoir (Schaal, 2016).

There is no history of unlawful impairment between the two dams, and Custer West Dam has been in existence since 1943, impounding water from 1943 to 2012 based on the available information (Water Rights, 2024a and 2024c). Based on the available stream gaging data under average to slightly below average conditions, there is expected to be sufficient runoff to supply both dams. The continuance of the qualification for a low bypass requirement should be continued on this permit, if reinstated, in the unlikely event that an unlawful impairment does occur.

Domestic use concerns have come up downstream of Custer West Dam primarily in the early 1970s (Water Rights, 2024a). These concerns were more in relation to irrigation of portions of a golf course adjacent to the dam and reservoir, rather than an issue with the water impounded by the dam itself (Water Rights, 2024a). Past reviews of these concerns concluded that since a golf course, open to the public, is included under the definition of a public recreation area (ARSD 74:02:1:01.01), that the city's municipal golf course could be irrigated out of the dam without additional water permitting under the definition of domestic use (SDCL 46-1-6(7)) (Water Rights, 2024a). However, the city's pumping for irrigation could not exceed a rate of 18 gallons per minute. This history does suggest that under drier conditions low flows may need to be bypassed for downstream domestic users between the Custer West Dam and Stockade Dam, especially users in the first mile downstream of the dam which is the approximate distance in stream miles to the next drainage contributing to French Creek (USGS, 2020a).

Safety of Dams

The Custer West Dam is classified as a small-sized category 1 dam. A category 1 dam is a high hazard dam which is a dam whose failure may cause loss of life. This size of high hazard dam is required by the Safety of Dams Rules to have a minimum spillway capacity capable of passing 50 percent of the probable maximum flood (PMF), unless the owner can provide information and justification to show that the proposed design flow can be stored or passed over the dam without failure of the dam. Currently, the dam does not have sufficient spillway capacity to meet this rule and the reservoir is being kept drained as a risk reduction measure (Water Rights, 2024b). Additionally, the Chief Engineer of the Water Rights Program has issued an order for the dam's repair.

In 2016, the reconstruction plans for the dam by Banner Engineering were approved (Water Rights, 2024a). RESPEC Engineering, as part of assisting the city on this reinstatement application, has indicated that RESPEC is reviewing the 2016 plan, and that calculations of the required flood event and the reconstruction plans for the dam could be updated from what was

approved in 2016 (Bareis, 2023). Any significant changes to the 2016 reconstruction plans will need to be reviewed for compliance with the Safety of Dams Rules and approved by the Chief Engineer of the Water Rights Program.

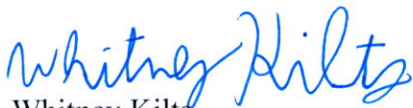
Pursuant to ARSD 74:02:08:08, category 1 dams are subject to additional design requirements in addition to minimum spillway capacity requirements. The first requirement is that if a category 1 dam undergoes extensive repairs which require complete drawing down of the reservoir, a low-level drawdown facility must be installed. A low-level drawdown facility may be either a gated pipe through the embankment that would allow the release of water below the primary spillway or sufficient available pumping capacity to draw down the reservoir. Since the Custer West Dam is currently being kept drained (completely drawn down) the requirement for a low-level drawdown facility applies. The 2016 reconstruction plans for the dam included a low-level drawdown. The low-level drawdown will likely also allow for the bypass of low flows as needed. The second requirement is that for a category 1 dam, a breach analysis report must be completed by the owner with a simulated water surface at or above the top of the dam and submitted with the plans and specifications for review. The 2016 reconstruction plans included a breach analysis. However, if any change to the plans results in a significant increase in the top of dam elevation, an updated breach analysis may be needed.

Pursuant to ARSD 74:02:08:10, an emergency preparedness plan (EPP) (more commonly known as an emergency action plan (EAP)) is required for all category 1 dams. The rule does not specify how often a plan needs to be reviewed. However, best practice is that a plan be reviewed at least annually and updated as needed (FEMA, 2013). The majority of state-regulated high hazard dams do not meet the best practice of an annual review of EPPs or EAPs (Water Rights, 2024b). An EAP was submitted with the plans and specifications in 2016. This 2016 EAP had the generally recommended components of an EAP (FEMA, 2013), but several of the contacts were out-of-date. The 2016 EAP did not provide a total estimated population at risk but listed approximately 100 entries under the list of residences, businesses, and highways at risk in the event of a dam failure. Given the number of downstream residences, businesses, and highways at risk in the event of a dam failure, the addition of a qualification to the permit, if reinstated, requiring the EAP be updated and the updated plan provided to all plan holders identified in the EAP prior to construction is recommended. Additionally, given the number of downstream residences, businesses, and highways at risk, it is recommended that a qualification be included requiring the EAP be reviewed annually after the dam is reconstructed.

Conclusions

1. Water Permit Application No. 2878-2, filed by the City of Custer is to reinstate Water Permit No. 2751-2, for which the time to complete construction of works expired on July 6, 2021. This application is to reconstruct Custer West Dam and impound 47.5 acre-feet of water from French Creek in the N ½ SE ¼ Section 27-T3S-R4E. The water will be used for recreational, fish and wildlife propagation, and public safety purposes. This is in addition to the 30 acre-feet of water authorized for impoundment by the same dam on French Creek by Water Right No. 298-2.

2. Combined, this application and Water Right No. 298-2 would impound 77.5 acre-feet of water by the reconstructed Custer West Dam on French Creek in the N ½ SE ¼ Section 27-T3S-R4E.
3. While water is expected to be available in average or slightly below average years, water availability for downstream users could be an issue in extremely dry years. Should this occur, the City of Custer would need to bypass water to downstream domestic users and water right holders with a senior priority date.
4. If the permit is reinstated, a low flow bypass requirement for downstream domestic use is recommended to remain as a qualification.
5. If the final plans and specifications for the dam are updated, they will need to be reviewed for compliance with South Dakota's Safety of Dams Rules and approved by the Chief Engineer prior to reconstruction.
6. Addition of a qualification is recommended, requiring the emergency action plan (or emergency preparedness plan) for the dam to be reviewed and any outdated information updated, and plan updates filed with all plan holders at least 30 days prior to the start of reconstruction. Once the dam is reconstructed, the plan should be reviewed annually, and any updates provided to all plan holders including the Water Rights Program.



Whitney Kilts

SDDANR- Water Rights Program

References

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- Water Rights. 2024a. Water Right/Permit Files. SD DANR-Water Rights Program, Joe Foss Building, Pierre, South Dakota.
- Water Rights, 2024b. Safety of Dams Files. SD DANR-Water Rights Program, Joe Foss Building, Pierre, South Dakota.
- Water Rights, 2024c. County Complaint Files. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

**NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT
THE NEWSPAPERS RIGHT AWAY.**

May 31, 2024

City of Custer
c/o Robert Brown, Mayor
622 Crook Street
Custer SD 57730

Dear Mr. Brown:

Water Permit Application No. 2878-2 for recreation, fish and wildlife use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Custer County Chronicle printed in Custer SD (Ph # 605 673-2217) and the Rapid City Journal printed in Rapid City SD (see attachment for contact number). You will need to contact the newspapers and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspapers to authorize publication of your Notice and to arrange for payment. Early contact with the papers can eliminate delays. Upon receiving authorization from you, the publishers have been instructed to publish your notice. The newspapers have also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Rachel Rodriguez

Rachel Rodriguez
Water Rights Program
(605) 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the application.

NOTICE OF APPLICATION NO. 2878-2 to Appropriate Water

Notice is given that the City of Custer, 622 Crook Street, Custer SD 57730 has filed an application for a water permit to reinstate Water Permit No. 2751-2 for which the time to complete construction of works expired on July 6, 2021. This application to reinstate Permit No. 2751-2 is to reconstruct Custer West Dam originally authorized by Water Right No. 298-2. Water Right No. 298-2 authorizes impoundment of 30 acre-feet of water by a dam on French Creek located in the NE 1/4 SE 1/4 Section 27-T3S-R4E. This application proposes to reconstruct the dam and increase the storage capacity an additional 47.5 acre-feet with water to be impounded in the N 1/2 SE 1/4 Section 27-T3S-R4E. This application requests impoundment of sufficient water to maintain water to an outlet elevation of 5,348.0 feet mean sea level with a normal storage capacity of 77.5 acre-feet at the primary spillway elevation. The water will be used for recreational, fish and wildlife propagation and public safety purposes. This site is located in the southwest part of the City of Custer SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2878-2 to reinstate Water Permit No. 2751-2 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 domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by June 24, 2024.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by June 24, 2024.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Published once at the total approximate cost of_

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Thursday, May 30, 2024 11:12 AM
To: custernews@gwtc.net
Subject: 2878-2 City of Custer - Public Notice
Attachments: 2878-2 public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on June 12, 2024.

City of Custer, 622 Crook Street, Custer SD 57730, 605-673-4824, has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol Ave, Pierre SD 57501.

Let me know if you have questions. **Please acknowledge receipt of this email.**

Thank you,

Rachel Rodriguez
DANR | Program Assistant
Rachel.Rodriguez@state.sd.us



Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Thursday, May 30, 2024 11:17 AM
To: RCY Legals
Subject: 2878-2 City of Custer - Public Notice
Attachments: 2878-2 RCJ public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on June 13, 2024.

City of Custer, 622 Crook Street, Custer SD 57730, 605-673-4824, has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol Ave, Pierre SD 57501.

Let me know if you have questions. **Please acknowledge receipt of this email.**

Thank you,

Rachel Rodriguez
DANR | Program Assistant
Rachel.Rodriguez@state.sd.us



Affidavit of Publication

State of South Dakota)

)ss.

County of Custer)

Jerry Lee Lenander of said county, being duly sworn, on oath says that he is publisher of the Custer County Chronicle, a weekly newspaper printed and published in Custer City, said County of Custer and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein, mentioned, and was and is printed wholly or in part in an office maintained at said place of publication: that the

City of Custer City
Notice of Application
No 2878-2 to Appropriate Water

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for one successive week(s), on which said newspaper was regularly published, to wit:

June 12, 2024; _____; _____;

_____, _____; _____, _____;

_____, _____; _____, _____;

_____, _____; _____, _____;

the full amount of the fees for the publication of the annexed notice is \$ 47.48.

Subscribed and sworn to me before this 12

of June, 2024;

Jeanne Fuerstenberg
NOTARY PUBLIC

MY COMMISSION EXPIRES:

NOV 30 2027



NOTICE OF APPLICATION

NO. 2878-2 TO APPROPRIATE WATER

Notice is given that the City of Custer, 622 Crook Street, Custer SD 57730 has filed an application for a water permit to reinstate Water Permit No. 2751-2 for which the time to complete construction of works expired on July 6, 2021. This application to reinstate Permit No. 2751-2 is to reconstruct Custer West Dam originally authorized by Water Right No. 298-2. Water Right No. 298-2 authorizes impoundment of 30 acre-feet of water by a dam on French Creek located in the NE 1/4 SE 1/4 Section 27-T3S-R4E. This application proposes to reconstruct the dam and increase the storage capacity an additional 47.5 acre-feet with water to be impounded in the N 1/2 SE 1/4 Section 27-T3S-R4E. This application requests impoundment of sufficient water to maintain water to an outlet elevation of 5,348.0 feet mean sea level with a normal storage capacity of 77.5 acre-feet at the primary spillway elevation. The water will be used for recreational, fish and wildlife propagation and public safety purposes. This site is located in the southwest part of the City of Custer SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2878-2 to reinstate Water Permit No. 2751-2 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 domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation

a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by June 24, 2024.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Published once at the total approximate cost of \$47.48 and may be viewed free of charge at www.sdpublicnotices.com.

6/12

RECEIVED

JUL 01 2024

OFFICE OF
WATER

AFFIDAVIT OF PUBLICATION

Rachel Rodriguez
Department of Agriculture and Natural Resources
523 E Capitol Avenue
State of Pennsylvania, County of Lancaster, ss:

Yuade Moore, being first duly sworn, deposes and says: That (s)he is a duly authorized signatory of Column Software, PBC and duly authorized agent of The Rapid City Journal, a corporation of Rapid City, South Dakota, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published for at least one year prior to the first date of the published notice.

This affidavit is a true and corrected copy of notice which appeared in said newspaper on the following dates:

PUBLICATION DATES: June. 13 2024

NOTICE ID: kTSXe0Ua4S0fHVUfpXpl
PUBLISHER ID: COL-SD-0286
NOTICE NAME: NOTICE OF APPLICATION NO. 2878-2
TOTAL AD COST: \$85.11
FILED ON: May. 30, 2024

(Signed) Yuade Moore

VERIFICATION

State of Pennsylvania
County of Lancaster

Commonwealth of Pennsylvania - Notary Seal
Nicole Burkholder, Notary Public
Lancaster County
My commission expires March 30, 2027
Commission Number 1342120

Subscribed in my presence and sworn to before me on this: 06/14/2024

Nicole Burkholder

Notary Public
Notarized remotely online using communication technology via Proof.

NOTICE OF APPLICATION NO. 2878-2 to Appropriate Water
Notice is given that the City of Custer, 622 Crook Street, Custer SD 57730 has filed an application for a water permit to reinstate Water Permit No. 2751-2 for which the time to complete construction of works expired on July 6, 2021. This application to reinstate Permit No. 2751-2 is to reconstruct Custer West Dam originally authorized by Water Right No. 298-2. Water Right No. 298-2 authorizes impoundment of 30 acre-feet of water by a dam on French Creek located in the NE 1/4 SE 1/4 Section 27-T3S-R4E. This application proposes to reconstruct the dam and increase the storage capacity an additional 47.5 acre-feet with water to be impounded in the N 1/2 SE 1/4 Section 27-T3S-R4E. This application requests impoundment of sufficient water to maintain water to an outlet elevation of 5,348.0 feet mean sea level with a normal storage capacity of 77.5 acre-feet at the primary spillway elevation. The water will be used for recreational, fish and wildlife propagation and public safety purposes. This site is located in the southwest part of the City of Custer SD. Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2878-2 to reinstate Water Permit No. 2751-2 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 domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below. Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501, or call (605) 773-3352. The applicant's mailing address is given

en above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by June 24, 2024.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by June 24, 2024.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

(Published June 13, 2024 for a total approximate cost of \$85.11 and may be viewed for free at www.sd-publicnotices.com)
Legal No: COL-SD-0286

Rodriguez, Rachel

From: Column Support <support@column.us>
Sent: Thursday, May 30, 2024 12:26 PM
To: Rodriguez, Rachel
Subject: [EXT] Notice Order Confirmed
Attachments: notice_kTSXe0Ua4S0fHVUfpXpl_proof.pdf



Hi Rachel,

The Rapid City Journal just confirmed that they have received your notice order.

Notice Name: NOTICE OF APPLICATION NO. 2878-2

Notice ID: kTSXe0Ua4S0fHVUfpXpl

Receipt Confirmed: May. 30, 2024

Publication Dates: 06/13/24

You'll receive further updates if the publisher makes any changes to your notice before publication.

[View Notice](#)

Supported by Column

If you'd like to [unsubscribe](#) from any emails from Column, you can do so in your user settings.

Rodriguez, Rachel

From: Madison Hurd <leelegals@column.us>
Sent: Thursday, May 30, 2024 12:27 PM
To: Rodriguez, Rachel
Subject: Re: [EXT] 2878-2 City of Custer - Public Notice

Hi Rachel,

Your notice is scheduled to be published in **the Rapid City Journal on June 13, 2024**.
Your **Notice ID is: kTSXe0Ua4S0fHVUfpXpl**

You will be receiving a notification from Column Support with your proof. If you don't see it, check your spam folder and any email restrictions you may have.

For the fastest and most reliable placement process, use column.us to quickly place notices yourself, get proofs, view pricing, and access your invoices and affidavits. Visit our [help center](#) for tips, or sign up for one of our [training webinars](#).

If you have any questions or concerns, please don't hesitate to let us know so we can look into it!

Thank You!

—
Madison Hurd

Why wait to place? Submit your legal ads on your own in under 5 minutes. Visit column.us/place, and follow the simple steps. [Get the scoop here](#).

How did I do? 


On May 30, 2024 at 11:17 AM CDT rachel.rodriguez@state.sd.us wrote:

This Message Is From an External Sender

This message came from outside your organization.

Attached is a notice to be published on June 13, 2024.

City of Custer, 622 Crook Street, Custer SD 57730, 605-673-4824, has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol Ave, Pierre SD 57501.

Let me know if you have questions. [Please acknowledge receipt of this email](#).

Thank you,

Rachel Rodriguez
DANR | Program Assistant
Rachel.Rodriguez@state.sd.us

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Thursday, May 30, 2024 2:02 PM
To: 'mayor@cityofcuster.com'; Steve Bareis
Subject: 2878-2 City of Custer - Public Notice
Attachments: 2878-2 Rec.pdf; 2878-2 Ltr.pdf; 2878-2 PubNotice.pdf; Invoice_RapidCityJournal.pdf; [EXT] Notice Order Confirmed

Good afternoon,

Attached is a copy of the report, chief engineer's recommendation, and information regarding the public notice for your water permit application. As stated in the letter, **please contact the paper(s) as soon as possible to authorize publication and arrange for payment.** Please note that the Rapid City Journal has a new online portal which allows for easy payment, see attached email to view and submit payment. Also, this newspaper only prints 3 days a week, so it will be published on a Thursday, a print day. This information is also being mailed to you.

Let me know if you have questions. Please acknowledge receipt of this email.

Thank you,

Rachel Rodriguez
DANR | Program Assistant
Rachel.Rodriguez@state.sd.us





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

JUL 12 2024

City of Custer
c/o Bob Brown, Mayor
622 Crook Street
Custer SD 57730

Dear Mayor Brown:

Enclosed is Water Permit No. 2878-2 authorizing construction of the water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

An informational sheet *Common Water Right Questions?* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

**Affidavit of Public Notice
Posting on DANR Website**

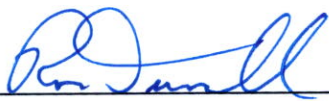
Pursuant to SDCL § 46-2A-4, public notice of the following application was posted on the DANR web site at <https://danr.sd.gov/public>. The posted public notice is the same notice as published in the pertinent newspaper(s) and a copy of the public notice is maintained in the application file. If the application is contested, the posting is moved to the DANR contested case website at <https://danr.sd.gov/public/ContestedCase.aspx> until final action is taken on the application pursuant to SDCL § 46-2A-4.

Application No.: 2878-2

Name of Applicant: City of Custer

Date of Posting: 6/10/2024

Date of Removal: 7/12/2024



Ron Duvall, Engineer III

7/12/2024

Date

Subscribed and sworn to before me, a notary public, this 12th day of July, 2024.



Notary Public - South Dakota
My commission expires:

**Rachel Rodriguez
My Commission Expires
May 16, 2029**

(SEAL)





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

File No. 2878-2

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

On Monday, October 6, 2025, Alexis (Allie) Simons, with Respec Engineering firm hired by City of Custer, provided an updated Emergency Preparedness Plan (EPP), pursuant to Qualification No. 4, placed on Permit No. 2878-2.

Due to a wealth of contact information being listed on the EPP, it will **NOT** be scanned into the Water Rights file for Permit No. 2878-2; however, a copy will be kept by Program Staff, Whitney Kilts, who is charged with overseeing the state's Safety of Dams program.

Amanda Dewell
Water Rights Program