

444 1948

District _____

OFFICE OF STATE ENGINEER
PIERRE, S. LAK.

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

- I. If a corporation**

- (NOTE—A certified copy of articles of incorporation must accompany the application.)

- ## II. Method of accomplishing the work and financial resources of the applicant

2. Name of diversion works City Park Dam at City Park Lake

3. Quantity of water claimed. .01 cubic feet per second. or 30 acre feet per year for storage

4. Source of water supply French Creek

5. Location of point of diversion The left end of the dam N. 89 degrees 57 minutes W., 1058 feet
distant from the $\frac{1}{4}$ section corner on the east side of section (26), T. 3S., R. 1E.
D.A.M., Custer County, S.D. (Right or left bank looking down stream.)

6. Annual period during which water is to be used All year around

7. To be used for: Public recreation- rich culture- Fire protection- Domestic stock water.

1. Irrigation or domestic use

- (a) Number of acres irrigated // // // // // acres

- (b) : Legal Authority/Type of right

(b) Legal subdivisions to be irrigated and fraction with average acreage should be written (NOTE—A list of lands to be irrigated, giving each subdivision, here, or may be appended as a part of this application. Same must also be shown on accompanying map.)

- (c) Student (s)/is/are domestic/foreign (city/country/etc.)

- II. Mining, power, manufacturing, transportation, or other purposes:**

- (a) Nature of use ~~water to be impounded for a lake of seven acres~~ area containing 30 acre feet. To be used as park lake fish culture- Fire protection.

- (b) Amount of power to be generated //////////////// horse power. //////////////// Stock water.

- (c) Loftis/et al

- (d) Abs. Sec. 97, developing power 11/17/77

- (c) Point where water will be returned to stream Will be returned to stream at a point N. 89° de. 57 min. W., 75 1/2 feet distant from said 1/4 sec. corner on east side of said section 26, T. 3. S., R. 4 E.

8. Estimated cost of works:

(a) 11644/6444/8/ (b) 899999/9999/8/
 (c) 888888/8/ (d) 888888/8/
 (e) Other structures Dam and Spillway \$ 5900. Total, \$

9. Description of diversion works:

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

Dam and Spillway

II. Dimensions of works:

(a) Dam: Height 10 to 11 feet; length at bottom 345 feet; length at top 345 feet; thickness at bottom 90 feet; thickness at top 10 feet; slope of front (water) face 3 to 1; slope of back face 2 to 1; material used in construction earth fill
 (b) Reservoir: Capacity when filled 30 acre feet. Surface area at highwater mark 7 acres.

DEPTH AT OUTLET-Feet	SURFACE AREA AT EACH DEPTH AT OUTLET-ACRES	CAPACITY ACRE-Feet
4 to 5 ft.	High water	30
	Average depth of lake 4 to 5 feet	
Spillway to consist of arched concrete 61 feet straight across and 71 feet along arch of 130 degree curve, and 58 feet of natural solid rock or granite dike in place. Arched concrete from 6 to 12 feet in height 369 square feet available across section		
spill capacity.		

(c) 11644/6444/8/ feet; 899999/9999/8/ feet;

(d) 888888/8/ miles.

LOCATION, BELOW HEADGATE	DEPTH	BOTTOM WIDTH	WIDTH AT WATER LINE	GRADE PER MILE
At <u> </u> Mile	<u> </u> feet	<u> </u> feet	<u> </u> feet	<u> </u> feet
At <u> </u> Mile	<u> </u> feet	<u> </u> feet	<u> </u> feet	<u> </u> feet
At <u> </u> Mile	<u> </u> feet	<u> </u> feet	<u> </u> feet	<u> </u> feet
At <u> </u> Mile	<u> </u> feet	<u> </u> feet	<u> </u> feet	<u> </u> feet
At <u> </u> Mile	<u> </u> feet	<u> </u> feet	<u> </u> feet	<u> </u> feet
At <u> </u> Mile	<u> </u> feet	<u> </u> feet	<u> </u> feet	<u> </u> feet

(Give dimensions where reductions in size are made.)

10. Time required for completion of work one years.

11. Time required for complete application of water to the proposed beneficial use one years.

12. Choice of newspaper for publication of notice of intention to appropriate Custer County Chronicle, Custer, South Dakota

STATE OF SOUTH DAKOTA

County of Custer ss.

I, E. S. Fellows, Mayor of Custer City, South Dakota, being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of Mayor

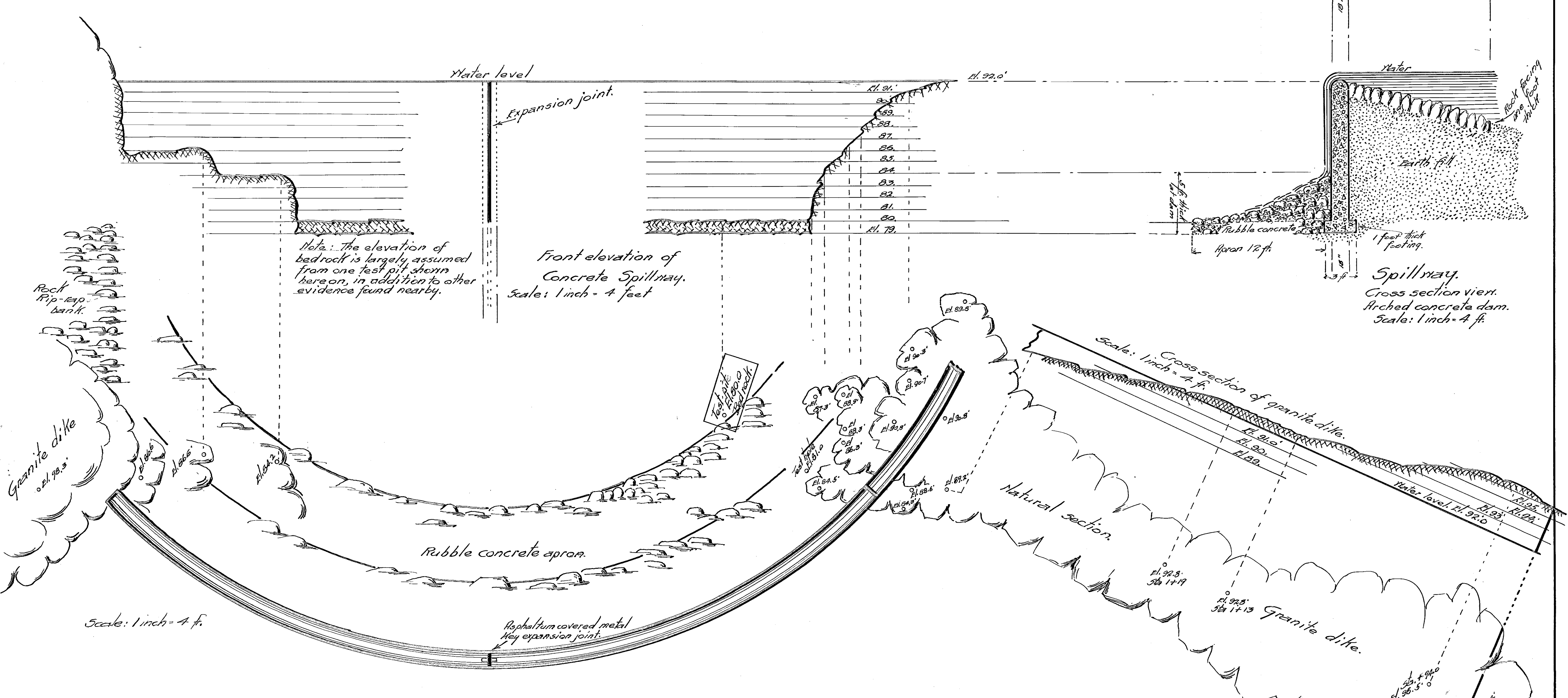
(Owner, manager, engineer.), that I have read the above and foregoing statement, and examined the map accompanying the same, and that I know of my own personal knowledge that the matters herein stated and shown are true.

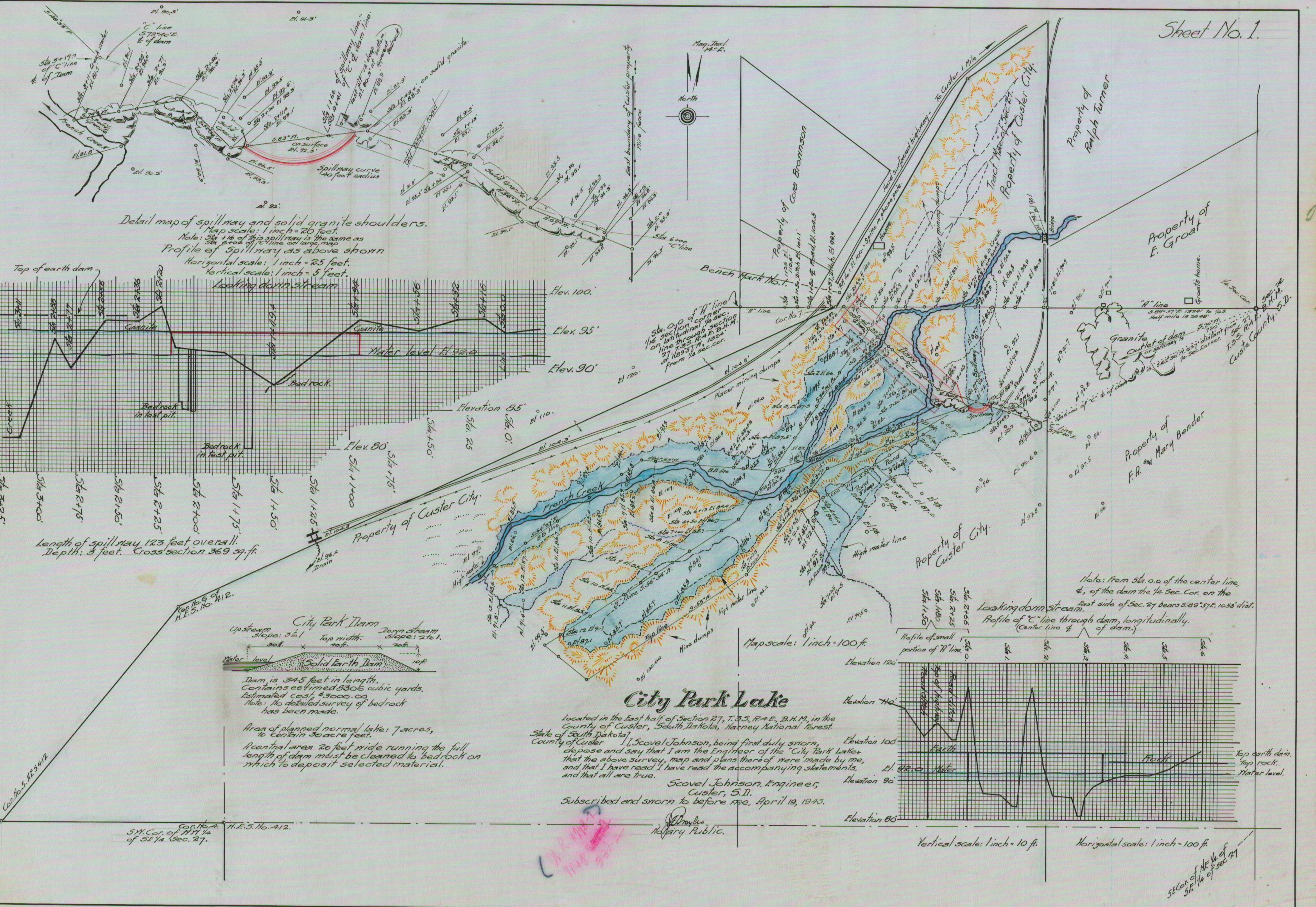
Signed Custer City, Custer County, South Dakota
 by (Signed) E. S. Fellows, Mayor

Subscribed and sworn to before me this 5th day of May, 1913

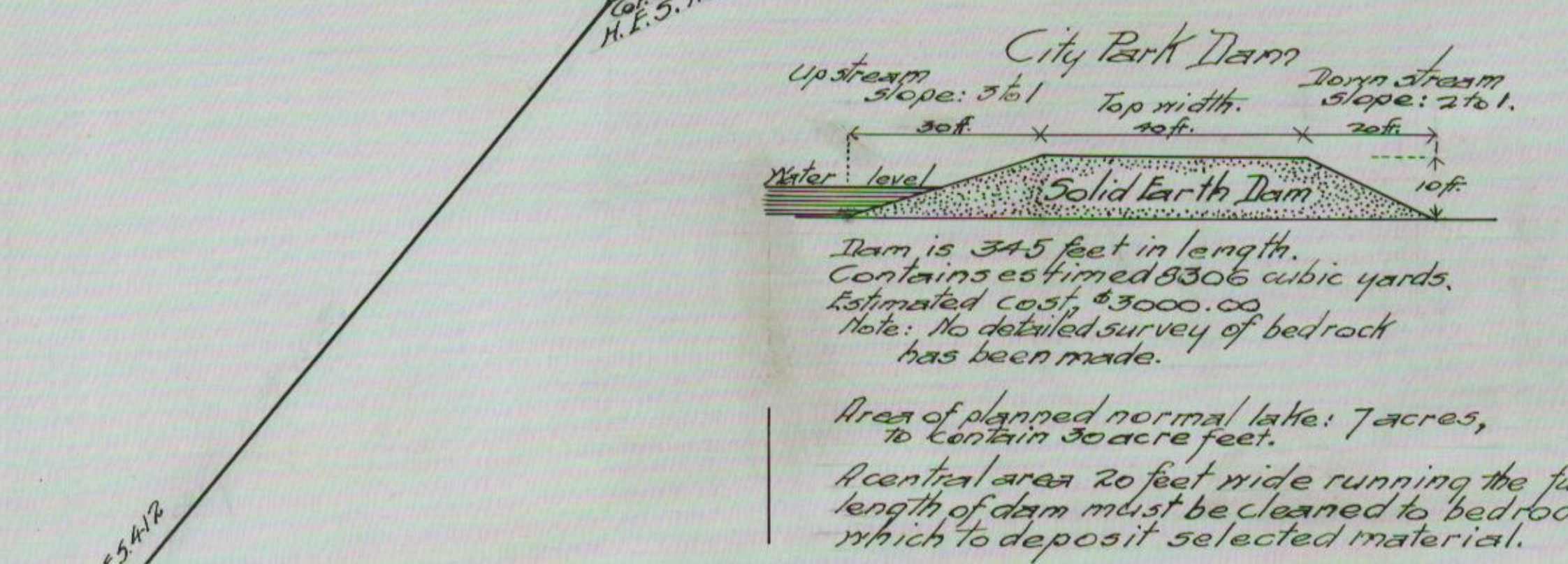
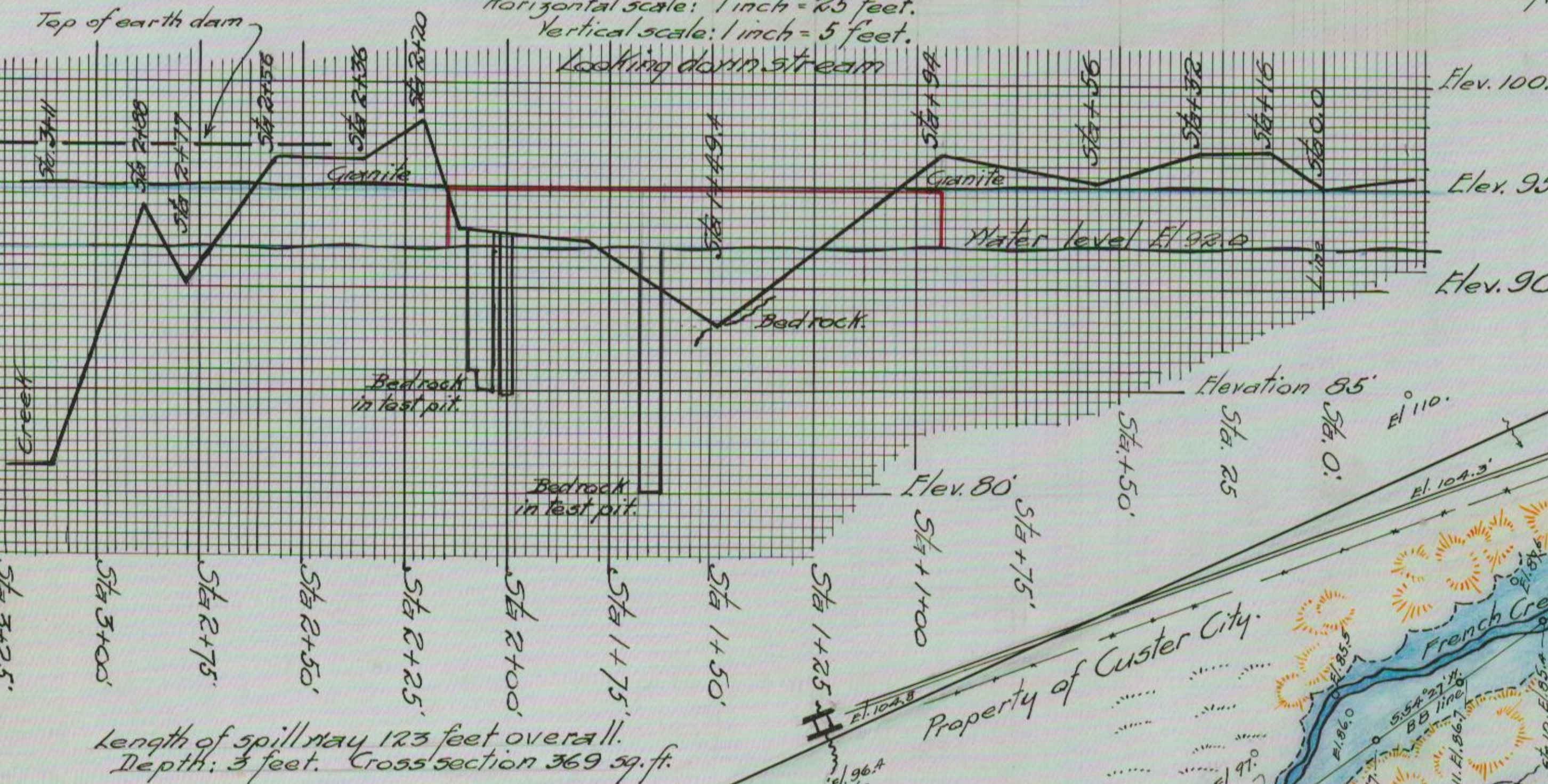
(Seal)

(Signed) J. F. Broyles
 Notary Public (or other qualified officer)



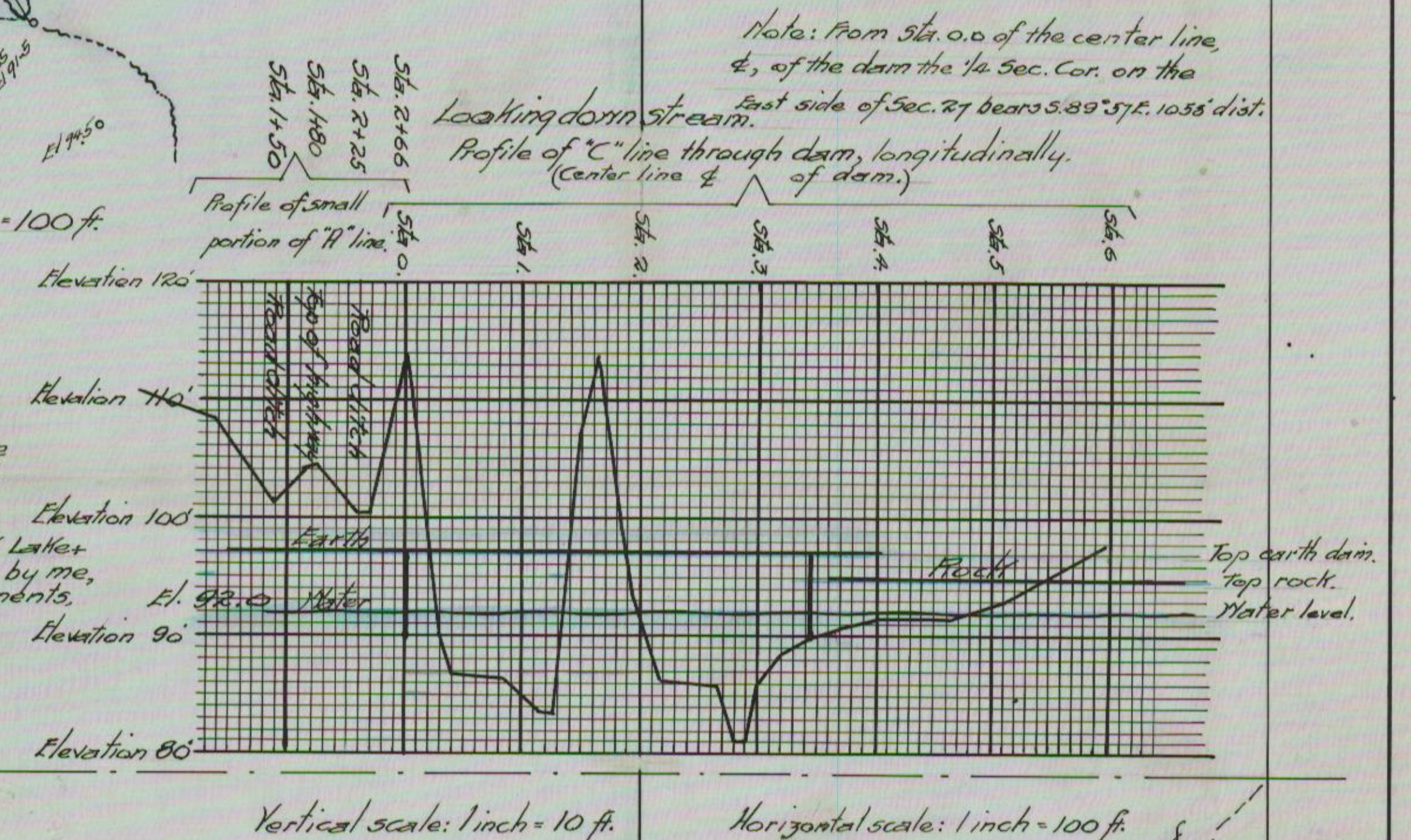


Detail map of spillway and solid granite shoulders.
Map scale: 1 inch = 20 feet.
Note: Sta. +16 of this spillway is the same as Sta. 6+06 of the line on large map.
Profile of spillway as above shown
Horizontal scale: 1 inch = 25 feet.
Vertical scale: 1 inch = 5 feet.
Looking down stream



City Park Lake

Located in the East half of Section 27, T. 33, R. 4 E., B. H. M., in the County of Custer, South Dakota, Harney National Forest.
State of South Dakota
County of Custer
I, Scovel Johnson, being first duly sworn, depose and say that I am the Engineer of the "City Park Lake" that the above survey, map and plans thereof were made by me, and that I have read I have read the accompanying statements, and that all are true.
Scovel Johnson, Engineer,
Custer, S.D.
Subscribed and sworn to before me, April 19, 1943.
Henry Public.



Cor. No. 5, N.E. 1/4, Sec. 27, T. 33, R. 4 E., B. H. M., in the County of Custer, South Dakota, Harney National Forest.

SEC. 27, T. 33, R. 4 E., B. H. M., in the County of Custer, South Dakota, Harney National Forest.

Remarks by State Engineer:

As stated elsewhere in this permit, no ~~val~~ is hereby granted subject to the provision that prior water rights now in force and effect be not injuriously affected. It is further understood that the proposed dam is for the purpose of storing flood water, that the amount of storage will be very little more than is now stored by conditions left by mining corporations and that the only diversion is that which may occur from natural evaporation and that when the lake has been filled, the flow of the stream will be passed on as it is received.

STATE OF SOUTH DAKOTA

County of Hughes

ss.

Pierre, South Dakota, June 24, 19 43

This is to certify that the foregoing application was received at this office at 8:30 o'clock a. m. upon the 6th day of May, 1943 and that after examination it was found to comply with the State Water laws and a notice of appropriation was published in the Custer County Chronicle and the application taken up by the State Engineer on June 15, 1943 all in accordance with the State Code. No objections were made except an "appearance and statement" was filed by Carl Bourassa in support of Water Right # 211+2.

Number of permit 298-2

Dean W. Loucks

State Engineer.

Date of first receipt of application

April 23,

19 43

Date of return to applicant for correction

May 3,

19 43

Date of receipt of corrected application

May 5,

19 43

Date from which applicant may claim right

April 23,

19 43

Approved June 24

19 43

Recorded in Book 2

Page 556

This is to certify that I have examined the foregoing application for a permit to appropriate water of the state of South Dakota, and I hereby grant the same as stated herein, subject, however, to the following limitations and conditions:

1st. The equivalent of at least one-fifth of the work above specified is to be completed on or before December 24, 19 43.

2nd. The whole of said work is to be completed on or before June 24, 19 44.

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is June 24, 19 44.

4th. The water appropriated shall be used for the purpose of fish culture, fire protection, stockwater, and public recreation.

5th. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be injuriously affected by this appropriation.

6th. The amount of the appropriation herein granted shall not exceed 30 acre feet ^{per year} ~~on the~~ feet of water per second of time; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventh (1/7) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before June 24, 19 43; said water to be used during the following described annual period:

To be filled during high stage of stream and normal flow passed on as same is received.

Witness my hand this 24th day of June, 19 43.

Certif of Const. & Water License
March 20, 1981

Dean W. Loucks

State Engineer.

Permit No. 298-2

Water Diversion No. 2 Upper Cheyenne Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That Custer City

_____ the holder _____ of
Permit No. 298-2, issued upon Application No. 298-2, bearing date of priority of April 23, 1943

_____ authorizing the diversion of 30 acre ^{storage} ~~xx ft. xxxxxx~~ of the waters of
French Creek County of Custer, State of South Dakota at
a point N 89° 57' W, 1050' from El corner, Section 27, T3S, R4E
(left end of the dam)

_____, for recreation, fire protection, fish culture and domestic
storage water

purposes, has _____ complied with the provisions of the laws of the State of South Dakota relating to proof of
completion of the works of diversion set out and described in said Permit; that said works are found in satisfactory
condition for diverting and conveying to the place of intended use 30 acre ^{storage} ~~xx ft. xxxxxx~~ of water.

Date March 20, 1981



JOHN HATCH, Chief Engineer
Water Rights Division

WATER LICENSE NO. 298-2

(1) WHEREAS, On the 23rd day of April A. D. 1943

the City of Custer

made Water Right Application No. 298-2 for a permit to use 30 acre ~~xxx~~ feet ^{storage} ~~xxxxxxx~~ of the waters of French Creek

County of Custer, State of South Dakota, for fish culture, fire protection, recreation and domestic stockwater purposes; and

(2) WHEREAS, On the 24th day of June A. D. 1943

Permit No. 298-2, with a date of priority of April 23, 1943

was issued to said applicant for the diversion of said water, and provided for the completion of construction of the water supply system therein described on or before the 24th day of June A. D. 1944 and for the application to beneficial use of said water on or before the 24th day of June A. D. 1944

and

(3) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to completion of the construction of the water supply system and is entitled to divert 30 acre ~~xxx~~ feet ^{storage} ~~xxxxxxx~~ of water for beneficial use and,

(4) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to the application of water to beneficial use of the following extent,

water supplies for fish culture, fire protection, and domestic stockwater, and recreation.

(5) NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota, We hereby grant and confirm to Custer City, South Dakota

the holder XX and owner XX of said permit No. 298-2 a water right, dating from April 23, 1943 to use of 30-acre XXX feet storage annually of French Creek in the County of Custer and State of South Dakota, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at a point N89° 57' W, 1050' from E₁ corner Section 27, T36, R4E (left end of dam)

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ the water to be impounded for a lake
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

for the purpose of recreation, fire protection, fish culture and domestic stock water

Subject to any limitations listed in Water Right Permit No. 298-2 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 20th day of March A. D.
nineteen Hundred and Eighty-one

WATER MANAGEMENT BOARD

By:

John Hatch
Chief Engineer, Executive Officer

JOHN HATCH

Permit No. 298-2Water Division 2 Battle Creek Water District

REPORT OF EXAMINATION OF WORKS AND/OR APPLICATION OF WATER TO BENEFICIAL USE

TO: WATER RIGHTS, WATER MANAGEMENT BOARD / FOSS BLDG., PIERRE, SOUTH DAKOTA 57501

I have this day made a thorough examination of the water use system constructed by Custer City
of Custer, S. Dak. holder.

of Permit No. 298-2, bearing date of priority of April 23, 1943

authorizing the diversion of 30 A.F. ~~cu. ft.~~ per second of the waters of French Creek
for Recreation Fire Protection
Fish Culture - Domestic Stock Water purposes, in Custer County.

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

The Water Use System consists of,

A. Works used to divert the water:

Earth Dam - 15 ft high Water Depth 17 ft (est)
5 surface Acres.
Storage = 30 A.F.

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

C. Works used to apply water to beneficial use.

Pond formed by dam.The system is in the following condition: Good

The point of diversion is located The left end of dam = N 89° 57' W, 1058'
from E 1/4 Cor. Sec 27 T35 R4E

The works are capable of diverting and conveying to the place of use 30 A.F. Storage
cu. ft. per second of water which is to be used for Recreation - Fire Protection - Fish
Culture and Domestic Stock Water

Water has been put to beneficial use to the maximum extent as follows:

comprising a total of _____ acres of land.

License for 30 A.F.Date July 23, 1980

LeRoy J. McNamee
(Signature)

RECEIPT

WATER RIGHTS COMMISSION

State of South Dakota

No 4 7844

PIERRE, December 22, 1980

RECEIVED OF City of Cuarter SD 57730

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

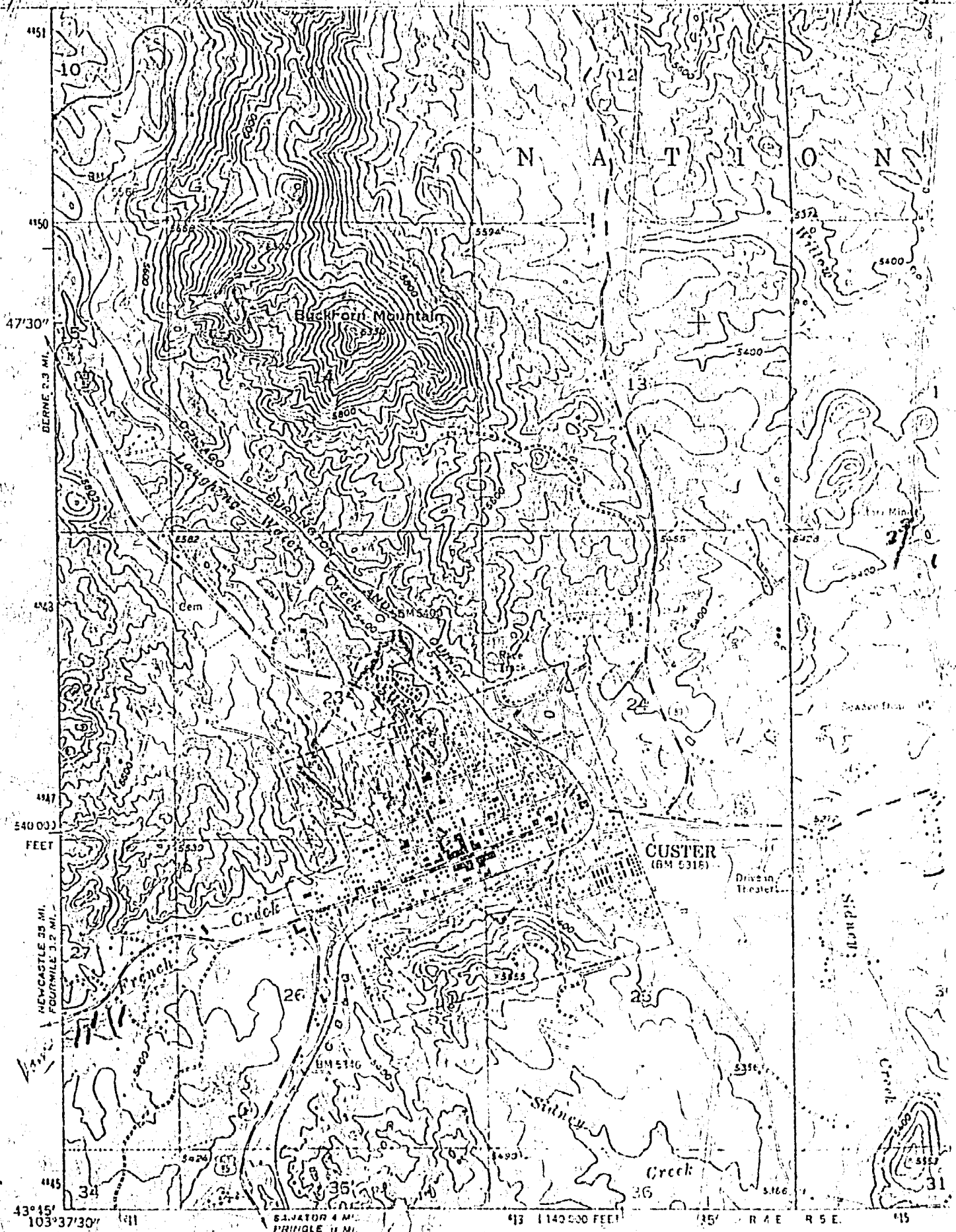
Fee for Application for Permit to Appropriate Water No. (examination, processing, recording and filing)		
Fee for Inspecting Construction, and Issuing Cert. of Construction No. 298-2)		12 00
Fee for Inspecting Beneficial Use, and Issuing Water License No. 298-2)		
Fee for Issuing Location Certificate-Dry Draw No.		
Fee for filing		
Fee for certified copy of		
Fee for Print copy of map		
Fee for Certifying		
Fee for (any other work as provided by law)		
TOTAL		12 00

WATER RIGHTS COMMISSION

By John Hatch
Chief Engineer, Executive Officer

JOHN HATCH

ky



Mapped, edited, and published by the Geological Survey
Cont. of by USGS and USC&GS

MINING CLAIM LOCATION SURVEYS;
LOST CORNERS REESTABLISHED;
MINERAL PATENTS SURVEYS;
UNDERGROUND SURVEYS;
LANDSCAPE SURVEYS;
CORNER DISPUTES, PLANS AND PLATS

SCOVEL JOHNSON

LAND SURVEYOR

CUSTER, SOUTH DAKOTA

May 2, 1943

SOUTH DAKOTA LICENSE, 908
WYOMING LICENSE, 1910
U. S. MINERAL SURVEYOR, 1913
U. S. SURVEYOR-DRAFTSMAN, 1914
HIGHWAY FIELD ENGINEER, 1917-1927

RECEIVED
MAY 3 1943

S.D. State Engineer,
Pierre, South Dakota.

Dear Sir;

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

On April 22, 1943, I sent you Sheets Nos. 1 and 2, of map and plans of the City Park Lake and spillway dam, such being part of the application of Custer City, S.D. for permit to construct a lake on French Creek in Custer County, S.D.

On said Sheet No. 2, at the lower left portion, where the arch spillway is described in part, I have stated in printing, that the spillway followed a 13 degree curve.

In this last connection I have left out the cipher "0" after the 13. The degree of curve figured in the plan was a 130 degree curve instead of a 13 degree curve.

A checking of the figures may show that only the nearest degree and only the nearest foot has been used in the estimates. The degree of curve is a fraction, or 12 minutes more than 130 degrees to make the length of curve 71 feet.

May I ask that the figure 13, as above described, be added to with a cipher "0", making 130 degrees curvature, on the original tracing and also the blueprint copy thereof, of said Sheet No. 2- this on the maps sent you.

It is quite likely that after the eight to twelve feet of overcover of earth has been removed at the spillway sight it may be found desirable to shift the arch from the present proposed position to make it better fit a possible present unknown bedrock formation.

I trust this oversight on my part has not caused work or inconvenience in your office, and I will be much pleased if you will have the correction inserted on Sheet 2 as it certainly gives a wrong impression.

Very truly yours,

Scovel Johnson.

MINING CLAIM LOCATION SURVEYS;
LOST CORNERS REESTABLISHED;
MINERAL PATENT SURVEYS;
UNDERGROUND SURVEYS;
LANDSCAPE SURVEYS;
CORNER DISPUTES, PLANS AND PLATS

SCOVEL JOHNSON

LAND SURVEYOR

CUSTER, SOUTH DAKOTA

April 22, 1945.

SOUTH DAKOTA LICENSE, 1908
WYOMING LICENSE, 1913
U. S. MINERAL SURVEYOR, 1913
U. S. SURVEYOR DRAFTSMAN, 1914
HIGHWAY FIELD ENGINEER, 1917-1927

State Engineer,
Pierre, South Dakota.

Dear Sir:

I am sending you in behalf of Custer City, South Dakota, under separate cover sheets numbers 1 and 2 of lake, dam and spillway plans for City Park Lake, with a blue print copy of each, located in Sec. 27, T. 3 S., R. 4 E., B. H. M., Custer County, South Dakota.

It is my understanding that Custer City has some joint arrangement with the South Dakota Fish and Game Department to construct this lake for fish propagation, and, doubtless Mr. H. E. Bauers, Engineer for the Fish and Game Department, will shortly be in touch with you in this connection as I have written him today, sending him blue print copies of sheets numbers 1 and 2.

Very truly yours,

Scovel Johnson
Scovel Johnson,
Engineer for City Park Lake.

SJ:j

FRED F. WHEELER

WHEELER AND EASTMAN
ATTORNEYS AT LAW
CUSTER, S. DAK.

RECEIVED

JUN 13 1943

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

June Eleventh
Nineteen forty-three

Deap. W. Leuchs
State Engineer
Pierre, South Dakota

Dear Sir:-

In re: APPLICATION OF CITY OF CUSTER
FOR APPROPRIATION OF WATER FROM
FRENCH CREEK IN CUSTER COUNTY

At the request of Carl Bourassa, of Custer City, South Dakota, we are mailing you the enclosed copy of his "Appearance and Statement" in connection with the above captioned matter. This is being sent to you in response to the published notice of hearing appearing in the Custer County Chronicle and which notice bears date of May 12th, 1943.

It is our understanding that Mr Bourassa does not intend to be personally present at the hearing on June 15th, but he does request that his enclosed statement be considered at that time.

Copy of such statement is today being mailed to Mr E. S. Fellows as Mayor of Custer City.

Yours very truly,

WHEELER AND EASTMAN

By *Tom Eastman*

Dictated by
Mr. Eastman
1 enclosure

IN THE MATTER OF THE APPLICATION OF
THE CITY OF CUSTER CITY, SOUTH DAKOTA,
FOR A PERMIT TO APPROPRIATE WATER FROM
FRENCH CREEK IN CUSTER COUNTY, SOUTH
DAKOTA ... (No. 298-2)

APPEARANCE AND STATEMENT OF
HOLDER OF PRIOR WATER RIGHT

TO DEAN W. LOUCKS, State Engineer,
Pierre, South Dakota.....

The undersigned Carl Bourassa, of Custer City, South Dakota, does hereby enter his appearance and make the following statement in connection with the hearing on the application of said Custer City for a permit to appropriate 30 acre feet of water per year for storage in French Creek by means of City Park Dam, and as contained in a published notice of such hearing as appears in the Custer County Chronicle and bearing date of May 12th, 1943:-

That the undersigned is the present owner of a valid and subsisting water right or license (being License No. 211-2), issued under statutory provision by the then State Engineer, one Homer M. Derr, on July 26th, 1918, to Ernest Bellemere, now deceased, and a copy of which said license is hereto attached and made a part of this statement, and is the owner of and in the possession of all of the lands therein described under various transfers out of and from the said Ernest Bellemere. That such water right or license has never been abandoned nor have any of the rights thereof been surrendered by nonuser or otherwise and that the same is now in full force and effect.

That the proposed appropriation of water by Custer City and the creation by it of a storage dam on French Creek, as disclosed by its application, will be at a point approximately two (2) miles up-stream from the point whereat the undersigned is authorized and permitted to divert water from said stream under his said permit No. 211-2, and that a complete shutting off of all water in said stream by the creation of a storage dam will deprive the undersigned of the benefits and rights granted to him under his said permit and deprive him of a valuable property right.

That the undersigned has no objection to the granting of such a permit as is applied for by said Custer City and has no desire or inclination to in any manner oppose the same so long as adequate provision be made to assure and protect the rights of the undersigned under his said License and Permit aforesaid. That this appearance and statement is being made to the end that no charge or contention may hereafter be made by you or by the said City of Custer that the undersigned has in any manner waived any of his rights under his said permit and license No. 211-2, or that he consents to being deprived of any portion of the water granted to him under his said permit.

Dated this 10th day of June, 1943.

Postoffice address:-
Custer City, South Dakota

Copy to
E. B. Fellows, Mayor,
Custer City, South Dakota

Carl Bourassa
As the present owner of Water
License No. 211-2 as issued by
Homer M. Derr, State Engineer,
on July 26th, 1918

STATE OF SOUTH DAKOTA
WATER LICENSE NO.211-2

WHEREAS, on the 10th day of August, A.D.1914, ERNEST BELLEMARE, of Custer, County of Custer, and State of South Dakota, duly made application (No.211-2) to me for a permit to use -1- cubic feet per second of the waters of French Creek, County of Custer, State of South Dakota, for irrigating purposes; and

WHEREAS, On the 7th day of December, A.D.1914 Permit No.211-2 was issued to said applicant, for the diversion of said water, and providing for the completion of the work of diversion therein described on or before the 20th day of November, A.D.1919, and for the application to beneficial use of said water on or before the 20th day of November, A.D. 1919, and

WHEREAS, on the 12th day of July, A.D. 1918, the holder of said permit duly made proof of the completion of adequate works for the diversion of -0.81- cubic feet per second of said waters, as evidenced by my certificate No.211-2 dated July 12, 1918, confirming the completion of works of sufficient capacity for the diverting and conveying to the place of intended use -0.81- cubic feet per second of water, with date of priority of August 22, 1914, and

WHEREAS, on the 12th day of July, A.D. 1918, proof was duly made of the application to beneficial use of -0.81- cubic feet per second of said water;

NOW, THEREFORE, By virtue of the authority vested in me by the laws of the State of South Dakota, I hereby grant and confirm to Ernest Bellemare, of Custer, South Dakota, the holder and owner of said permit No.211-2 a water right, dating from December 7, 1914, to the use of -0.81- cubic feet per second of the waters of French Creek, in the County of Custer and State of South Dakota, or so much thereof as may be necessary for the purposes hereinafter mentioned, to be diverted at S.6° 06' W. 148 ft. from S $\frac{1}{4}$ cor. Sec 24, T.3 S., R. 4e., B.H.M. on right bank of stream and conducted to and upon 56.87 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ & SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 24; NW $\frac{1}{4}$ NE $\frac{1}{4}$ & NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec.25, all in T.3 S., R.4 E., and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec.19 & NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec.30, all in T.3 S., R.5E., B.H.M. for the purpose of irrigating, subject, however, to the laws of the State of South Dakota applicable to a license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Pierre, South Dakota, this 26th day of July, A.D. 1918

(SEAL)

Homer M. Derr, State Engineer

Recorded July 26, 1918. in Book 2 of Records, pages 264 & 265

Recorded on August 3rd, 1918,
at 8 o'clock A.M. in Book 9 of
Mols. Records at page 408, in
the office of the Register of
Deeds of Custer County, South
Dakota

RECEIVED

Form 12—Proof of Publication—Appropriation of Water.

JUN 12 1943

No. 298-2

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA }
County of Custer } ss.

Mona Bostwick being duly sworn, deposes and says the annexed printed copy of Notice of Intention to appropriate water was taken from the

Custer County Chronicle a newspaper which during the whole time of publication of said notice herein-after stated, has been and is printed and published in the city of Custer County of Custer and State of South Dakota;

that the said notice was published in said newspaper on the following dates:

May 20, 1943

May 27, 1943

June 3, 1943

June 10, 1943

in each and every issue of the full number thereof, the first publication being made on the 20 day of May 1943 and the last publication on the 10 day of June 1943, upon which days or times of publication aforesaid the newspaper was regularly published, and that during the whole time of said publication he was editor the printer and publisher of the said newspaper.

Mona Bostwick

Subscribed and sworn to before me this 10 day of June A. D. 1943

Notary Public *[Signature]* County, S. D.

Public Notice of May 2, 1943
APPROPRIATION OF WATER

Office of State Engineer,
Pierre, S. D.

Notice is hereby given that Custer, City, whose postoffice address is Custer, S. D., has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate (or benefit) 100,000 feet of water per year for storage in French Creek by means of a City Park Dam, the point of diversion of which is to be located on the left bank of said stream in the NW 1/4 of the SE 1/4 of Section 27, Twp. 3 S., Range 4 E. Said water to be used for the purpose of providing public recreation, fish culture, fire protection and stock water.

This application will be taken up by the State Engineer at his office at Pierre for consideration upon the 16th day of June, 1943, at 10:00 A. M. All persons who believe that their prior rights would be injuriously affected, or that the allowance of the permit would be detrimental to the public welfare shall file such protest with the State Engineer in writing prior to the above date and may appear on the day above mentioned in person for the purpose of discussing further the information presented.

Appropriate action will be taken by the State Engineer after suitable time has elapsed for the consideration of any or all information presented.

DEAN W. LOUCKS
State Engineer
118 JUN 10 1943

Copy of "APPEARANCE AND STATEMENT OF HOLDER OF PRIOR WATER RIGHT" as signed by Mr. Bourassa sent with this letter.

July 6, 1943

Mr. M. F. Dudley
Dudley and Lampert
Attorneys at Law
Custer, South Dakota

Re: Custer City water right # 298-2

Dear Mr. Dudley:

I have your letter of July 2nd and wish to clarify some of the facts in connection with the Custer City water right referred to above.

No one from Custer appeared at our office on the date the water right was taken up. You therefore have not read the complete statement by Mr. Bourassa. I am enclosing a copy of same which may clarify to you his position in respect to his water right which he claims to be in full effect at this time. I do not believe it is the desire or thought of Mr. Bourassa to hold up the Custer project; neither was it my thought that the addition of a control in the dam would in any way hold up the project. This would seem to be a more or less simple addition and should not increase the cost to the extent of prohibiting the project. If it is difficult or impossible to get metal gate valves, I see no reason why reinforced concrete and stop planks could not be used in lieu of the metal gates. This would also be true of the pipe through the dam which could be a reinforced concrete box which would not need to be over 18 or 24 inches in size. It is my opinion that a control of this nature through a dam on a stream such as French Creek that is used for irrigation purposes would be entirely appropriate.

Records in this office show that there have been some 70 water permits issued on French Creek. Perhaps a good number of these have been abandoned through non-use. However, it would seem to me that the burden of proof of abandonment in this case would rest upon Custer City if they are to assume that it would not be necessary to pass water through the reservoir to these projects.

If the city should wish to go into the matter of showing abandonment through non-use of this list of projects on French Creek, I would be glad to furnish them with the list of the permits as they are filed in this office.

Very truly yours,

Dean W. Loucks
State Engineer

DWL:ab
enc.

H. F. DUDLEY
GEORGE LAMPERT

DUDLEY AND LAMPERT
ATTORNEYS AT LAW
CUSTER, S. DAK.

RECEIVED

JUL 5 - 1943

OFFICE OF STATE ENGINEER
PIERRE, S. DAK

July 2nd, 1943

Dean W. Louks,
State Engineer,
Pierre, S.D.,

Dear Mr. Louks:

As City Attorney, for Custer City, Mayor E. S. Fellows has handed me your communication of June 28th, #298-2, with the following P.S.:

"In view of the fact of the filing of the appearance and statement by Mr. Bourassa in the interest of his water right located below Custer and also other water right users below Custer, it will be necessary to pass through the reservoir all waters claimed for appropriation prior to the date of this appropriation to the city. It will therefore be necessary to have some means of control through the dam other than the spillway so that an appropriated waters can be passed through the irrigate below."

It appears to me that it may not be necessary to pass through the reservoir all waters claimed for appropriation prior to the date of the appropriation to the city, especially with reference to Mr. Bourassa's interest.

I am informed that the water right attached to the Mallon property, for which Bourassa seems to be the agent, was never used and to my personal knowledge has never been used for at least fifteen years. And I am informed by reliable sources, that it never was used. The prior owner required the water right to build a dam and irrigation ditch on the place, but the dam has washed out and the irrigation ditches no longer exist. The lay of the land is such, that if there is a dry year in this community, no water comes down the creek for irrigation purposes, and if it is a wet year no irrigation is necessary. Therefore the irrigation system was never used.

I have no knowledge as to who the other parties are, who claim water rights, and therefore can say nothing, as to this phase of your P.S., the paragraph above quoted.

It may be possible to get Mr. Bourassa to sign a release or to get him to write you, stating that he has

M. F. DUDLEY
GEORGE LAMPERT

DUDLEY AND LAMPERT
ATTORNEYS AT LAW
CUSTER, S. DAK.

Dean W. Louks,
#2

no desire to hold up the dam project by reason of his
so-called water right. It certainly would be a shame to
hold up this little project by reason of the prohibitive
fact, with reference to procuring the iron gate and
valve for the spill-way.

Yours very truly,

M. F. Dudley
M. F. Dudley

MFD:AM

July 26, 1943

Stovel Johnson
Reg. Engineer and Land Surveyor
Custer, South Dakota

Re: City Park Dam, Custer

Dear Mr. Johnson:

Replying to your letter of July 19th, I am enclosing herewith the print of a bulkhead control which has been developed by the Game and Fish Department over a period of years and has been found to be very satisfactory in the matter of controlling the surface levels of small lakes or ponds.

I believe it could be used for your purpose very satisfactorily. You will note that the height depends on the particular project in question. Relative to the matter of reinforcing steel, I believe the State Game and Fish Department has adequate steel on hand for the job and would suggest that you contact them in connection with same.

Mr. Bowers states that he will try to get out to Custer during the time you are constructing the dam and bulkhead so that you may have the advantage of any experience of the Game Department in the construction of these small controls.

Sincerely yours,

Dean W. Loucks
State Engineer

DWL:ab

*See 13000000
List of Towns
until East of north*

SCOVEL JOHNSON
PROFESSIONAL ENGINEER AND LAND SURVEYOR
REAL ESTATE AND MINING
CUSTER, SOUTH DAKOTA

July 19, 1943.

RECEIVED

JUL 20 1943

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

South Dakota State Engineer,
Pierre, South Dakota.

Dear Sir:

Reference is made to water right application
No. 298-2, City Park Dam.

This is to ask if your office has for public
distribution any plans or specifications for con-
structing an outlet for draining the water from res-
ervoirs or lakes of small capacity.

We are finding it difficult to get a gate valve
to use for the above purpose at the proposed Custer
City Park Lake. Perhaps you would be glad to advise
in this matter, for which advice we would be apprec-
iative.

Very truly yours,

Scovel Johnson
Scovel Johnson,
for Custer City.

SJ:jj

Dear Sir:

Have the Custer golf Association
got a water user permit to take
water out of West Dam. If not how
do we go about getting them stopped.
I would sure like to know if no of
the permit + like to know for how
much water it calls for I think
some one from Pierre should
come out + look this over

July 2, 1971

Mr. Pedro J. Nunez
Box 443
Custer, South Dakota 57730

Dear Mr. Nunez:

Your letter received June 29, 1971 inquires as to the water right pertaining to the West Dam on French Creek and states that the water has been used in watering a golf course.

The water right involved is Water Permit No. 298-2 issued to the Custer City by the State Engineer on June 24, 1943. The water right is in complete form, having never been licensed, but I assume it is a valid water right.

Water Permit No. 298-2 was issued to the City of Custer to be used for "Public Recreation-Fish Culture-Fire Protection-Domestic Stockwater". When Water Permit No. 298-2 was issued, water was being used downstream by at least one prior water right holder and Water Permit No. 298-2 contains the following qualification, "As stated elsewhere in this permit, approval is hereby granted subject to the provision that prior water rights now in force and effect be not injuriously effected. It is further understood that the proposed dam is for the purpose of storing flood water, that the amount of storage will be very little more than is now stored by conditions left by mining corporations and that the only diversion is that which may occur from natural evaporation and that when the lake has been filled, the flow of the stream will be passed on as it is received".

Despite the last quoted qualification of Water Permit No. 298-2, under current water laws, the City of Custer can allow the West Dam to be pumped dry in the watering of an area, or areas, such as golf greens, providing the total area watered is not greater in size than one half acre.

Sincerely,

J.W. GRIMES

JWG/DD/bw

cc: Richard Bratton, Mayor, 1104 Sherman, Custer, S.D. 57730

673-4477

F.H.A.

WATERING GREEN

B.D. BALDWIN

H. 673-2314
B. 673-4433

TALKED TO MR. SAGER -
HAVE BEEN WATERING FAIRWAYS
UNTIL JULY 7 - NOW ARE WATERING
ONLY GREENS - GETTING
WATER UNDER CITY W/R 298.2
ON SMALL LAKE ON FRENCH
CREEK -

7-9-71

PHONE CALL FROM FRANK HENDERSON
RE GOLF COURSE AT CUSTER
PUMPING FROM SMALL LAKE ON
FRENCH CREEK NEAR CUSTER -

CALLED WILLIAM SAGER - AT
CUSTER - HEAD OF GOLF CLUB -
SAID THEY HAD BEEN PUMPING
ON FAIRWAYS, BUT SINCE
TUESDAY 7-7, THEY ARE PUMPING
ONLY ON GREENS

Frank

Henderson

Custer - drinking my
French Creek

Bill Sager - Custer

Bill SAGER

William Sager
211 Woodlawn
673-4032

Dear Sirs

I wrote you last year about the golf club here in Custer pumping water out of west Dam. I wish you would send me these permit No. Custer is in bad shape for water one of their wells has oil leak in it. The City well that is located near the lake has been pumped 24 hrs a day for a week. If the golf outfit is ab. ed to pump our lake dry like they did last year it will sure be its bad.

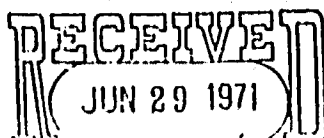
I sure like the people with money sure get their way. We are being charged \$1.90 a month extra on our water bills for water improvement & then let the golf outfit take our water.

The state put fish in the lake again so kid under 16 years old can fish. I just came back from the and they were pumping the lake they have a big pump which is able to pump 500 gal per min.

I wish someone from your office would come to Custer & find out what is going on. I am going to write a letter to the Attorney Gen also.

Hoping to hear from you.
I remain

Of Nancy

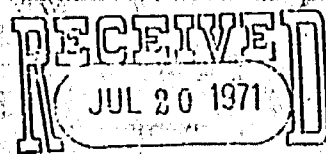


Fairburn S.D.
July 19, 1971

So. Dak. Water Resources Comm.

Pierre

So. Dak.



STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

Dear Sir:

Am writing in regard to the
pumping of water out of the
Sportman Dam 1 mile west of
Custer So. Dak. on French Creek
as the water is needed on
the east end of French Creek
for stock water, purposes.
Thank you.

Yours truly
Sam Young

Fairburn
So. Dak.

57738

July 29, 1971

Mr. Robert Painter, President
Custer Golf Association
Custer, South Dakota 57730

673-4665

Dear Mr. Painter:

This office received information this morning that 15 acres of the Custer Golf Association Golf Course were being irrigated from Custer City Dam on French Creek.

In a subsequent phone call to you from this office, you indicated that less than one acre of land was being irrigated, that the dam had overflowed last week and was just full at the present time.

Under current water laws and existing water rights the total area which the Custer Golf Association can irrigate from the Custer City Dam shall not be greater in size than one half acre.

Sincerely,

J.W. GRIMES

JWG/DD/bv

cc: Mr. Sam Young, Fairburn, S.D.
Mr. Clyde Smith, Fairburn, S.D.
Miss Francie Edgerton, Fairburn, S.D.

RECEIVED
JUL 20 1971

STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

Fairburn S.D.

July 19, 1971

Water Resources Comm.
Pierre S.D.

Dear Sir:

I have heard that the city of Custer is pumping water out of the dam on French Creek west of Custer for a golf course, and letting water go by down stream. This must certainly be against the law and should be stopped. I would like to see these runs of water be split the land owners.

With the dam being full there is a larger head of water to reach the valley during a rain. Sincerely yours
Clyde Smith

257-2

298

Dear Sir,

Thank you for your prompt answer. In your letter it states that this water is for Public Recreation - Fish Culture - Ice Prevention - Domestic Stockwater. Well this golf course is not a Public links it would cost me 75. a year or 1.00 daily to use the course. The fish the state puts in for the 16 year old and under to catch do not have much chance after it is dry. I do not know if this case being this is not for public use has any bearing on this.

Thank you again for your time

I remain

Yr. Truly
O. H. Munn
Cincinnati, O. 443

SOUTH DAKOTA

State Water Resources Commission

STATE OFFICE BUILDING # 2

PIERRE, SOUTH DAKOTA

July 29, 1971

Mr. Robert Painter, President
Custer Golf Association
Custer, South Dakota 57730

Dear Mr. Painter:

This office received information this morning that 15 acres of the Custer Golf Association Golf Course were being irrigated from Custer City Dam on French Creek.

In a subsequent phone call to you from this office, you indicated that less than one acre of land was being irrigated, that the dam had overflowed last week and was just full at the present time.

Under current water laws and existing water rights the total area which the Custer Golf Association can irrigate from the Custer City Dam shall not be greater in size than one half acre.

Sincerely,

J.W. GRIMES

JWG/DD/bw

cc: Mr. Sam Young, Fairburn, S.D.
Mr. Clyde Smith, Fairburn, S.D.
Miss Francis Edgerton, Fairburn, S.D.

S R STICK

AUG 12 1971

Dear Sir:

What can be done about a golf club here who have a right to pump all the water they want to from west dam. But according to the Water Comm in Pierre they can just put the water on $\frac{1}{2}$ acre and they are watering 6 acres or more. They have letters from Mr. Breides in Pierre stating that, that is all they can water.

This has been going on for two years and said they are never going to quit. We do not have money to get a lawyer and put an injunction on them. Every time they water they are breaking the law. ~~the~~ I cannot figure out

why there are two set of
laws, One for those who have
and those that have not.
This is not a city operated
course as it cost \$5.00 a
year to play golf.

Last year they came
up to the city shops and got
gas to mow the course with.
If the taxpayer has to
furnish gas he should be
able to play golf. The city
also gave them a pump which
I do not think is legal.

The reason I am writing
is action has been very
slow in getting to Custer on
this matter. I would sure like
to see your office enforce this
law. I have wrote to your
office before but have not
to hear from you.

Last year they were allowed
to pump it dry. I hope it does
not happen again. It is a
place for kids 16 years & younger
to fish & in the winter they
can ice skate.

They know they are breaking
the law but nobody does anything
about it. Hoping to hear from
you & remain

a Concerned

Citizen.

John J. Murray

Box 443

Custer

S.D. 57730



State of South Dakota

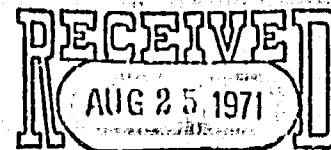
ATTORNEY GENERAL'S OFFICE

Gordon Mydland

Attorney General

Pierre, South Dakota 57501

Phone (605) 224-3215



STATE WATER RESOURCES COMM.

PIERRE, SOUTH DAKOTA

Office of Commissioner of Drug Control

Office of Consumer Affairs

Office of Labor Commissioner

August 24, 1971

State Radio Communication System

Division of Criminal Investigation

Office of Industrial Commissioner

Mr. Joe Grimes
Water Resources Commission
State Capitol
Pierre, South Dakota

Dear Joe:

Please find enclosed a copy of a letter concerning water rights in Custer, South Dakota. Please give me your thoughts on the matter.

Sincerely yours,

WILLIAM J. SRSTKA, JR.
Assistant Attorney General

WJS:rg

CC Mr. Pedro J. Nunez

298-2

J.W. GRIMES

COMMISSION

Carl Cronin, Gettysburg
Lauren A. Davis, Belle Fourche
W. Neil Evans, Watertown
Milton E. Fischer, Milbank
Dick Fisher, Cresbard
Stanley Jensen, Beresford
Richard Lommen, Harrisburg
Clarence D. Mortenson, Haves

South Dakota
WATER RESOURCES COMMISSION

Chief Engineer
and
Executive Officer

State Office Building #2

PIERRE, SOUTH DAKOTA 57501

PHONE 605/224-3584

August 26, 1971

Mr. William J. Srstka, Jr.
Assistant Attorney General
State Capitol
Pierre, South Dakota

Dear Bill:

Reference is made to your letter concerning the water right situation at City Park Dam in Custer.

Enclosed for your information are copies of letters we have received and answers from this office about this situation.

I believe Custer has the right to allow the water to be used for watering the greens only of the specified golf course, under the domestic use preference in law. However, as stated, the area irrigated should not exceed one half acre in size. As you can see there is a difference of opinion as to the size of the area irrigated. Mr. Painter, the President of the golf course assured this office, in a phone call, that only the greens and tees, an area of less than one acre, was being irrigated.

I consider this matter primarily the concern of the local people. However if there is a flagrant violation of the water laws, this office should become involved.

Sincerely,

J.W. GRIMES

JWG/DD/bw

cc: Mr. Pedro J. Nunez, Box 443, Custer, S.D. 57730



State of South Dakota

ATTORNEY GENERAL'S OFFICE

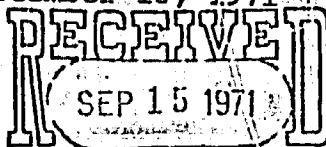
Gordon Mydland

Attorney General

Pierre, South Dakota 57501

Phone (605) 224-3215

September 15, 1971



STATE WATER RESOURCES COMM.

PIERRE, SOUTH DAKOTA

State Radio Communication System
Division of Criminal Investigation
Office of Industrial Commissioner

Office of Commissioner of Drug Control
Office of Consumer Affairs
Office of Labor Commissioner

Mr. Pedro J. Nunez
Box 44C
Custer, South Dakota 57730

Dear Mr. Nunez:

The problem is with this Custer Golf Course situation is that we have no evidence of misappropriation of water. The Water Resources Commission does have several letters, but these are not evidence. At the times the Water Resources Commission has investigated the situation, there has been no violation. The Water Resources Commission does not have enough time nor man-power to station a full-time man on French Creek.

The Water Resources Commission intends to be fully cooperative, but absent any evidence they can do little. A proper type of evidence that would be needed would be as follows. The Water Resources Commission would need the amount of water that was pumped. They would need the dates, times and places. They would need the exact measurement of the land being irrigated. This could be done by affidavit or otherwise. The letters of complaints have been investigated, as I stated before, but have revealed nothing. As you know, the Water Resources Commission can not proceed upon hearsay. It has to have concrete evidence.

Sincerely yours,

WILLIAM J. SRSTKA, JR.
Assistant Attorney General

WJS:ew

cc: Mr. Joe Grimes
Water Resources Commission

RECEIVED
SEP 16 1971

STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

Mr. Armes:

I do not know ^{PIERRE, SOUTH DAKOTA} picture of the watering well do any good, but I got a couple before I got to dark, Sunday night; While picture No. 1 was taken they were watering three more areas from my view from where I took this picture. I went over to the golf course to get some more pictures and the caretaker ask me what I was doing. I told him I came over to get some pictures. They were watering fairways + + boxes and greens I ask him how come they were watering fairways + greens + he said the pump pressure was so great that he had to put it some place. He also told me that he wished someone from the Water resource could come out and get this problem resolved.

Picture #2 → It shows a green and a fairway being watered. Every one of these sprinklers with four areas being

watened "were throwing water 60 ft at

If we do not get an action from the water commission we are going to get an association and get an injunction against someone, whether it be the golf association, city council or the Water Resource commission for not giving us any satisfaction. That is what is wrong with the U.S. The people are going to get control of our city councils + state legislatures and Water Resource Commission if need be.

I have not been unfair with your office at all. it is the job of your office to look into any complaint which is sent to your office & you do not do nothing. All I ask is send a man out here + we will get the caretaker to operate the watering system + you will be able to measure it.

I will not be writing to your office any more + bothering you

as I can see it does not
do any good.

thank you
for nothing

Pf. Harvey

Mr. William J. Sullivan Jr.
& J. W. Sullivan

As stated in your letter Mr.
Sullivan the area irrigated should
not exceed $\frac{1}{2}$ acre in size. If
you would just send one of your men
to Carter to look into this it could
have been corrected by now. After
two years of writing to you it looks
like we might get some action. The
people of Carter do not know what is
going on. All these dealings are
done after council meeting and once
they are not published in the city council
meeting. I have to pay \$2.90 a month
for water improvements and right now
we are having to use muddy water.
I do not know what the trouble is.

All the areas that they are
watering are not hard to till and
they are nice & green all you have
to do is send a man out to
measure the $\frac{1}{2}$ acre. It is yours.

more as you stated in your
letter after two years that you
had better become involved.

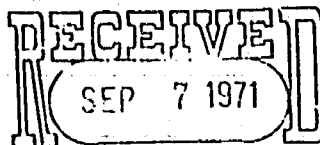
Who is Mr Painter he
is just one man. there are a
lot of people in Astoria who
are not happy over what is
going on.

The council gave the golf
association a pump a well casing
& pipe & help install same with
city help for the golf course is
this where our \$2.90 is going. I
think it stinks about as bad as
our water. If this stuff was done
out in the open it would not be
bad but its all underhanded just
like they do when they sneak the
water. I want a golf course just
as bad as the next guy but it
is not been done right.

I am sending Mr. William
Stratke for a copy of this letter

Hoping to hear from you or
see you in Custer soon I
remain.

Of Nunez
A concerned Citizen



STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

COMMISSION

Carl Cronin, Gettysburg
Lauren A. Davis, Belle Fourche
W. Neil Evans, Watertown
Milton E. Fischer, Milbank
Dick Fisher, Cresbard
Stanley Jensen, Beresford
Richard Lommen, Harrisburg
Clarence D. Mortenson, Hayes

South Dakota

WATER RESOURCES COMMISSION

State Office Building #2

PIERRE, SOUTH DAKOTA 57501

298-2

C O P Y

J.W. GRIMES

Chief Engineer
and
Executive Officer

PHONE 605/274-3584

September 20, 1971

Mr. Pedro J. Nunez
Box 443
Custer, South Dakota 57730

Dear Mr. Nunez:

In my letter to Mr. Srstka, written August 26, 1971, with a copy sent to you, I stated "I consider this matter primarily the concern of the local people. However, if there is a flagrant violation of the water laws, this office should become involved."

The intent here was that the local people should be given some time to resolve this situation. There was no promise of immediate action by the Staff of the Water Resources Commission, as suggested in your two recent letters.

This matter was discussed with the Water Resources Commission at its regular meeting on September 1, 1971. It was the consensus of the Commission that the local folks should have ample time to resolve this problem.

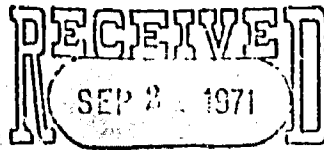
Sincerely,

J.W. GRIMES

JWG/DD/bw

cc: Mr. William J. Srstka, Assistant Attorney General, Pierre, S.D.
Mayor of the City of Custer, Custer, South Dakota
Mr. Robert Painter, President, Custer Golf Association, Custer, S.D.

ATTORNEY
GENERAL



SEP 20 1971

Sept-16-1971

Mr. William L. Butler Jr.
STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

I am going to direct my letter to you Bill + hope you send this on to the Water Commission. The picture I am sending is of the No 9 green and I measured it after the water shut off. it was watering an area 120 ft by 140 ft but there was quite a wind from the north. I think 120 x 130 would be honest measurement. And the other areas which had just shut off measured 250 ft x 180 ft. I did not get up to measure the other 4 areas that I could see that were being watered at the same time. This water operation is on a clock and as it opens + shuts off greens + turns on areas automatically. The gate to the golf course was shut off and there was nobody at the club house.

I do not think it would do any good to tell you how much water they are allowed to take because they are not breaking the law on this score as they can take it all + put it on 1/2 acre. The law states that they can not water an area total area larger than 1/2 acre. I did not walk on the rest of the course to see how many more areas they were watering as it gets dark pretty fast.

The date was Sept 16-1971 at 6.35 PM and the place that I measure was #9 green + a picture of #9 green + also measured the

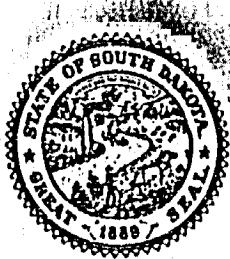
putting green & \$1 tee box.

I was out to the golf course Sunday and the caretaker was even wishing they could get the question resolved. We have two city council people on our side but we need another vote. I want the golf course as bad as anyone but they should not break the law. Golf members will tell you that ~~when~~ when the golf association started that they did not plan to get water from the dam.

You know Bill that is one thing that is wrong with the country today the people have to get control of our state legislatures down to our stinking city councils. Our laws do not mean anything in Custer Co. you can get a bigger rap for driving while intoxicated or just being drunk than killing someone. It has happened. We had one guy kill a whole Navy man's family & he did not get anything out of it. I often wonder where it is going to lead us to.

As Ever
B J Huns

P.S. And then we wonder why the youngsters are rebelling about.



State of South Dakota

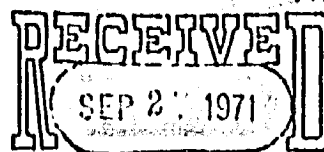
ATTORNEY GENERAL'S OFFICE

Gordon Mydland

Attorney General

Pierre, South Dakota 57501

Phone (605) 224-3215



STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

Office of Commissioner of Drug Control
Office of Consumer Affairs
Office of Labor Commissioner

September 24, 1971

State Radio Communication System
Division of Criminal Investigation
Office of Industrial Commissioner

Mr. Robert C. Blakewell, Jr.
34 North 6th
Custer, South Dakota 57730

Re: Rocky Knolls Golf Association, Custer, South Dakota

Dear Mr. Blakewell:

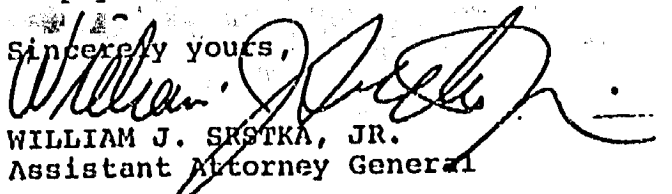
Your letter of September 23, 1971 to Attorney General Gordon Mydland concerning the above entitled subject has been referred to me for reply.

Please be advised that I have taken the liberty of mailing your letter along with the clipping to Joe Grimes by copy of this letter. In your letter your interpretation of the law as developed in Belle Fourche Irrigation District v. R. A. Smiley, 176 NW 2d 239, holding that the City of Custer or its lessee has riparian rights sufficient to allow for irrigation of this golf course to the extent that such use shall not interfere with any vested rights on French Creek below the point of diversion is incorrect. The Smiley case was decided and reversed upon merely procedural grounds. It is our contention that the law is well settled and riparian rights have been abolished within the state of South Dakota. A person, however, may obtain certain vested rights by complying with the terms of the statute. I do not know whether or not your client has any vested rights as I am unacquainted with the facts in the situation.

You would probably be interested to know that the Belle Fourche Irrigation District v. R. A. Smiley case has been re-litigated. A new judgment will be entered soon re-affirming the original judgment of the trial court. I assume that the case will be again appealed; however, I am confident that this time the result in the Supreme Court will be different.

Our position is that no person within this state has any riparian rights. This person, however, may have certain vested rights pursuant to the statute as I have stated above. If you have any further questions on this matter, you should contact Mr. Grimes. Mr. Grimes could certainly help you out in this matter.

Sincerely yours,


WILLIAM J. SRSTKA, JR.
Assistant Attorney General

WJS:ew

cc: Mr. Joe Grimes

LAW OFFICES OF
ROBERT C. BAKEWELL, JR.
34 NORTH 6th
CUSTER, SOUTH DAKOTA 57706
TELEPHONE 673-2213

ATTORNEY
GENERAL

SEP 24 1971

September 23, 1971

The Honorable Gordon Mydland
Attorney General
State of South Dakota
Pierre, South Dakota 57501

Dear Gordon:

I have been contacted by the members of the Rocky Knolls Golf Association, which is presently leasing a portion of HES #412, Section 27, Township 3 South, Range 4 East, Black Hills Meridian, from the City of Custer City, and they are operating a watered golf course at that location.

It is my understanding that certain citizens of the City of Custer have previously been in contact with the Water Resources Commission, who in turn has written a letter which was published in the local paper, a copy of which I am enclosing herewith.

I have been advised that there have been further contacts with the Water Resources Commission, but I am uninformed as to just what these contacts were, but also, the information is that the Water Resources Commission has been in contact with your office concerning this matter.

At the moment, my advice to the Golf Association has been that regardless of the present status of things, that they should merely at this point make application for a water right, assuming that there are any unallocated waters from French Creek at the point where it divides this property. However, in so doing, I am merely attempting to alleviate the situation by adhering to the statute, but I am under the impression that under the law as developed in Belle Fourche Irrigation District v. R. A. Smiley, 176 NW 2nd, 239, that the City of Custer or its lessee has riparian rights sufficient to allow for irrigation of this golf course, to the extent that such use shall not interfere with any vested rights on French Creek below the point of diversion.

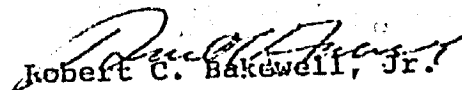
The Honorable Gordon Mydland
Attorney General
Pierre, South Dakota 57501

September 23, 1971

Page 2

I am fully aware that I am in no position to be inquiring of you as to your official opinion in this matter, but I would appreciate being advised as to any position that you may have taken in the matter, as I am not particularly interested in attempting to develop anything that would be counter to your stated position, but I am also interested in your views as to the applicability of the Smiley case. You may be assured that any comments that you may make in this regard will be held in the strictest confidence, but I would like an expression of your opinion as this is a matter of public concern in this area.

Respectfully yours,


Robert C. Bakewell, Jr.

RCB/ljb
Encl.

Letters

Pierre, S. D.
July 2, 1971

Mr. Pedro J. Nunez
Box 443
Custer, South Dakota 57730

Dear Mr. Nunez:

Your letter received June 29, 1971 inquires as to the water right pertaining to the West Dam on French Creek, and states that the water has been used in watering a golf course.

The water right involved is Water Permit No. 298-2 issued to the Custer City by the State Engineer, on June 24, 1943. The water right is in incomplete form, having never been licensed, but I assume it is a valid water right.

Water Permit No. 298-2 was issued to the City of Custer to be used for "Public Recreation-Fish Culture-Fire Protection-Domestic Stockwater." When Water Permit No. 298-2 was issued, water was being used downstream by at least one prior water right holder and Water Permit No. 298-2 contains the following qualification, "As stated elsewhere in this permit, approval is hereby granted subject to the provision that prior water rights not in force and effect be not injuriously affected. It is further understood that the proposed dam is for the purpose of storing flood water, but the amount of storage will be very little more than is now stored by conditions left by mining corporations and that the only discharge is that which may occur from natural evaporation and that when the lake has been filled, the flow of the stream will be passed on as it is received."

Despite the last quoted qualification of Water Permit No. 298-2, under current water law the City of Custer can allow the West Dam to be put up dry in the watering of an area or areas, such as golf greens, providing the total area watered is not greater in size than one half acre.

Sincerely,
J. V. Grimes
Chief Engineer
Water Resources Commission

October 1, 1971

Mr. Robert G. Bakewell, Jr., Attorney
34 North 6th
Custer, South Dakota 57730

Dear Mr. Bakewell:

Reference is made to your letter of September 23, 1971 pertaining to water rights on French Creek below Section 27, T3S, R4E.

There have been many water location notices filed and a number of water permits issued before 1935 on which this office does not have definite information, but we assume that most of these are no longer active. One modern valid water right is for Stockade Lake.

Thus any permit which might be obtained to irrigate golf course fairways from French Creek with water diverted below "West City Dam" would be subject to:

1. Allowing water to by-pass as needed for downstream domestic use, including livestock watering,
2. Allowing water to by-pass as needed for older valid water rights which might exist,
3. Allowing water to by-pass as needed to maintain the Stockade Lake water level. This would mean golf course diversions could not be made when water was not over flowing the Stockade Lake spillway.

This office has been requested to furnish the golf course with forms which can be used in making a water right application to irrigate the golf course with water from a well to be drilled. Recognizing there may be some problems in developing a well having sufficient water supply, if such a well can be obtained, it would have a number of advantages.

Sincerely,

J.W. GRIMES

JWG/DD/bw

LAW OFFICES OF
ROBERT C. BAKEWELL, JR.
34 NORTH 6TH
CUSTER, SOUTH DAKOTA 57730
TELEPHONE 673-2213

September 23, 1971

Water Resources Commission
State of South Dakota
Pierre, South Dakota 57501

Re: Part of HES #412, Section 27, Township
3 South, Range 4 East, BHM

Gentlemen:

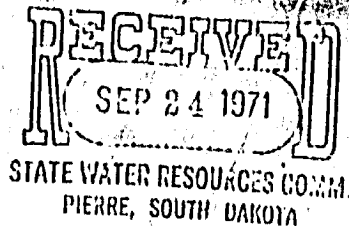
In anticipation that the City of Custer City may wish to make application for a water right for irrigating the golf course which is situated upon the above described real property, will you kindly advise whether there is at the point of the above described property, any unallocated water in French Creek, which runs through this property, and as to any water rights that presently exist below this point which would be considered in determining the availability of unallocated water, should an application for the use of same be made.

The basis for my inquiry is that I have been requested by the members of the Rocky Knolls Golf Club, which is leasing this property, to assist them in attempting to acquire such rights as are necessary to irrigate their nine-hole golf course. I will appreciate it if you will give this inquiry your early consideration.

Very truly yours,

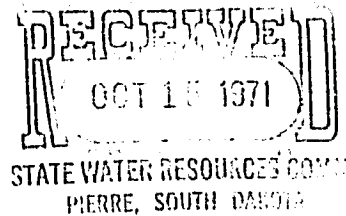
Robert C. Bakewell, Jr.
Robert C. Bakewell, Jr.

RCB/ljb



LAW OFFICES OF
GERALD M. BALDWIN
430 MOUNT RUSHMORE ROAD
CUSTER, SOUTH DAKOTA 57730
TELEPHONE 673-4825

October 13, 1971



South Dakota Water Resources Commission
State Office Building #2
Pierre, S. D. 57501

Attention: Mr. J. W. Grimes

Re: Custer Golf Course Water Right

Dear Mr. Grimes:

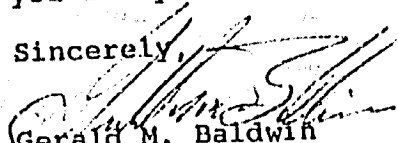
Please indulge another inquiry regarding the water rights to West Dam for the purpose of watering the Custer Golf Course. A number of people have pursued this matter, and it is a little difficult for me to determine all that has preceded.

Our State Senator, Kenneth Trask, has handed me the application forms for water appropriation permit, and I have also copies of your letters to the president of the Golf Association, Bob Painter, and to my fellow attorney, Bob Bakewell.

Your letter indicated that the forms were provided for the purpose of taking an application to pump from a well to be drilled. This appears not to be the case, as any water source other than West Dam has been determined not to be feasible. As a practical matter, other than in the Spring, there is no flow of water in French Creek, and therefore it is doubtful that there would be any downstream user's objections, or objections from the South Dakota Game and Fish Department regarding a water supply for Stockade Lake. If you would so recommend, we might visit with the said Game and Fish Department regarding a possible assignment of their permit to us, or if waiving an objection to the Golf Association obtaining a water right.

I do not wish to file the application without your concurrence and advice. Thank you for your consideration.

Sincerely,


Gerald M. Baldwin

GMB:cw

MISSION

M. Garhart, Spearfish
r Brue, Parker
Tronin, Gettysburg
n A. Davis, Belle Fourche
n E. Fischer, Milbank
nd Lommen, Harrisburg
nce D. Mortenson, Hayes
Fisher, Cresbard

South Dakota

WATER RESOURCES COMMISSION

State Office Building #2

PIERRE, SOUTH DAKOTA 57501

298-2

J.W. GRIMES

Chief Engineer
and
Executive Officer

PHONE
224-3584
Area Code 605

July 2, 1971

Mr. Pedro J. Nunez
Box 443
Custer, South Dakota 57730

Dear Mr. Nunez:

Your letter received June 29, 1971 inquires as to the water right pertaining to the West Dam on French Creek and states that the water has been used in watering a golf course.

The water right involved is Water Permit No. 298-2 issued to the Custer City by the State Engineer, on June 24, 1943. The water right is in incomplete form, having never been licensed, but I assume it is a valid water right.

Water Permit No. 298-2 was issued to the City of Custer to be used for "Public Recreation-Fish Culture-Fire Protection-Domestic Stockwater". When Water Permit No. 298-2 was issued, water was being diked downstream by at least one prior water right holder and Water Permit No. 298-2 contains the following qualification, "As stated elsewhere in this permit, approval is hereby granted subject to the provision that prior water rights now in force and effect be not injuriously effected. It is further understood that the proposed dam is for the purpose of storing flood water, that the amount of storage will be very little more than is now stored by conditions left by mining corporations and that the only diversion is that which may occur from natural evaporation and that when the lake has been filled, the flow of the stream will be passed on as it is received".

Despite the last quoted qualification of Water Permit No. 298-2, under current water laws, the City of Custer can allow the West Dam to be pumped dry in the watering of an area, or areas, such as golf greens, providing the total area watered is not greater in size than one half acre.

Sincerely,

J.W. GRIMES

JWG/DD/bw

cc: Richard Bratten, Mayor, 1104 Sherman, Custer, S.D. 57730

Reddy Mining
Box 443
Custer S.D.
57730

Dear Sir:

I would like to have
you people send me a
clear picture as to what
Mr. Himes said in his
last paragraph in the letter
enclosed.

Did the man mean
that the total area watered
was not to be greater than
 $\frac{1}{2}$ acre or did he mean
that we could move this
 $\frac{1}{2}$ acre any place on the
gulf course.

Hoping to hear from
you soon. I remain

Respectfully
B. J. Himes

July 26, 1974

Mr. Pedro J. Nunez
Box 443
Custer, South Dakota 57730

Dear Mr. Nunez:

Reference is made to your letter received July 23, 1974 regarding Mr. Grimes' July 2, 1971 letter.

The total of the area or areas watered shall not exceed one half acre. I do not believe the intent is that one half acre watered can be changed each day, but a number of the same areas having a total area not greater than one half acre can be watered each day.

Sincerely,

DONALD DRISCOLL
Chief Engineer

DD/hw

August 1, 1972

Miss Martha Smith
Fairburn, South Dakota 57738

Dear Miss Smith:

In letter of July 6, 1972, you raise questions concerning irrigation of the golf course at Custer, South Dakota. As you mention in your letter this irrigation use of water from City Park reservoir on French Creek is part of numerous issues between city government and city residents. To the extent that the water question can be isolated from the other issues, I shall attempt to answer your questions.

1) Under provisions of current State water rights law, the Law of 1881 (subsequently State law upon statehood) is determinative of "vested rights" (defined in Section 61.0102 (7) of the water laws in your possession apparently and recodified as Section 46-1-9 of the Compiled Laws of South Dakota, 1967), provided that water rights were acquired through actual use of water during the period 1881 to 1907. Water right records do not show that the City of Custer acquired water rights during this period, consequently, the Law of 1881 does not seem to apply to the use of water by the City or on the golf course unless decision is made otherwise by a Court.

The City of Custer has acquired water from four water rights under provisions of State law; three for use of ground water through wells, the fourth is that for storage of French Creek waters in City Park reservoir. The water right for the stored water provides for "public recreation-fish culture, fire protection-domestic stock water".

2) Domestic use of water (defined in Section 61.0102 (4) of your copy of the law) has preference over all other uses of water

Miss Martha Smith

2.

August 1, 1972

(61.0101 (5) (a)) and may be used without a permit (61.0107). Irrigation of not to exceed one-half acre is part of domestic use and water from French Creek for the golf course to irrigate one-half acre complies with the law. This means a total of one-half acre, not different one-half acres at different times. This may be complicated by lack of municipal water service to the golf course facilities due to the contamination of the City's wells by gasoline and by the other interrelated issues involving City government and its residents. Officials of the City, the golf course, the states attorney and other lawyers, and individual citizens have been advised as to these relationships.

As a general rule, State government does not subject its will on municipal or other subdivisions in matters of local dispute unless there is a flagrant violation of state law. The many unresolved facets of matters in dispute in Custer, including the golf course water situation, preclude State intervention unless some of the interrelated issues are clarified.

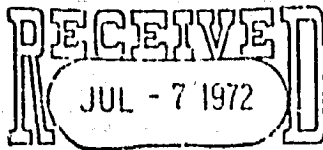
Sincerely,

JWG:ls

J. W. Grimes

bc Governor's Office

Attorney General (Srstka) w/copy



Fairburn, S. Dak.
July 6, 1972

STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

Dear Sirs:

On July 3, 1972 I was asked to attend a meeting of the City Council, Custer, S. Dak., at which concerned citizens were questioning the legality plus moral rights of the Council to designate the usage of 1) city owned property, 2) baring of Sportsmans Club to their property (i.e.--99 year lease), 3) and the usage of water for irrigation purposes from a small dam west of Custer which is on French Creek. All these questions concern the liason between Custer City Council, City of Custer, and the local golf course, which has been decreed a Corporation, and to which a local taxpaying citizen must pay dues in order to achieve usage of facilities. Unless a satisfactory agreement can be reached between the parties concerned, then it may no doubt have to be resolved in a court of law as to the misuse of public property and funds.

My concern as a taxpayer, landowner and resident involves the irrigation and possible misuse of water from the dam that is on French Creek. Since I was actively involved, and chariman of a committee which achieved in fact the building of a pipe line around the sink holes in French Creek, I most certainly am interested in anything which might detract from the viable stream that French Creek now is. (Certainly I will not argue that at this time we have had sufficient rains to aid in this.) It is, I believe, in the interest of all ranchers, property owners, and the residents of the city of Fairburn, which is located on French Creek, to see that no misuse of water-shed and viable stream flow be allowed. Therefor at this time I raise the following questions:

- 1) Are the water rights issued as early as 1881 being violated by the pumping of irrigation water from this dam? (a copy of these water rights is in my possession) It is also our understanding that this dam was built and stocked with fish for the entertainment of children only.
- 2) Is compliance of the State water laws being broken? I read a letter signed by Mr. Grimes, State Water Resources Commission, giving the right to irrigate "1/2 acre" for the Golf Course. This is a vague statement and has been apparently interpreted as they see fit. Does it mean- 1/2 acre in the morning, 1/2 acre in the afternoon and whenever and wherever they please? The water rights law 61.0126 specifies the limitation of the amount of water and a specified time each year; law 61.0130, specifies a measuring device; law 61.0128 specifies the law on existing rights and publication in a paper for 4 weeks; law 61.0137 states the natural flow of the stream may not be prevented; law 61.0155 states Form of judgement and a certified copy filed with the commission; law 61.0124 states units of measurement which I believe hasnot been complied with or possibly, understood by the managers of the Golf Course Corporation; law 61.0122 states appropriation for future use by municipalities with temporary permit (since it has been 3 years of usage surely t this cannot be used as application if a permanent permit should have been complied with.)

It is a basic principle of law that an upper riparian owner cannot use water for irrigation purposes, although he is certainly entitled to water for domestic purposes, and preclude lower riparian owners of reasonable water for their domestic purposes and the watering of their livestock. This is based upon the Americans sense of fair play and justice.

This then, Gentlemen, is the basis of my interest and questioning of the legality and possible misuse of irrigation water from French Creek.

Sincerely yours,

Martha Smith

Martha Smith

Fairburn, S. Dak. 57738

copy to: Gov. Richard Kneip

Fairburn, S. Dak.
July 6, 1972

Dear Sirs:

On July 3, 1972 I was asked to attend a meeting of the City Council, Custer, S. Dak., at which concerned citizens were questioning the legality plus moral rights of the Council to designate the usage of 1) city owned property, 2) baring of Sportsmans Club to their property (i.e. --99 year lease), 3) and the usage of water for irrigation purposes from a small dam west of Custer which is on French Creek. All these questions concern the liason between Custer City Council, City of Custer, and the local golf course, which has been decreed a corporation, and to which local taxpaying citizen must pay dues in order to achieve usage of facilities. Unless a satisfactory agreement can be reached between the parties concerned, then it may no doubt have to be resolved in a court of law as to the misuse of public property and funds.

My concern as a taxpayer, landowner and resident involves the irrigation and possible misuse of water from the dam that is on French Creek. Since I was actively involved, and chairman of a committee which achieved in fact the building of a pipe line around the sink holes in French Creek, I most certainly am interested in anything which might detract from the viable stream that French Creek now is. (Certainly I will not argue that at this time we have had sufficient rains to aid in this.) It is, I believe, in the interest of all ranchers, property owners, and the residents of the city of Fairburn, which is located on French Creek, to see that no misuse of water-shed and viable stream flow be allowed. Therefor at this time I raise the following questions:

- 1) Are the water rights issued as early as 1881 being violated by the pumping of irrigation water from this dam? (a copy of these water rights is in my possession) It is also our understanding that this dam was built and stocked with fish for the entertainment of children only.
- 2) Is compliance of the State water laws being broken? I read a letter signed by Mr. Grimes, State Water Resources Commission, giving the right to irrigate "1/2 acre" for the Golf Course. This is a vague statement and has been apparently interpreted as they see fit. Does it mean- 1/2 acre in the morning, 1/2 acre in the afternoon and whenever and wherever they please? The water rights law 61.0126 specifies the limitation of the amount of water and a specified time each year; law 61.0130 specifies a measuring device; law 61.0123 specifies the law on existing rights and publication in a paper for 4 weeks; law 61.0137 states the natural flow of the stream may not be prevented; law 61.0155 states form of judgement and a certified copy filed with the commission; law 61.0124 states units of measurement which I believe hasnot been complied with or possibly understood by the managers of the Golf Course Corporation; law 61.0122 states appropriation for future use by municipalities with temporary permit (since it has been 3 years of usage surely this cannot be used as application if a permanent permit should have been complied with.)

It is a basic principle of law that an upper riparian owner cannot use water for irrigation purposes, although he is certainly entitled to water for domestic purposes, and preclude lower riparian owners of reasonable water for their domestic purposes and the watering of their livestock. This is based upon the Americans sense of fair play and justice.

This then, Gentlemen, is the basis of my interest and questioning of the legality and possible misuse of irrigation water from French Creek.

Sincerely yours,

Martha Smith

Martha Smith

Fairburn, S. Dak. 57738

copy to: Joe Grimes
State Water Resources Comm.
Pierre, S. Dak.

673 - 4471

F.H.A.

WATERING GREEN

B.D. BALDWIN

H. 673-2314
B. 673-4433

TALKED TO MR. SAGER -

HAVE BEEN WATERING FAIRWAYS
UNTIL JULY 7 - NOW ARE WATERING
ONLY GREENS - GETTING
WATER UNDER CITY W/R 298:2
ON SMALL LAKE ON FRENCH
CREEK -

Dear Sirs:

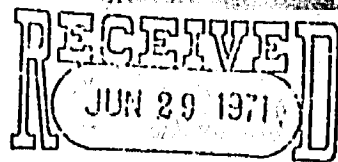
I wrote you last year about the golf club here in Custer pumping water out of west Dam. I wish you would send me their permit No. Custer is in bad shape for water one of their wells has oil leak in it. The City well that is located near the lake has been pumped 24 hrs a day for a week. If the golf outfit is allowed to pump our lake dry like they did last year it will sure be in bad.

I seems like those people with money sure get their way. We are being charged \$1.90 a month extra on our water bills for water improvement & then let the golf outfit take our water.

The State put fish in the lake again so kids under 16 years old can fish. I just came back from the and they were pumping the lake they have a big pump which is able to pump 500 gal per min.

I wish someone from your office would come to Custer & find out what is going on. I am going to write a letter to the attorney. Ben also.
Hoping to hear from you.
I remain,

B. J. Hume



STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

298-2

IV Complaint

J.W. GRIMES

Chief Engineer
and
Executive Officer

MISSION

1 Cronin, Gettysburg
Jren A. Davis, Belle Fourche
Neil Evans, Watertown
Ron E. Fischer, Milbank
ck Fisher, Crestbard
anley Jensen, Beresford
Richard Lomman, Harrisburg
arence D. Mortenson, Hayes

South Dakota

WATER RESOURCES COMMISSION

State Office Building #2

PIERRE, SOUTH DAKOTA 57501

PHONE 605/224-3584

September 20, 1971

Mr. Pedro J. Nunez
Box 443
Custer, South Dakota 57730

Dear Mr. Nunez:

In my letter to Mr. Srstka, written August 26, 1971, with a copy sent to you, I stated, "I consider this matter primarily the concern of the local people. However if there is a flagrant violation of the water laws, this office should become involved."

The intent here was that the local people should be given some time to resolve this situation. There was no promise of immediate action by the Staff of the Water Resources Commission, as suggested in your two recent letters.

This matter was discussed with the Water Resources Commission at its regular meeting on September 1, 1971. It was the consensus of the Commission that the local folks should have ample time to resolve this problem.

Sincerely,

J.W. GRIMES

JWG/DD/bw

cc: Mr. William J. Srstka, Assistant Attorney General, Pierre, S.D.
Mayor of the City of Custer, Custer, South Dakota
Mr. Robert Painter, President, Custer Golf Association, Custer, S.D.

RECEIVED
SEP 16 1971

Mr. Armes:

STATE WATER RESOURCES COMM.

I do not know ^{of the location of} the watering well do any good but I got a couple before it got to dark Sunday night; while picture No. 1 was taken they were watering three more areas from my view from where I took this picture. I went over to the golf course to get some more pictures and the caretaker ask me what I was doing. I told him I came over to get some pictures. They were watering fairways + boxes and greens. I ask him how come they were watering fairways + greens + he said the pump pressure was so great that he had to put it some place. He also told me that he wished someone from the Water resource would come out and get this problem resolved.

Picture #12 → It shows a green and a fairway being watered. Every one of these sprinklers with four areas being

watered were throwing water 60 ft at
If we do not get an action from
the water commission we are going to
get an association and get an injunction
against someone, whether it be the
self association, city council or the
Water Resource commission for not
giving us any satisfaction. That is
what is wrong with the U.S. the people
are going to get control of our city
councils & state legislatures and
Water Resource Commission if need be.

I have not been unfair with
your office at all it is the job of your
office to look into any complaint which
is sent to your office & you do not
do nothing. All I ask is send a
man out here & we will get
the caretaker to operate the
watering system & you will be
able to measure it.

I will not be writing to your
office any more & bothering you

as I can see it does not
do any good.

Thank you

for nothing

P. J. Harvey



State of South Dakota

ATTORNEY GENERAL'S OFFICE

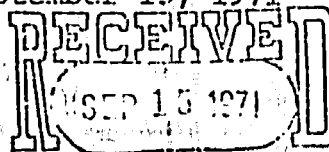
Gordon Mydland

Attorney General

Pierre, South Dakota 57501

Phone (605) 224-3215

September 15, 1971



STATE WATER RESOURCES COMM.

PIERRE, SOUTH DAKOTA

Office of Commissioner of Drug Control
Office of Consumer Affairs
Office of Labor Commissioner

State Radio Communication System
Division of Criminal Investigation
Office of Industrial Commissioner

Mr. Pedro J. Nunez
Box 44C
Custer, South Dakota 57730

Dear Mr. Nunez:

The problem is with this Custer Golf Course situation is that we have no evidence of misappropriation of water. The Water Resources Commission does have several letters, but these are not evidence. At the times the Water Resources Commission has investigated the situation, there has been no violation. The Water Resources Commission does not have enough time nor manpower to station a full-time man on French Creek.

The Water Resources Commission intends to be fully cooperative, but absent any evidence they can do little. A proper type of evidence that would be needed would be as follows. The Water Resources Commission would need the amount of water that was pumped. They would need the dates, times and places. They would need the exact measurement of the land being irrigated. This could be done by affidavit or otherwise. The letters of complaints have been investigated, as I stated before, but have revealed nothing. As you know, the Water Resources Commission can not proceed upon hearsay. It has to have concrete evidence.

Sincerely yours,

WILLIAM J. SRSTKA, JR.
Assistant Attorney General

WJS:ew

cc: Mr. Joe Grimes
Water Resources Commission

Mr William I. Stratka Jr.
& J.W. Brimes;

As stated in your letter Mr. Brimes the area irrigated should not exceed $\frac{1}{2}$ Acre in size. If you would just send one of your men to Custer to look into this it could have been corrected by now. After two years of writing to you it looks like we might get some action. The people of Custer do not know what is going on. All these dealings are done after council meeting is over they are not published in the city council meeting. I have to pay \$2.90 a month for water improvements and right now we are having to use muddy water, I do not know what the trouble is.

All the areas that they are watering are not hard to tell as they are nice & green all you have to do is send a man out to measure the $\frac{1}{2}$ Acre. It is your

more as you stated in your
letter after two years that you
had better become involved.

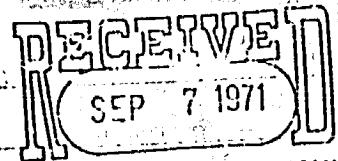
Who is Mr Painter he
is just one man. there are a
lot of People in Boston who
are not happy over what is
going on.

The council gave the golf
association a pump a well casing
& pipe & help install same with
city help for the golf course is
this where our \$2.90 is going. I
think it stinks about as bad as
our water. If this stuff was done
out in the open it would not be
bad but its all underhanded just
like they do when they sneak the
water. I want a golf course just
as bad as the next guy but it
is not been done right.

I am sending Mr. William
Stratka for a copy of this letter

Hoping to hear from you or
see you in Custer soon I
trust.

Of Nunez
a concerned citizen



STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

COMMISSION

Carl Cronin, Gettysburg
Lauren A. Davis, Belle Fourche
W. Neil Evans, Watertown
Milton E. Fischer, Milbank
Dick Fisher, Crestbard
Stanley Jensen, Beresford
Richard Lommen, Harrisburg
Clarence D. Mortenson, Hayes

South Dakota

WATER RESOURCES COMMISSION

State Office Building #2

PIERRE, SOUTH DAKOTA 57501

295-2

J.W. GRIMES

Chief Engineer
and
Executive Officer

August 26, 1971

PHONE 605/224-2400

Mr. William J. Srstka, Jr.
Assistant Attorney General
State Capitol
Pierre, South Dakota

Dear Bill:

Reference is made to your letter concerning the water right situation at City Park Dam in Custer.

Enclosed for your information are copies of letters we have received and answers from this office about this situation.

I believe Custer has the right to allow the water to be used for watering the greens only of the specified golf course, under the domestic use preference in law. However, as stated, the area irrigated should not exceed one half acre in size. As you can see there is a difference of opinion as to the size of the area irrigated. Mr. Painter, the President of the golf course assured this office, in a phone call, that only the greens and tees, an area of less than one acre, was being irrigated.

I consider this matter primarily the concern of the local people. However if there is a flagrant violation of the water laws, this office should become involved.

Sincerely,

J.W. GRIMES

JWG/DD/bw

cc: Mr. Pedro J. Nunez, Box 443, Custer, S.D. 57730

7-9-71

PHONE CALL FROM FRANK HENDERSON
RE GOLF COURSE AT CUSTER
PUMPING FROM SMALL LAKE ON
FRENCH CREEK NEAR CUSTER -

CALLED WILLIAM SAGER - AT
CUSTER - HEAD OF GOLF CLUB -
SAID THEY HAD BEEN PUMPING
ON FAIRWAYS, BUT SINCE
TUESDAY 7-7, THEY ARE PUMPING
ONLY ON GREENS.



State of South Dakota

ATTORNEY GENERAL'S OFFICE

Gordon Mydland

Attorney General

Pierre, South Dakota 57501

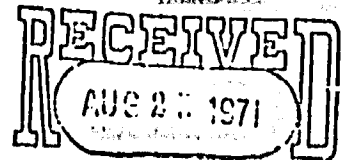
Phone (605) 224-3215

August 24, 1971

Office of Commissioner of Drug Control

Office of Consumer Affairs

Office of Labor Commissioner



STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

State Radio Communication System
Division of Criminal Investigation
Office of Industrial Commissioner

Mr. Joe Grimes
Water Resources Commission
State Capitol
Pierre, South Dakota

Dear Joe:

Please find enclosed a copy of a letter concerning water rights in Custer, South Dakota. Please give me your thoughts on the matter.

Sincerely yours,

WILLIAM J. SRSTKA, JR.
Assistant Attorney General

WJS:rg

CC Mr. Pedro J. Nunez

SR57122

AUG 12 1971

Dear Sir:

What can be done about a golf club here who have a right to pump all the water they want to from west dam. But according to the Water Comm in Pierre they can just put the water on $\frac{1}{2}$ acre and they are watering 6 acres or more. They have letters from Mr. Bredes in Pierre stating that that is all they can water.

This has been going on for two years and said they are never going to quit. We do not have money to get a lawyer and put an injunction on this. Every time they water they are breaking the law. The I cannot figure out

why there are two set of
laws, One for those who have
and those that have not.

This is not a city operated
course as it cost \$25.00 a
year to play golf.

Last year they came
up to the city shops and got
gas to mow the course with.
If the taxpayer has to
furnish gas he should be
able to play golf. The city
also gave them a pump which
I do not think is legal.

The reason I am writing
is action has been very
slow in getting to Council on
this matter. I would sure like
to see your office enforce this
law. I have write to your
office before but have got
it here from you.

Last year they were allowed
to pump it dry. I hope it does
not happen again. It is a
place for kids 16 years & younger
to fish & in the winter they
can ice skate.

They know they are breaking
the law but nobody does anything
about it. Hoping to hear from
you I remain

a Concerned

Citizen.

John J. Murray

Box 443

Custer
S.D. 57730

July 29, 1971

673-4665
Mr. Robert Painter, President
Custer Golf Association
Custer, South Dakota 57730

Dear Mr. Painter:

This office received information this morning that 15 acres of the Custer Golf Association Golf Course were being irrigated from Custer City Dam on French Creek.

In a subsequent phone call to you from this office, you indicated that less than one acre of land was being irrigated, that the dam had overflowed last week and was just full at the present time.

Under current water laws and existing water rights the total area which the Custer Golf Association can irrigate from the Custer City Dam shall not be greater in size than one half acre.

Sincerely,

J.W. GRIMS

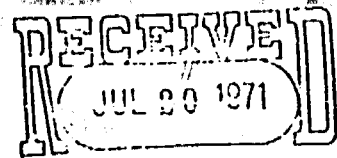
JWG/ED/bs

cc: Mr. Len Young, Fairburn, S.D.
Mr. Clyde Smith, Fairburn, S.D.
Miss Francis Egerton, Fairburn, S.D.

Fairburn S.D.
July 19, 1971

So. Dak. State Resources Comm.

Pierre
So. Dak.



STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

Dear Sir:

Am writing in regard to the
pumping of water out of the
Sportman Dam 1 mile west of
Custer So. Dak. on French Creek
as the water is needed on
the east end of French Creek
for stock water, purposes.
Thank you.

Yours truly
Sam Young
Fairburn
So. Dak.

57738

RECEIVED
JUL 20 1971

STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

Fairburn S.D.
July 19, 1971

Water Resources Comm.
Pierre S.D.

Dear Sir:

I have heard that the city of Custer is pumping water out of the dam on French Creek west of Custer for a golf course, and letting water go by down stream. This must certainly be against the law and should be stopped. I would like to see these runs of water benefit the land owners.

With the dam being full there is a larger head of water to reach the valley during a rain. Sincerely yours
Clyde Smith

257-2

298

Dear Sir,

Thank you for your prompt answer. In your letter it states that this water is for Public Recreation - Fish Culture - Ice Convention - Domestic Stockwater. Will this golf course is not a Public links it would cost me 75. a year or 1.00 daily to use the course. The fish the state puts in for the 16 year old and under to catch do not have much chance after it is dry. I do not know if this case being this is not for public use has any bearing on this.

Thank you again for your time

I remain

Yr. Wm. J. 304
Custer S.D. 743

June 23, 1972

Mr. Hobart H. Gates
Custer County State's Attorney
Custer, South Dakota 57730

Dear Mr. Gates:

Reference is made to your letter dated June 9, 1972 inquiring about the water right involved in the golf course sprinkling system.

For your information I am enclosing a copy of Water Right No. 298-2 and a copy of a letter written to Mr. Nunez on July 2, 1971.

For an explanation of the last paragraph of the letter to Mr. Nunez, note Sections 46-1-5 (1) and 46-1-6 (4) of SDCL 1967.

This matter has been considered by the Water Resources Commission and the consensus of the Commission was that it would be better if the problem was resolved by the local people.

I hope that this information is helpful.

Sincerely,

J. S.F. GRIMES

JWG/DD/bw

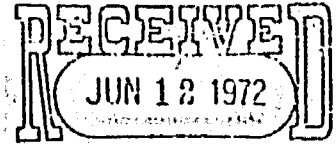
Encl: As stated

Office Of

CUSTER COUNTY STATES ATTORNEY

CUSTER, SOUTH DAKOTA

June 9, 1972



STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

Mr. J. W. Grimes, Executive Officer
Water Resources Commission
Pierre, SD 57501

Dear Mr. Grimes:-

For the past year or two I have read things in the paper about the feud going on between certain landowners and the Custer Golf Association over the matter of water appropriation. Now it has been brought to my attention as States Attorney by one of the landowners, Pedro Nunez.

What I would like to know is the water right that the City of Custer has or that the Custer Golf Association has in regard to appropriation of water for the golf course.

A good many years ago I happened to be a member of the Custer City Council when the land was purchased for a recreation area and I also assisted other local people in a meeting at Sioux Falls with the SD Dept. of Game, Fish & Parks when we managed to get them to build the dam for us, so I have more than a casual interest in this matter.

Any information on this water matter will be greatly appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "Hobart H. Gates". The signature is fluid and cursive, written over the typed name.

Hobart H. Gates, Custer County
States Attorney.

August 3, 1974

Mr. Donald Driscoll, Chief Engineer
SD Department of Natural Resource Development
Water Rights Commission
Office Building #2
Pierre, South Dakota 57501

Dear Mr. Driscoll:

Thank you for your prompt answer to my letter. What I am writing about is how I go about filing a formal complaint as this law is being violated. I think it is the Water Rights Commission that I should address my complaint to. If it is could you send me a form so that I could fill it out and return it to your office.

Thank you for your prompt answer.

Sincerely,

P. J. Nunez

673-2331

Called on 8-13-74

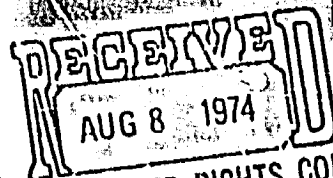
stressed that in the past the Commission had considered this as a community problem which may be better handled out by the local people.

He indicated recent rains had improved the water situation.

However he was determined to

do all he could to stop the life

association from pumping water from the pond.



STATE WATER RIGHTS COMM.
PIERRE, SOUTH DAKOTA

South Dakota

DEPARTMENT OF WATER & NATURAL RESOURCES
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

GREAT FACES. GREAT PLACES.

COPY

March 15, 1991

Rod Johnson
Oney Engineering .
P.O. Box 786
Custer, SD 57730

Dear Mr. Johnson:

I am writing in response to our recent phone conversation regarding the proposal to use wastewater effluent on the City of Custer's municipal golf course and the use of water from West (City Park) Dam along French Creek for irrigation of the golf course. I have reviewed the file on these issues and conferred with other Water Rights staff members to address your questions.

First, the Administrative Rules of South Dakota do not consider the disposal of contaminated water to be irrigation unless other water is used along with the contaminated water (74:02:01:01(2)). This rule allows the City of Custer to dispose of their wastewater effluent by land application to their property without obtaining a water permit.

The issue of using water from West Dam to irrigate the golf course has been controversial since the early 1970's. Water Right No. 298-2 authorized construction of this dam to impound 30 acre feet of water for public recreation, fish culture, fire protection and domestic use. The statutory definition of domestic use of water includes the use of 18 gallons of water per minute (gpm) or less for public recreation areas. It is noteworthy to mention that "public recreation area" was defined by rule to include golf courses in 1989. The inclusion of golf courses as public recreation areas now allows the use of up to 18 gpm by golf courses.

The irrigation of the municipal golf course from the West Dam is allowed without obtaining a water permit if the diversion rate does not exceed 18 gpm. There are no provisions that would allow pumping at greater than an 18 gpm diversion rate without first obtaining a water permit. If the city wishes to divert more than 18 gpm, a water permit to use West Dam will be required.

If you have any additional questions regarding the land application of wastewater effluent or the use of West Dam for irrigating the golf course, please feel free to contact me.

Sincerely,

Eric Gronlund
Eric Gronlund
Water Rights Division
605 773-3352