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STATE WATER RESOURCES CO.
District PIERRE, SOUTH DAKOTA

No. 7.27-2

Water Division No. 2

BATTLE CREEK

(Blanks to be filled by the Engineer for the W. R. C.)

VESTED RIGHT

APPLICATION FOR PERMIT

To Appropriate Water within the State of South Dakota

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

1. Name of applicant South Dakota Department of Game, Fish and Parks
 Postoffice address Pierre, County Hughes, State South Dakota

- I. If a corporation
- (a) Name of same
 - (b) Date and place of incorporation
 - (c) Amount of capital stock
 - (d) Amount paid in
 - (e) Names and addresses of directors

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

II. Method of accomplishing the work and financial resources of the applicant:

- (a) Method of accomplishing work (Whether by contract, employment of others, or by direct labor)

- (b) Cash on hand, \$
 (c) Treasury stock, \$
 (d) Bonds to be issued, \$
 (e) Other resources, \$

2. Name of diversion work BISMARCK LAKE - Custer County
As required to fill lake to spillway outlet - approximately
 3. Amount of water claimed 70 acre feet per cubic feet per second
 4. Source of water supply Willow Creek
 5. Location of point of diversion One pt int. in the watershed located in the NW 1/4
Sec. 22, T 3 S. R 5 E. on bank County.
 6. Annual period or periods during which water is to be used continuously
 7. To be used for:

- I. Irrigation or domestic use: Gravity, overhead sprinkling or combination system?

- (a) Number of acres to be irrigated acres.

- (b) Legal subdivisions to be irrigated

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

- (c) Statement as to (giving location, etc.) NW 1/4 Sec. 22, T. 3 S. R. 5 E.

II. Stockwatering, mining, milling, power, fish culture, fire protection and public recreation:

- (a) Nature of use Public recreation uses

Name any of the above uses claimed

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

Amount valued for engine cooling

- (c) Location of plant

- (d) Method of developing power

- (e) Point where water will be returned to stream

8. Estimated cost of work:

(a) Head Gates, \$-----

(b) Pumping plant, \$-----

(c) Fluming, \$-----

(d) Canal-earth, \$-----

Rock, \$-----

(e) Other structures ----- \$-----

Total, \$ 7000.00

9. Description of diversion works:

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

II. Dimensions of works.

- (a) Dam: Height 30 feet; length at bottom 170 feet; length at top 270 feet; thickness at bottom 100 feet; thickness at top 15 feet; slope at front water face 2:1; slope at back face 1:1; material used in construction Earth fill
- (b) Reservoir: Capacity when filled 220 acre feet. Surface area at highwater mark 22 acres.

DEPTH AT OUTLET-Feet	SURFACE AREA AT EACH DEPTH AT OUTLET-ACRES	AG. LE-Feet CAPACITY

(c)* Head gate: Width ----- feet; height ----- feet;
Material -----

(d) Canal: Total length ----- miles.

LOCATION BELOW HEADGATE	DEPTH	BOTTOM WIDTH	WIDTH AT WATER-LINE	GRADE PER MILE
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet

(Give dimensions where reductions in size are made.)

10. Time required for completion of work completed not applicable years.11. Time required for complete application of water to the proposed beneficial use complete years.12. Choice of newspaper for publication of notice of intention to appropriate not applicable

STATE OF SOUTH DAKOTA

County of Hughes

ss.

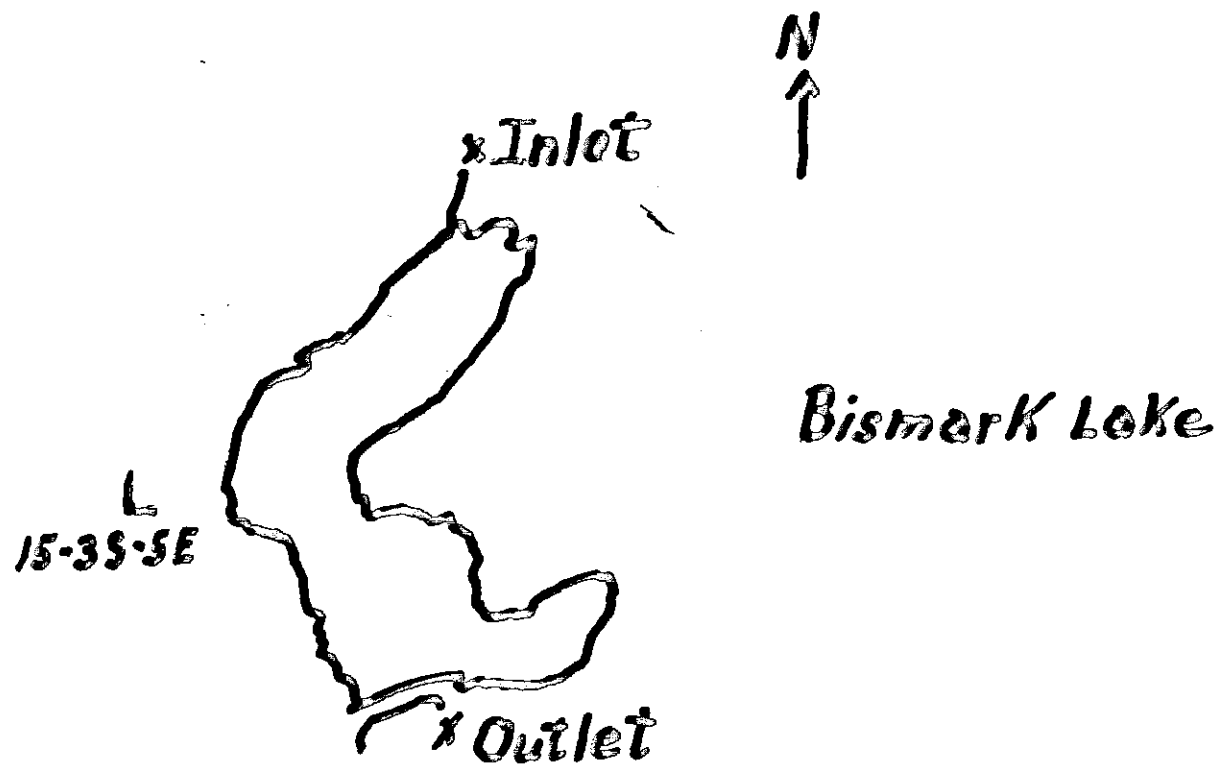
I, Walter J. Fillmore

being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of owner, that I have read the above foregoing statement, examined the map accompanying the same, and that I know of my own personal knowledge that the matters therein stated and shown are true.

Signed [Signature]Subscribed and sworn to before me this 11 day of September 1961[Signature]
Notary Public (or other qualified officer.)

11-6-65

*Each diversion must have a headgate or measuring device.



Remarks by State Water Resources Commission:

"vested right" claimed

STATE OF SOUTH DAKOTA

County of

Hughes

ss.

Pierre, South Dakota,

December 3, 1962

This is to certify that the foregoing application was received by the Commission at 4:15 o'clock P.m. upon the 12TH day of September, 1961.

State Water Resources Commission

By:

for Chief Engineer, Executive Officer

Number of permit

727-2

Date of first receipt of application

September 12

1961

Date of return to applicant for correction, amendments or changes required as follows:

19

Date of receipt of corrected application

19

Date from which applicant may claim right

1920

19

Approved

December 3, 1962

Recorded in Book

7

Page

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This is to certify that we have examined the foregoing application for a permit to appropriate water of the State of South Dakota, and we 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

2nd. The whole of said work is to be completed on or before

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is

Completed

4th. The water appropriated shall be used for the purpose of 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 70 acre feet annually cubic feet per second; 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 (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually

used for public recreation

and beneficially applied to on or before June 30, 1955; said water to be used during the following described annual period:

Continuously

Witness my hand this

3rd

day of

December

1962

State Water Resources Commission

By:

for Chief Engineer, Executive Officer

Chief Engineer, Executive Officer

Certificate of Construction issued

December 3, 1962

Water License issued

December 3, 1962

STATE OF SOUTH DAKOTA

WATER LICENSE No. 727-2

WHEREAS, On the 12th day of September A. D. 1961

the Department of Game, Fish and Parks

of Pierre County of Hughes Vested Right and State of South Dakota duly made application (No. 727-2) to us for a permit to use 70 acre feet annually of the waters of Willow Creek County of Custer, State of South Dakota, for public recreation purposes; and

WHEREAS, On the 3rd day of December A. D. 1962 recognizing Vested Right Permit No. 727-2 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 1st day of May 1962 and for the application to beneficial use of said water on or before the 1st day of May 1962 and,

WHEREAS, On the 12th day of September A. D. 1961 the holder of said permit duly made proof of the completion of adequate works for the diversion of 70 acre feet annually of said waters, as evidenced by our Certificate No. 727-2 dated December 3, 1962 confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 70 acre feet annually of water, with date of priority of 1920 and,

WHEREAS, On the 12th day of September A. D. 1961 proof was duly made of the application to beneficial use of 70 acre feet annually of said water; to be used in place for public recreation

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 the Department of Game, Fish and Parks
of Pierre the holder and owner of said ^{Vested Right} permit No. 727-2--
a water right, dating from 1910 to the use of 70 acre feet annually
~~and for the extension~~ of the waters of Willow Creek
In the County of Custer and State of South Dakota, or so much thereof as may be
necessray for the purposes hereinbelow mentioned, to be diverted at a point in the NW 1/4 Section 22,
T3S, R5E
and ~~used for~~ stored in place

for the purpose of public recreation

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 seal of our office at Pierre, South Dakota,
this 3rd day of December A. D. Nineteen
Hundred and Sixty-Two

State Water Resources Commisssion
By:

Chief Engineer, Executive Officer
J. W. GRIMES

STATE OF SOUTH DAKOTA

Water License No. _____

To _____

Source of Supply _____

County _____

Am't _____ c. f. s.

Point of Diversion _____

Place of Use _____

Purpose _____

Date of Priority _____

Recorded _____

In Book _____ of _____ Page _____

Permit No. 727-2Water Division No. 2 Battle Creek Water District**Certificate of Completion of Works**

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That the Department of Game, Fish and Parks

of Pierre, County of Hughes, and State of South Dakota, the holder of Vested Right Permit No. 727-2, Issued upon Application No. 727-2, bearing date of priority of 1920, authorizing the diversion of 70 acre feet annually of the Willow Creek waters of Custer County of South Dakota, at a point in the NW 1/4 Section 22, T3S, R5E

for public recreation purposes, has fully 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 recognized as satisfactory for diverting and conveying to the place of intended use 70 acre feet annually of water; and that the lands proposed to be irrigated by the use of said water are described as follows, to-wit: to be used in place for public recreation.

Witness my hand this 3rd day of December A. D. 1962

State Water Resources Commission

By:

Chief Engineer, Executive Officer
J. W. GRIMES

Location No.

Water Division No. Water District

Proof of Application of Water to Beneficial Use

PETITION OF HOLDER

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. South Dakota Department of Game, Fish and Parks, Pierre, South Dakota

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business (if a foreign corporation, give name and postoffice of statutory agent,) your position with reference to same, and your authority for appearing in its behalf.

Ans.

Ques. 3. State date of posting and date of recording notice of appropriation.

Ans.

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Willow Creek - one point in the watershed located in the NW1/4, Sec. 22,
T. 2 S. R. 5 E.

Ques. 5. Describe your works of diversion giving length and height of each dam and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use, and date of completion of same.

Ans. Earth Dam - approximately 170 feet long, 30 feet high
Impoundment of 30 acres at dam site

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have ACTUALLY been irrigated with said water.)

Ans. Fish and wildlife propagation, conservation and recreation

Ques. 7. If for other than irrigation purpose, state how applied, amount of horse power generated, etc.

Ans. Used in place in lake or reservoir

Ques. 8. What is the minimum amount of water required for the use specified above?

Ans. As required to fill lake to spillway outlet - approximately 70 acre feet per year

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans.

Ques. 10. State when, how, in what amount and to what extent, the water diverted under above mentioned permit has been used.

Ans. Been in use ever since 1920 when dam was constructed. Used by the

public for the uses specified except for that amount lost by evaporation
and seepage

(Sign)

W. McLean

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Pierre County of Hughes

State of South Dakota, on this 11 day of September A. D. 1961

Witnesses.

Edna H. Johnson
11-0-61

I, the undersigned, do hereby certify that I am a duly qualified elector, residing in the immediate vicinity of the diversion works designated in the foregoing testimony, that I have no interest in the works, water or land above described, that I have read the foregoing testimony and that I know of my own personal knowledge that the matters therein stated are true.

Location No. _____

PROOF OF APPLICATION OF
WATER TO BENEFICIAL USE

PETITION OF HOLDER

Amount of Water _____ c. f. s.

Source _____

County _____

Purpose _____

Place of Use _____

Date of recording _____

Received and filed _____

South Dakota Department of
Water & Natural Resources

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

September 21, 1988

Richard Beringson, Secretary
 Department of Game, Fish and Parks
 Anderson Building
 445 E Capitol
 Pierre SD 57501

Dear Mr. Beringson:

I am writing to notify you that pursuant to the Notice of Intent to Validate Vested Water Right Claims dated June 20, 1988 that I intend to oppose validation of all Department of Game, Fish and Parks Vested Water Right Claims for lakes for the following reasons:

1. Until the outlet elevation for each lake is surveyed and the outlet elevation is set by the Water Management Board.
2. To allow the Vested Water Right Claim to be amended, if necessary, as follows:
 - a) Include the outlet elevation;
 - b) To correct the amount of water claimed;
 - c) To add the qualification that a vested claim is subject where necessary to installation of a concrete outlet structure to assure retention of the outlet as the established elevation; and
 - d) To add any amendments and qualifications necessary to clarify a Vested Right Claim.

Also, that I intend to oppose validation of all Department of Game, Fish and Parks Vested Water Right Claims for dams to allow the Vested Water Right Claim to be amended, if necessary, as follows:

1. To include the spillway elevation;
2. To correct the amount of water claimed; and
3. To add any amendments and qualifications necessary to clarify a Vested Right Claim.

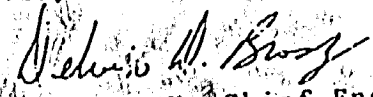


September 21, 1988
Richard Beringson, Secretary
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We will be working with your staff on these validations. We have already discussed setting outlet elevations before validating claims for lakes. Although the work necessary to complete the validation process will take several years to complete, the results should be of benefit to the public and to your Department. As the work is completed to validate each claim, the claim will be presented to the Water Management Board for validation.

Please advise if you have any questions.

Very truly yours,

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

cc: Ron Koth, Department of Game, Fish and Parks



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

October 9, 2001

MEMO

To: Individual Files
cc: Garland Erbele, Chief Engineer, Water Rights Program
Gale Selken, PE, Water Rights Program
From: Donald E. Stroup, DENR Natural Resources Project Engineer
Subject: License/Vested Right Nos. 726-2, 727-2, 728-2, 729-2, and 734-2

In September 1988 the Chief Engineer, Water Rights Division, notified the Secretary, Department of Game, Fish and Parks (GF&P) of his intent to oppose validation of all GF&P Vested Water Right Claims for lakes and dams for the following reasons:

Lakes:

1. Until the outlet elevation for each lake is surveyed and the outlet elevation is set by the Water Management Board;
2. To allow the Vested Water Right Claim to be amended, if necessary, as follows:
 - a. Include the outlet elevation;
 - b. To correct the amount of water claimed;
 - c. To add the qualification that a vested claim is subject where necessary to installation of a concrete outlet structure to assure retention of the outlet as the established elevation; and
 - d. To add any amendments and qualifications necessary to clarify a Vested Right Claim.

Dams:

1. To include the spillway elevation;
2. To correct the amount of water claimed; and
3. To add any amendments and qualifications necessary to clarify a Vested Right Claim.

In conjunction with the 2001 Staff Inspection Assignments, I examined GF&P License/Vested Water Right Nos. 726-2 Sylvan Lake, 727-2 Bismarck Lake, 728-2 Center Lake, 729-2 Legion Lake, and 734-2 Stockade Lake in Custer State Park for possible validation. These dams have

concrete spillways that can be used as an established, maintainable elevation reference upon completion of a proper survey. Once the outlet elevation is set and the correct amount of water be claimed for each of these lakes is determined, these claims could be presented to the Water Management Board for validation.

Gale Selken, Water Rights Program, is presently coordinating completion of required surveys with GF&P personnel and will schedule these dams for elevation surveys in the near future.