

No. FC-2 Hydrologic Unit 10140203
 Map No. FC-2 Basin KE
 Newspaper Mellette Co. News, Box F White River
 57579

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

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

Type of Application: Check one or more of the following

New ☒ Vested Right ☐ Future Use ☐ Change Use ☐

☐ Amend Permit No. _____ with old priority date retained

Change diversion point(s) ☐ Add diversion point(s) ☐ Other ☐ _____

☐ Application to: Change diversion point(s) ☐ Add diversion point(s) ☐ on Permit No. _____

☐ Construction to use water reserved by Future Use Permit No. _____

1. Name of Applicant Raymond Lolley Phone No. 605 259 3113

Post Office Address Box 45, White River, State South Dakota
(Street, RR or Box) Zip Code 57579

2. Amount of water claimed (c.f.s) None - Flood Control

3. Source of water supply Little White River

4. Location of point of diversion NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 10 T 41N R 29W

County Mellette

5. Counties where water will be used _____

6. Annual period during which water is to be used _____

7. Give a brief description of proposed project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

The structure was put across the river to divert the channel into an old one to keep it from eroding the existing bank away. Trees have been planted along the eroding bank to stabilize it if the structure can be left in tact.

Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach map (see instruction)

STATE OF SOUTH DAKOTA)
County of Mellette)^{ss}

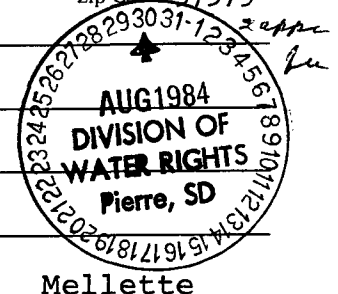
I, Raymond Lolley the applicant, certify that I have read the foregoing application, have examined the attached map and that the matters therein stated are true and that I intend, and am able to complete the necessary construction.

Signed Raymond Lolley

Subscribed and sworn to before me this 31 day of July 19 89

Debra M. Hutchinson
Notary Public (or other qualified officer)

4-1-90



WATER PERMIT

The Water Management Board hereby approves Water Permit Application No. _____

(Applicant)

(Post Office Address)

(State)

(Zip Code)

With the following qualifications.

Date of first receipt of application _____, 19____.

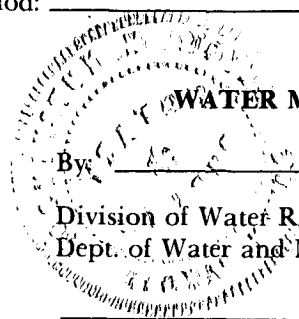
Date of return to applicant for correction, amendments or changes required _____, 19____.

Date of receipt of corrected application _____, 19____. Approved _____, 19____.

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

1. The date from which applicant may claim right is _____, 19____.
2. The equivalent of at least one-fifth of the specified work is to be completed on or before _____, 19____.
3. The whole of said work is to be completed on or before _____, 19____.
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is _____, 19____.
5. The water appropriated shall be used for the purpose of _____

6. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be unlawfully impaired by this appropriation.
7. The amount of the appropriation herein granted shall not exceed _____ cubic feet per second; neither shall it exceed the capacity of the above described water supply system nor shall it exceed the amount of water needed for beneficial uses served and to which water is actually and beneficially applied for _____ on or before _____, 19____; said water to be used during the following described annual period: _____



WATER MANAGEMENT BOARD

By _____

Chief Engineer

Division of Water Rights

Dept. of Water and Natural Resources

_____, 19____

Supplemental Information

(type or print in ink)

1. Well Information - Proposed construction

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

2. Dugout Information Estimates

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

3. Water Storage Dams *Main DiKe*

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

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

b) Freeboard 6'

c) Crest Width 20'

Crest Length 300'

d) Height 15'

e) Outlet Dimensions:
Pipe diameter _____

Spillway width _____

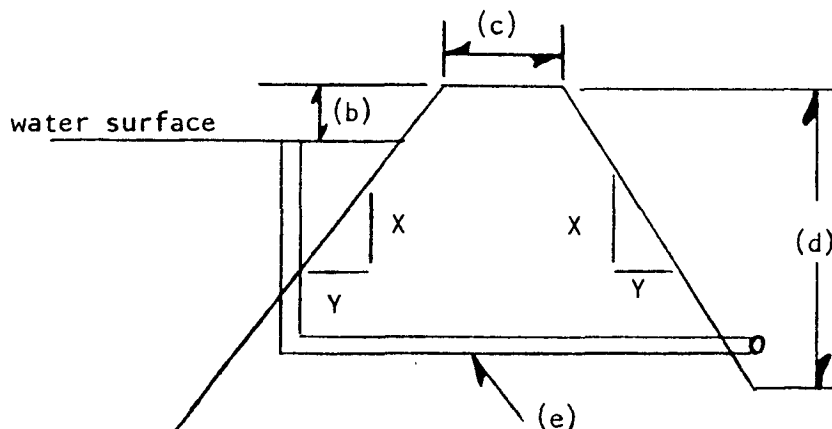
f) X & Y Slope
Upstream _____

Downstream _____

Surface Area of Impoundment _____

Storage None acre feet

Drainage area above dam _____



Signature of Applicant

Charles L. Lally

Supplemental Information

(type or print in ink)

1. Well Information - Proposed construction

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

2. Dugout Information Estimates

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

3. Water Storage Dams *Secondary Dike*

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

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

b) Freeboard 6'

c) Crest Width 18'

Crest Length 225'

d) Height 8'

e) Outlet Dimensions:
Pipe diameter _____

Spillway width _____

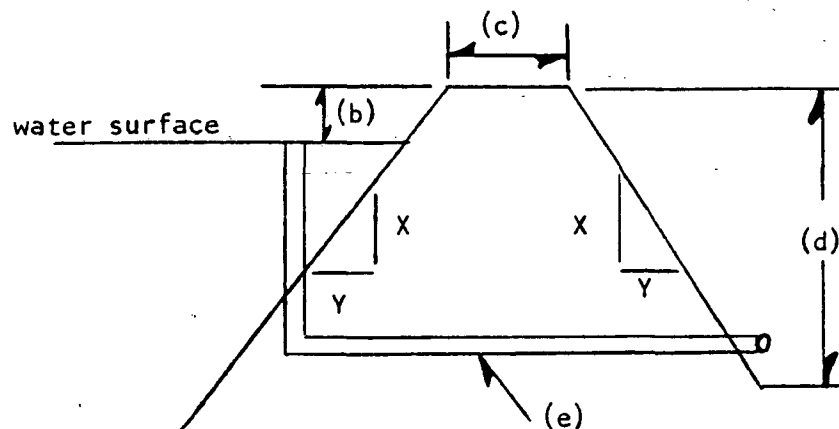
f) X & Y Slope
Upstream _____

Downstream _____

Surface Area of Impoundment _____

Storage NA acre feet

Drainage area above dam NA



Signature of Applicant

Charlene Lally

Charles L. Lutz, USGS
Regional Director
Don't start



original
channel

Dike

Dike

eroding bank

house

CL

NW CORNER
SEC 10, T41N, R29W

FC-2

Tim Schaaf

Water Rights Division - DWR

Mellette Co.
File No. _____

Conversation or File Documentation

NAME OF PERSON OR FILE: Roy Teachout, BIA Land Operations
✓ ADDRESS: Rosebud, S.D. COUNTY Mellette Co.
DATE: 4/24/84 TELEPHONE 747-2271 Ext. 44
RE: Complaint - Reported a unauthorized diversion from
COMMENTS: Little White River.

Reported that ~~possibly~~ Raymond "Swede" Lolley
has dammed up the Little White River and is
diverting the water to an old water way on
Lolley's land.

The location of the diversion dam is in the
N $\frac{1}{2}$ NW $\frac{1}{4}$ Sec 10, T41N, R 29W. Lolley owns
the 40 in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and 10 acres east
of this 40. It appears that he may be
trying to protect some cropland he has
next to the Little White River.

The water ~~then~~ moves across certain trust land.
This is what Mr. Teachout is concerned with.
He is asking if this is legal.

Address: Roy Teachout, BIA Land Operations
Soil & Moisture Conservation
Rosebud Agency 747-2271 Ext. 44
Rosebud, S.D.

Check out if there are any water rights and inspect.
Talk to Mr. Lolly about what he is doing.

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

NAME: James E. Hamilton



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OMAHA DISTRICT CORPS OF ENGINEERS
6014 U.S. POST OFFICE AND COURTHOUSE
OMAHA, NEBRASKA 68102

JUN 11 1984

RECEIVED

JUN 14 1984

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Raymond Lolley
Box 45
White River, South Dakota 57579

SOUTH DAKOTA DEPARTMENT OF
WATER AND NATURAL RESOURCES
OFFICE OF WATER QUALITY

Dear Mr. Lolley:

It has been brought to my attention that you have placed fill material in the form of an earthen dam across the main channel of the Little White River in the NW 1/4 of Section 10, Township 41 North, Range 29 West, Mellette County, South Dakota.

The Corps of Engineers is responsible for administering Federal laws that regulate certain activities in waters of the United States. The authority relative to your activity is Section 404 of the Clean Water Act, which prohibits the discharge of dredged or fill material into streams, natural lakes, and wetlands without a Department of the Army permit issued prior to start of construction. This authorization is either in the form of a Nationwide permit or an individual Department of the Army permit.

Since the required authorization was neither applied for nor granted, the work was performed in apparent violation of the Act and you are hereby directed to cease and desist any further unauthorized work at the site.

In order for the dam to remain, it would have to be authorized after-the-fact. However, it is almost certain that authorization would not be granted because of the unacceptable effects the structure has on the waterway and as such is contrary to the best interests of the general public. My only alternative is to order the structure removed. Accordingly, you are hereby directed to immediately remove the earthen dam in accordance with the following conditions:

a. The dam is to be removed in its entirety within the limits of the existing channel banks and the channel's flow carrying capacity is to be restored to its preconstruction condition.

b. The removed material is to be deposited landward in such a manner as to prevent the material from reentering the river.

c. The removed material is not to be placed in a wetland area or in any locality or manner so as to impair water flows into or out of any wetland area.

Upon completion, you are to notify Mr. Ralph Miller, Chief of Regulatory Branch at telephone number (402) 221-4133. The site will be inspected for compliance.

I realize you may have an erosion problem and do not want to deny you the opportunity to protect your property. Current regulations provide for a Nationwide permit that allows the placement of up to 500 feet of suitable bank protection material. Large diameter stone is recommended, if available. However, other materials are acceptable, such as broken concrete pieces (not slabs), old tires in stacked or mattress form (banded together and anchored), or trees laid parallel to the bank and cable anchored. Strict compliance with the enclosed conditions is required for the work to be covered under this Nationwide authorization, and notification should be given prior to commencement of work. If all conditions cannot be met and adhered to, an individual Department of the Army permit will be required prior to start of construction.

If you have any questions, contact Mr. Miller at the above address, or call (402) 221-4133.

Sincerely,

SIGNED
ROGER B. WHITNEY

Roger B. Whitney
LTC, Corps of Engineers
Acting District Engineer

Enclosure

CF w/o encl:

Environmental Protection Agency, Attn: Mr. Dale Vodehnal, Water Quality Requirements Section, Water Management Division, 1860 Lincoln Street, Denver, Colorado 80295-0699

U.S. Fish and Wildlife Service, South Dakota Field Office (ES), Post Office Box 986, Pierre, South Dakota 57501

South Dakota Department of Game, Fish and Parks, R.L. Hanten, Fisheries Staff Sepc., Anderson Building, Pierre, South Dakota 57501

✓ Duane G. Murphey, Office of Water Quality, Department of Water and Natural Resources, Joe Foss Building, Room 413, Pierre, South Dakota 57501

Tim Shaw, Division of Water Rights, Joe Foss Building, Pierre, South Dakota 57501



DEPARTMENT OF THE ARMY
OMAHA DISTRICT CORPS OF ENGINEERS
6014 U.S. POST OFFICE AND COURTHOUSE
OMAHA, NEBRASKA 68102

June 27, 1984

REPLY TO
ATTENTION OF

Permits Branch
PO Box 5, Omaha, NE 68101



Tim Shaw
Division of Water Rights
Joe Foss Building
Pierre, SD 57501

Dear Mr. Shaw:

The enclosed material concerns an activity performed without Department of the Army authorization pursuant to () Section 10 of the River and Harbor Act and/or (X) Section 404 of the Clean Water Act.

In accordance with Section 326.3 of our regulations implementing enforcement procedures, we request your views addressing specifically the following considerations:

- 1) Impacts and significance of the activity;
- 2) Authorization or approval required, granted or denied by your agency;
- 3) Enforcement actions taken or contemplated by your agency.

Your comments on the above considerations will be incorporated into our investigation and will be evaluated by the District Engineer in his determination as to further appropriate administrative and/or legal action to be taken.

If your comments are not received within 30 days from the date of this letter, we will assume that you wish to make no comments.

Any questions regarding this activity should be directed to Don Hintz telephone number (402) 221-4128 or FTS 864-4128 with reference to Enforcement No. E 3 0999 01072.

Sincerely,


for Ralph J. Miller
Chief, Regulatory Branch
Operations Division

Enclosures

1. Summary Sheet and Location Map
2. Investigation Report
3. Photo

The following activity was performed without proper authorization pursuant to Section 404 of the Clean Water Act (33 USC 1344).

Enforcement Activity No. E 3 0999 01072

Name: Raymond Lolley

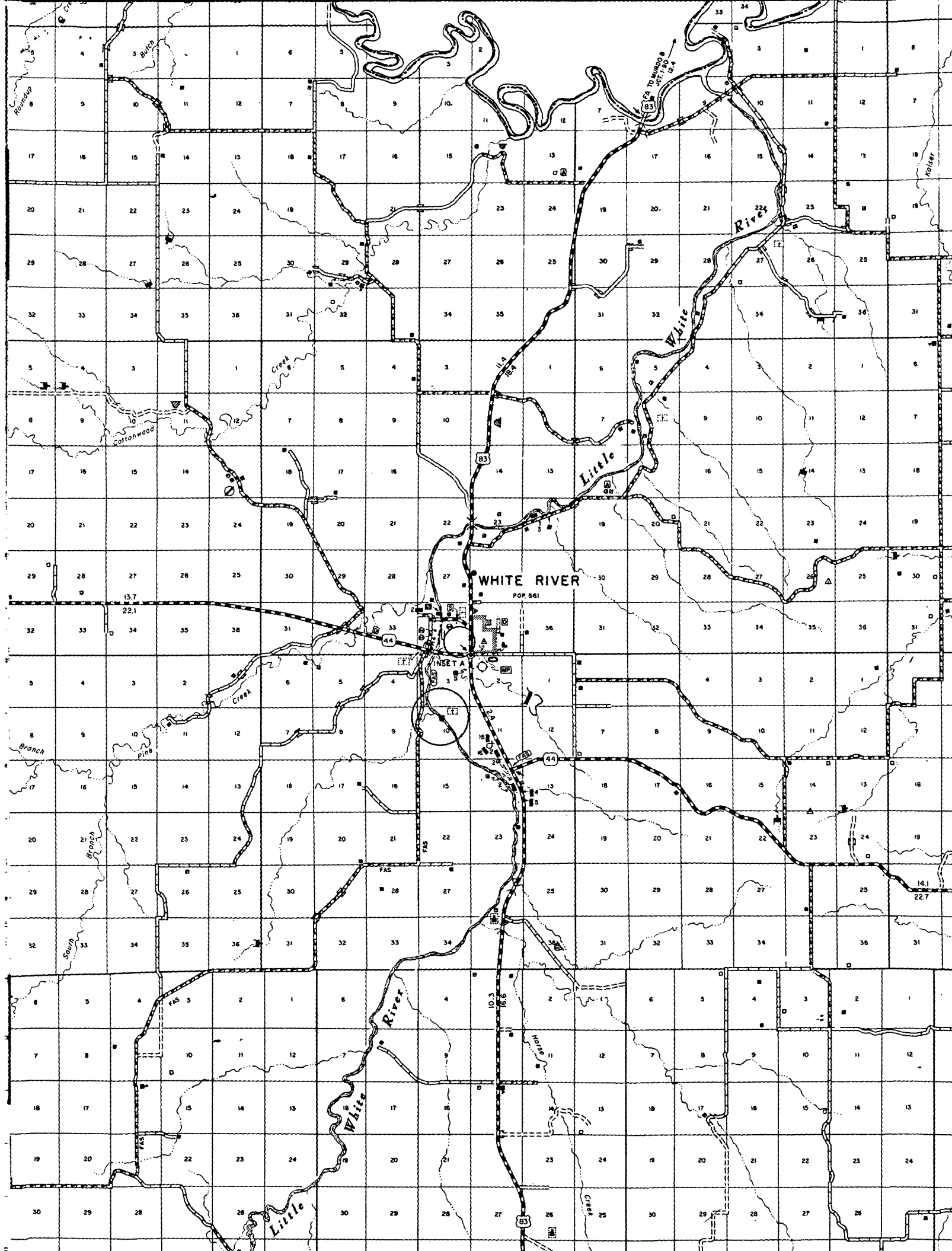
Location: Little White River, NW 1/4 Section 10, Township 41 North, Range 29 West, Mellette County, approximately one mile south of White River, South Dakota.

Activity: Fill material, in the form of an earthen dam, was placed across the main channel of the Little White River to prevent (according to Mr. Lolley) further erosion to his agricultural land and potential future damage to his buildings.

The structure is 303 feet long, 39 feet wide and 15 feet high and consists mostly of sand and loose soil. The channel immediately downstream was totally dewatered with flows backing up behind the dam and being directed into two high flow channels and then back into the main channel one-quarter of a mile downstream. The activity is purportedly causing erosion to adjacent Rosebud Indian lands.

Remarks: Mr. Lolley is not an Indian, nor is the activity located on Indian lands.

This activity was brought to the Corps' attention on May 1, 1984 and was subsequently inspected. An evaluation of the project resulted in Mr. Lolley being ordered to immediately remove the structure on June 11, 1984. On June 26, the Bureau of Indian Affairs advised the Corps that as of June 22, the structure was still in place.



OMAHA DISTRICT
SECTION 404 INVESTIGATION REPORT

1. Date 22 MAY 1984 Reporting Office Regulatory
Investigator Jon Miller

2. Reason for Report

- | | |
|---|--|
| ☐ Preconstruction Inspection | ☐ Suspected Violation |
| ☐ Progress Inspection | ☒ Reported Violation |
| ☐ Completion Inspection | ☐ Other |
| ☐ Restoration Inspection | |

3. Location of Work

Waterway Little White River Mile Index _____

Address _____

Detailed Description 1 mile west and 1 mile south of
White River, Mellette County, S.D.
NW 1/4 of Sec. 10, T41N, R29W.

4. Method of Inspection

- ☒ On Site ☐ Boat ☐ Aircraft ☐ Adjacent Property
☐ Other

5. Activity (Description of Work Being Done)

Date Work Commenced Feb. 1984 100 % of Work Completed

Date Work Completed Feb. 1984

Permit Issued _____

Narrative Description of Activity RAYMOND Lolley has placed
an earthen dam (soil is 75% sand) across the
river diverting the flow across a lowland area
and into two high water channels.

6. Property Owner RAYMOND LOLLEY

Address (Bus.) _____

Phone No. _____

Address (Res.) Box 45Phone No. 605/259-3113White River, South Dakota☒ Individual☐ Partnership☐ Corporation

7. Name of Party Doing Work

Company Name _____

Company Address _____

Phone No. _____

Supervisor on Site _____

8. Investigator's Pertinent Remarks The Little White River runs through Mr. Lolley's property. He said the river has caused erosion along his alfalfa field and the river has moved to the southwest for a distance of 50 yards in the last two years. Mr. Lolley is concerned that in several more years the river will put his home in jeopardy. He has constructed a dam 303 feet long, 39 feet wide, and 15 feet high consisting of local soil from his property. The dam completely

9. Attachments

1. Maps & Sketches (3) No. Pages

2. Photos (12) Total No. Submitted

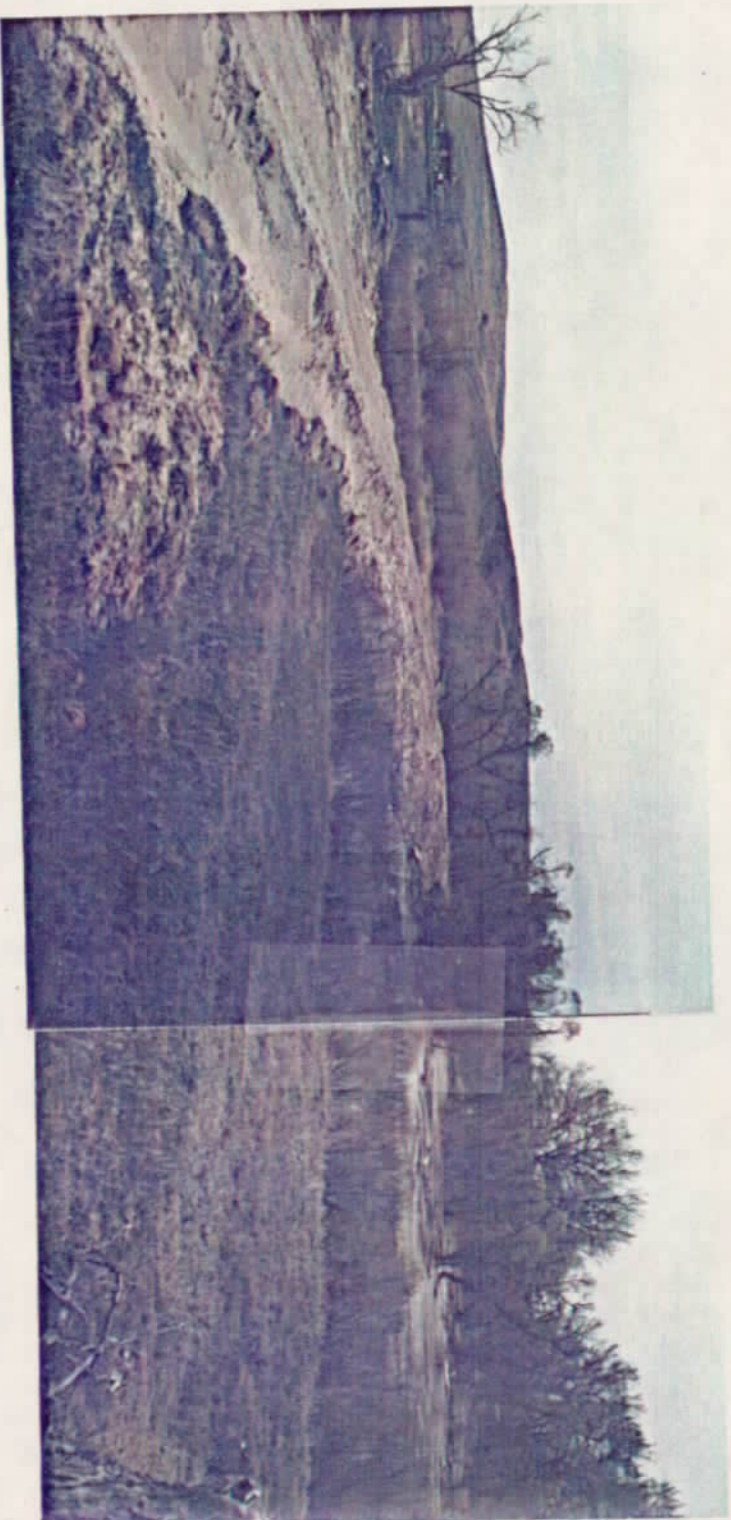
3. Additional Comments (1) No. Pages

Jon Miller
Investigator's Signature

Attachment #3

blocks off the channel and is forcing the flow to spread out upstream of the dam over the right bank, 90 yards upstream of the dam. The flow funnels into 2 high water channels and back into the original main channel approximately $\frac{1}{4}$ mile downstream. The amount of fill within the OHW marks is calculated at approximately 1170 cubic yards. The dam was put in place in February 1984 and took 2 days to complete. It was constructed with a dozer. Some water is seeping through the dam. Mr. Lolley said the water depth along his alfalfa field was normally $1\frac{1}{2}$ feet during summer and 4 feet during winter months. Mr. Lolley owns 50 acres of land and is surrounded by land owned by American Indians. The land in this area is not designated as an Indian Reservation. Prior to the construction of the dam Mr. Lolley talked to his adjacent downstream landowner, Mr. Richard Clombe, and he had no complaint whatsoever about the construction of the dam.

Activity No. E 30999C1C72 Name Raymond Lacey
 Type of alleged violation: () Sec 9 () Sec 10 () Sec 13 () Sec 404
 Location: Waterway Little White R Mile 10 County Knox State South Dakota
 of Nov 14 of Sec 10, T 41 - N 41 - R 29 - W
 Date photos were taken: 5/15/84 Time: 10:00 (X) A.M. () P.M. () C.S.T. (X) D.L.S.T.
 Film: Roll 2 Negative 1516



Start Photos Below This Line

(2)

Briefly describe what photo depicts (give direction camera is pointed) View of upstream side
of dam. Camera pointed W



United States Department of the Interior

FISH AND WILDLIFE SERVICE
South Dakota Field Office (ES)
Post Office Box 986
Pierre, South Dakota 57501

IN REPLY REFER TO:

July 5, 1984



Colonel William R. Andrews, Jr.
Omaha District, Corps of Engineers
Permits Branch
P.O. Box 5
Omaha, Nebraska 68101

Dear Colonel Andrews:

This is in response to your June 27, 1984, request for comments concerning an unauthorized activity performed by Mr. Raymond Lolley (Enforcement Activity No. E 3 0999 01072) in violation of Section 404 of the Clean Water Act. The unauthorized activity is located on the Little White River in Township 41 North, Range 29 West, NW $\frac{1}{4}$ Section 10, Mellette County, South Dakota. The activity consists of placing fill material in the form of an earthen dam across the main channel of the Little White River. The earthen dam is 303 feet long, 39 feet wide, and 15 feet high.

The Little White River is classified as a high priority fishery resource. Stream surveys conducted by the U.S. Fish and Wildlife Service in June 1981 at Spring Creek Community upstream from this site indicated the presence of the following fish species: white sucker, creek chub, sand shiner, red shiner, golden shiner, black crappie, green sunfish, and suckermouth minnow. Past surveys have also included largemouth bass, pumpkinseed, bluegill, rainbow trout, yellow perch, northern pike, walleye, black bullhead, longnose dace, fathead minnow, and channel catfish. The Little White River provides valuable spawning habitat for species from both the Little White River and the White River basins. Subsequently, the stream may also provide both forage base and game fish production for the Missouri River at Lake Francis Case.

This activity will not have a known impact on any federally listed endangered or threatened species, their habitat, or critical habitat.

The activity will have minor local adverse impacts on waterfowl as the waterfowl density along the Little White River is low.

The impact of this activity on terrestrial wildlife and terrestrial ecosystems is difficult to estimate at this time. The riparian zone in the Little White River provides good habitat for species such as white-tailed deer and turkey. If the water that is being diverted causes the root zone of trees in the riparian zone to become saturated, there will be a loss of trees, and subsequently, significant impacts could result.

The impact of this activity on aquatic ecosystems is more direct. There is the loss of available habitat in that portion of the river that has been dewatered. If significant erosion is occurring along the channels that are now carrying water back to the river, the benthic zone downstream will be covered with silt. This could result in the loss of a portion of the food chain and adversely effect both productivity and species diversity.

We recommend that, prior to making a determination on the appropriate administrative or legal action on the activity, the Corps of Engineers arrange an on-site meeting with Mr. Lolley. This might afford all interested agencies and concerned parties an opportunity to assess the situation firsthand and perhaps also find an equitable solution for Mr. Lolley, the Bureau of Indian Affairs, and the affected environment.

We would be willing to participate in an on-site inspection. If you have any questions concerning our comments, and if such a meeting can be arranged, please contact Phil Laumeyer at 605/224-8693 or FTS 782-5228.

Sincerely,

Kent D. Keenlyne
Field Supervisor, ES
South Dakota Field Office

cc: EPA; Denver, CO
SDDWNR; Pierre, SD —
SDDGFP; Pierre, SD

Water Rights Division
605 773-3352

July 10, 1984

Ralph J Miller, Chief
Regulatory Branch
Omaha District Corps of Engineers
6014 U.S. Post Office & Courthouse
Omaha NE 68102

Dear Mr. Miller:

In reference to the unauthorized activity performed by Mr. Raymond Lolley on the Little White River in Mellette County (Enforcement No. E 3 0999 01022), you asked for my comments on three considerations dealing with this matter.

1. Impacts and significance. The impacts of this activity would be the erosion and flooding caused by the diversion of the Little White River over the trust land of the Rosebud Sioux Tribe.
2. Required authorization and approval. South Dakota Codified Law 46-5-47 requires an approved permit for flood control projects, SDCL 46-5-1.1 states that obstruction of a navigable watercourse or interference with the stage, level or flow of public waters is prohibited. Our office did not receive an application for a flood control permit from Mr. Lolley, and if we had we would have recommended denial because of SDCL 46-5-1.1.
3. Enforcement actions. We investigated the situation on April 30, 1984 and contacted the Corps of Engineers on May 1, 1984 and have been waiting to see what actions are taken under their authority. We are recommending that the dam be removed and Mr. Lolley find some other means of bank stabilization.

If you have any questions on this matter, please contact this office.

Sincerely,

TIMOTHY G SCHAAL
Water Resources Engineer

TGS:ks

cc: Duane Murphy, DWNR, Water Quality

South Dakota
Department of
Game, Fish and Parks

Date July 18, 1984

TO: Omaha District Corps of Engineers
Attn: PERMITS BRANCH
P. O. Box 5
Omaha, Nebraska 68101

FROM: Robert L. Hanten
Fisheries Staff Specialist

Division of Wildlife
Sigurd Anderson Building
445 East Capitol
Pierre, South Dakota 57501-3185
(605) 773-3381

SUBJECT: Section "10" and/or "404" Permits

Re: Permit No. E 3-0999 01072

Name Raymond Lolley

Box 45

Address White River, SD 57579

(Little White River, Union Co.)

COMMENTS & RECOMMENDATIONS TO THE ABOVE PROJECT:

The Little White River, along with its fish and wildlife resources, are considered by the State of South Dakota to be of high value. Actions to dam or alter the stream without environmental consideration have a significant adverse impact. Generally, under these situations we recommend immediate restoration to a near the original condition as possible. However, we do concur with the U. S. Fish and Wildlife's suggestion to meet on site and discuss the remedial action that should be taken regarding this apparent violation.

RECEIVED

JUL 19 1984

SOUTH DAKOTA DEPARTMENT OF
WATER AND NATURAL RESOURCES
OFFICE OF WATER QUALITY

Copies to:

Region II
Conservation Officer Dennis Mann
USF&WS, Pierre
US EPA, Denver
→ DW&NR, Pierre

Robert L. Hanten

Robert L. Hanten
Fisheries Staff Specialist

July 24, 1984

Dept of the Army
Omaha Dist Corps of Engineers
6014 US Post Office and Courthouse
Omaha, NE 68201

RE: Little White River in the
NW¼ of Section 10,
Township 41 N, Range 29 W,
Mellette County, South Dakota

Attn: Michael W. Reilly
Assistant District Counsel
Office of Counsel

Dear Mr. Reilly:

At the suggestion of David Zuercher, Assistant U. S. Attorney, we are sending to your office our request for an extension of time beyond the August 15, 1984 date. We are requesting the extension for several reasons.

- 1) It is our understanding that on August 15, 1984, the Corps of Engineers will reevaluate our situation and hopefully grant us permission to sign the necessary papers which would allow us to leave the diversion dike to prevent further erosion.
- 2) We are in the process of applying for a Flood Control Permit from the Division of Water Rights and their Board does not meet until September 26.
- 3) We have alleviated the problem of the portion of the water that flowed on the land owned by the Rosebud Indians.

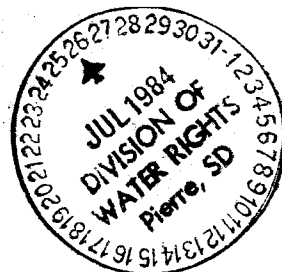
May we ask that our situation be given every consideration.

Sincerely,

Mrs. Raymond Lolley

Raymond Lolley
Box 45
White River, SD 57579

cc: Ralph J. Miller, Corps of Engineers
David L. Zuercher, Assistant U. S. Attorney
James Abdnor, United States Senator
Tim Schaal, Division of Water Rights



 **Department of
Water & Natural Resources**

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

Water Rights Division
605 773-3352

July 26, 1984

Mr. & Mrs. Raymond Lolley
PO Box 45
White River SD 57579

Dear Mr. & Mrs. Lolley:

Representative Cerny has contacted us concerning your dam and dike on the Little White River. After several attempts to call you, I am writing to respond to Mr. Cerny's telephone call.

Upon receipt of and advertisement of your completed application for a permit to construct flood control works, we will request that the August 15, 1984 deadline set by the Corps of Engineers for removal of the dam be extended.

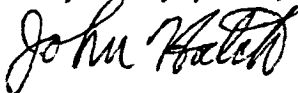
In order to process and advertise the application for the September 26 and 27, 1984, Water Management Board meeting, we must have your application prior to August 3, 1984. The newspaper advertisement must be mailed to your local paper the week of August 6 to meet the minimum advertising requirements.

I believe you should be aware that I will be recommending that the Board deny your application. However, only the Board can approve or deny an application based upon the evidence present at the hearing. I am questioning the structural safety of the dam. The dam is leaking. The material used to construct the dam is estimated to be up to 75% sand.

There are other ways to stabilize the bank. For example, trees held next to the bank with cable have been used in other areas with good success.

If you have questions please feel free to contact us.

Very truly yours,



JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks

cc: Representative William Cerny

Equal Opportunity Employer

Tim S

WATER RIGHTS DIVISION
(605) 773-3352

August 10, 1984

Mr. & Mrs. Raymond Lolley
PO Box 45
White River, South Dakota 57579

Dear Mr. & Mrs. Lolley:

Enclosed is your application for a flood control permit for the dam you constructed on the Little White River. The application is being returned as you requested August 10, 1984 during a telephone conversation with Tim Schaal of this office. We are processing a voucher to return your \$50.00 filing fee. You will receive a \$50.00 check in a couple of weeks.

It will be necessary to remove the dam across the Little White River as directed by the Corps of Engineers. I suggest you use an alternate means of erosion control.

Our recommendations are not final. The Water Management Board has approved applications even though the staff recommends denial.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division

JH:ms
Enc.

Do not use this space.

DIRECT VOUCHER

AGENCY VOUCHER NO.

DATE

0500

PAYEE • **Raymond Lolley**
 • **PO Box 45**
 • **White River, SD 57579**

DEPT. • **DWR-Water Rights**
 • **Foss Bldg.**
 • **Pierre, SD 57501**

STAPLE
HERE

AGENCY •

ADDRESS •

Agency	Fund	Sub Fund	Prog.- Act.	Obj. Sub. Obj.	Agency Coding	Amount	Contract No.
00001	210	01	000	0001		00.00	1
							2
							3
							4
							5
							6
							7
							8
							9
							10
TOTAL 22						00.00	

028568 And Cont
 8-17-84
 384635-~~warrent~~ #

NOTE: Vendors invoice must be attached.

Invoice No.(s)	Date Delivered	QUAN.	DESCRIPTION OF SERVICE OR COMMODITY	UNIT PRICE	AMOUNT	MEMO
			Return of application fee for flood control permit on Little White River. Lolley requested return of application (Receipt # 4 9729)		50 00	
TOTAL					50 00	

I declare and affirm under the penalties of perjury that this claim is in all things, true and correct. I further agree to comply with the provisions of the Civil Rights Act of 1964 and regulations issued thereunder relating to nondiscrimination in federally assisted programs.

Raymond Lolley
 Claimant Signature Date

AGENCY VERIFICATION

I hereby certify that this claim has been examined by me, and to the best of my knowledge and belief is in all things true and correct and the same is hereby approved.

John Katel
 DIVISION APPROVAL

8-10-84
 DATE

APPROVAL SIGNATURE

DATE



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OMAHA DISTRICT CORPS OF ENGINEERS
6014 U.S. POST OFFICE AND COURTHOUSE
OMAHA, NEBRASKA 68102

AUG 16 1984



Mr. Raymond Lolley
Box 45
White River, South Dakota 57579

Dear Mr. Lolley:

This responds to your letter of July 24, 1984 requesting an extension of time beyond August 15, 1984 to comply with my order to remove a dam you constructed across the Little White River.

The time extension to August 15 was granted to allow the appropriate federal, state and local agencies an opportunity to respond by July 27 to our request for their views regarding the effects of your project on their particular areas of interest. Upon receipt of their comments, an evaluation of the effects was made.

This evaluation of the responding agencies' comments, along with our previous environmental evaluation done in accordance with EPA 404(b)(1) guidelines, affirmed my decision that the dam which is constructed across the main channel is ecologically and environmentally unacceptable and unless remedial measures are undertaken, significant harmful effects to the water quality and aquatic ecosystem in the vicinity of the site can be expected.

I am enclosing copies of the responding agency comments. Notice the letter from the South Dakota Department of Water and Natural Resources points out that the dam violates SD Codified Law 46-5-47, which requires an approved flood control permit for the obstruction of a navigable watercourse or interference with the stage, level or flow of public waters and that had you made application, they would have recommended denial of the application.

Even if an after-the-fact application was accepted by me at this late date, processing would result in a denial and subsequent removal because, by regulation, Section 404 authorization cannot be granted unless Section 401 water quality certification is either approved or waived. Certification in South Dakota is provided by the Environmental Protection Agency in Denver, Colorado. The content of their letter indicates that certification would be denied, e.g., the dam was seeping heavily, thereby providing a continuous source of pollution into the stream. They went on to recommend that 1) all obstruction to the main channel flow be removed and flows be restored to the natural channel, and 2) that safer, less polluting, conventional means be used for erosion control such as rock riprap, cabled logs, deflectors or similar structures.

Accordingly, I again order you to remove the dam from the Little White River in accordance with the following conditions:

a. The dam is to be removed in its entirety within the limits of the existing channel banks and the channel's flow carrying capacity is to be restored to its preconstruction condition by August 31, 1984.

b. The removed material is to be deposited landward in such a manner as to prevent the material from reentering the river.

c. The removed material is not to be placed in a wetland area or in any locality or manner so as to impair water flows into or out of any wetland area.

Upon completion, you are to notify Mr. Del Broers, Acting Chief of Regulatory Branch at telephone number (402) 221-4129. The site will be inspected for compliance.

Sincerely,

William R. Andrews, Jr.
Colonel, Corps of Engineers
District Engineer

Enclosure

CF w/o encl:

Environmental Protection Agency, Mr. Dale Vodehnal, Water Quality Requirements Section, Water Management Division, 1860 Lincoln St., Denver, Colorado 80295-0699

U.S. Fish and Wildlife Service, South Dakota Field Office (ES), Post Office Box 986, Pierre, South Dakota 57501

South Dakota Department of Game, Fish and Parks, R.L. Hanten, Fisheries Staff Sepc., Anderson Building, Pierre, South Dakota 57501

Duane G. Murphey, Office of Water Quality, Department of Water and Natural Resources, Joe Foss Building, Room 413, Pierre, South Dakota 57501

✓Tim Shaw, Division of Water Rights, Joe Foss Building, Pierre, South Dakota 57501

David L. Zuercher, Assistant United States Attorney, District of South Dakota, Room 425, Federal Building & U.S. Post Office, Pierre, South Dakota 57501

Senator James Abnor, U.S. Senate, Washington, DC 20510

G. F. JOHNSON (1910-1971)
RICK JOHNSON
WALLY EKLUND
GARY E. DAVIS

JOHNSON, EKLUND AND DAVIS

ATTORNEYS AT LAW

GREGORY, SOUTH DAKOTA 57533-0149

P. O. BOX 149
TELEPHONE NUMBER 635-0391
AREA CODE 605

August 27, 1984

William R. Andrews, Jr.
Colonel, Corps of Engineers
District Engineer, Dept. of Army
6014 U.S. Post Office & Courthouse
Omaha, Nebraska 68102



Dear Colonel Andrews:

Mr. Raymond Lolley of White River, South Dakota, has consulted with me about the bank stabilizing dike that he constructed on his property. In reviewing this matter with him I was shocked to find out that although the Lolleys had submitted an application to the Water Rights Division of the South Dakota Department of Water and Natural Resources for a permit for the dike, that employees of that department had told them that they just as well withdraw the application because it was not going to be granted. Such advice constitutes a flagrant disregard of the Administrative Procedures Act of the State of South Dakota which permits persons such as Mr. Lolley a hearing on the application and a right to go to the Courts if necessary.

In reliance upon the statements of the staff, particularly Mr. Schaal, Mr. Lolley withdrew his application for a permit authorizing the dike and also cancelled the publication notices.

It appears to me that the federal government has empowered the State to grant the necessary permits and it seems somewhat presumptuous to determine in advance that such a permit would not be given fair consideration.

Also, it would appear to me that there is a serious question but that the structure in issue does not come within the nationwide permit. The government's claim on the case is that the Lolley bank erosion controls have diverted the river into different "high water channels". In fact, the Lolleys believe that they can prove that they have only acted to stop erosion on the bank and to restore the river to its original channel before it began meandering to the southwest.

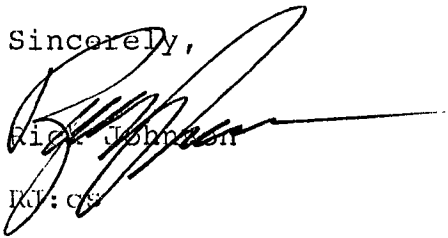
It would be impossible for the Lolleys to remove the dike as described in your letter of August 16th and if they tried to do so they would be violating more of the regulations that are claimed to be in effect than they would remedy. Also,

William Andrews' Letter

to do so will possibly subject them to claims from the EPA and downstream owners.

I believe the Lolleys are entitled to a fair hearing on this issue before the Board of the Department of Water and Natural Resources. I have instructed them to resubmit their application and to proceed to advertise the same for the next scheduled board meeting. It would seem to me that the circumstances of this case would justify a continuance of any orders from you until that meeting.

Sincerely,


Rick Johnson

RT:cs

cc:

Environmental Protection Agency, Mr. Dale Vodehnal, Water Quality Requirements Section, Water Management Division, 1860 Lincoln St., Denver, Colorado 80295-0699

U.S. Fish & Wildlife Service, S.D. Field Office (ES), P.O. Box 986, Pierre, South Dakota 57501

S.D. Department of Game, Fish & Parks, R. L. Hanten, Fisheries Staff Secp., Anderson Building, Pierre, S.D. 57501

Duane G. Murphey, Office of Water Quality, Dept. of Water & Natural Resources, Joe Foss Bldg., Room 413, Pierre, S.D. 57501

Tim Shaw, Division of Water Rights, Joe Foss Bldg, Pierre, S.D. 57501

David L. Zuercher, Ass't. U. S. Attorney, Dist. of S.D., Room 425, Fed. Bldg. & U.S. Post Office, Pierre, S.D. 57501

Senator James Abnor, U. S. Senate, Washington, DC 20510

RECEIPT

Division of Water Rights

No 4 9741

South Dakota Department of Water and Natural Resources

Pierre, September 4, 1984

RECEIVED OF Raymont Lolley, Box 45, White River, SD 57579

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use _____	50	00
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for <u>a permit for flood control use</u>	50	00
(Any Other Work Provided by Law)		
Total	50	00

By

John Hatch

Chief Engineer

JOHN HATCH 

Water Rights Division
605 773-3352

September 5, 1984

Rick Johnson, Attorney
PO Box 149
Gregory SD 57533

Dear Mr. Johnson:

This is in response to your letter to Colonel Andrews of the Corps of Engineers, dated August 27, 1984, concerning the Lolley dam on the Little White River. We did not tell Mr. & Mrs. Lolley to withdraw their application for a flood control permit. We did tell them we would be recommending denial, but that only the Water Management Board can make the final decision. The Board is not required to follow our recommendation.

We received the Lolley's resubmitted application August 30, 1984. Following the receipt of the required map, the application can be advertised for the December 5 & 6, 1984 Water Management Board meeting. We will send you a copy of our report and recommendation when it is completed.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:TS:ks

Turn 5.

September 14, 1984

Office of Counsel

Rick Johnson, Esq.
Johnson, Eklund and Davis
Attorneys at Law
Gregory, South Dakota 57533-0149

Dear Mr. Johnson:

Colonel Andrews has asked me to respond to your letter of August 11 in which you requested, on behalf of your client, Mr. Raymond Lolley, that the Corps of Engineers "continue" its directive that Mr. Lolley remove a 300 foot long earthen dam which he has placed in the Little White River without a permit as required by Section 404 of the Clean Water Act (33 U.S.C. 1344a).

In your letter, you asserted that the South Dakota Department of Water and Natural Resources had not accorded Mr. Lolley an opportunity for a public hearing in connection with his permit application to that agency, as provided for by South Dakota's Administrative Procedures Act. Your further state that ... "the federal government has empowered the State to grant the necessary permits...". It would be inappropriate for me to express an opinion regarding the accuracy of your interpretation of South Dakota law in this matter. However, I can tell you that the regulatory program administered by the Corps of Engineers is entirely separate from that of the State of South Dakota and that the federal program neither requires, nor provides an opportunity for, a public hearing as a condition preceding an order by the Corps of Engineers to remove an unauthorized structure. I must also point out that the United States has not delegated to the State of South Dakota its authority to regulate activities occurring in waters within its jurisdiction. South Dakota's requirements in this area may parallel those of the federal government in some respects, but the regulatory program administered by the Corps of Engineers is neither subject to nor restricted by any similar program within South Dakota.

You also suggest in your letter that the structure in question may be eligible for a nationwide permit. I know of no provision in the aforementioned regulations of the Corps of Engineers, as adopted in accordance with the Clean Water Act, which would serve to confer nationwide permit status upon a structure which not only shuts off an entire stream but which is also the most environmentally damaging of several available alternatives.

Finally, you claimed in your letter that if Mr. & Mrs. Lolley were to remove the dike, as they have been directed to do, "...they would be violating more of the regulations that are claimed to be in effect than they would remedy." There are no Corps of Engineers regulations which would prohibit the Lolleys from complying with the order of the District Engineer and, even if removal of the channel block would create a temporary increase in sedimentation and turbidity, such effects would surely be offset by the benefits gained from returning the river to its normal course. Furthermore, in response to your contention that removal of the dam may subject Mr. & Mrs. Lolley to claims from EPA and downstream owners, while I cannot speak for the downstream owners, I can assure you that EPA fully concurs with the position of the Corps of Engineers in this matter.

Consequently, I do not believe that the arguments you have advanced on behalf of Mr. & Mrs. Lolley have merit and I see no reason why the order of the District Engineer should be suspended. Therefore, unless Mr. Lolley evinces an immediate intention to comply with that order, I shall have no other recourse than to recommend to the United States Attorney that he initiate whatever action he deems necessary.

Sincerely,

John R. Scalzo
District Counsel

Copy Furnished:
David L. Zuercher, Esq.
Assistant United States Attorney
District of South Dakota
Room 425
Federal Building & U.S. Post Office
Pierre, SD 57501

MROOP-N

RECOMMENDATION OF CHIEF ENGINEER FOR FLOOD CONTROL PERMIT

APPLICATION NO. FC-2, Raymond Lolley

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Flood Control Permit Application No. FC-2, Raymond Lolley, Box 45, White River SD.

The Chief Engineer is recommending DEFERRAL of Application No. FC-2 because the application was not completed until the map was recieved October 17, 1984. There was not enough time to prepare a report and make a recommendation prior to the newspaper publication advertising deadline.

A handwritten signature in cursive script that reads "John Hatch".

JOHN HATCH, Chief Engineer
Water Rights Division
October 17, 1984



Department of Water & Natural Resources

Joe Foss Building
623 East Capitol
Pierre, South Dakota 57501

WATER RIGHTS DIVISION
(605) 773-3352

No. FC-2

October 18, 1984

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

Raymond Lolley
Box 45
White River SD 57579

Dear Mr. & Mrs. Lolley:

You are hereby notified that your Application No. FC-2 for a permit to

~~appropriate water~~ for flood control use, has been examined and
found to comply with the South Dakota Water Laws and applicable rules. A notice
of your intent to appropriate water has been sent to the Publisher of the

Mellette Co. News printed at White River,

South Dakota. For your information, a copy of this notice and the recommendation
of the Chief Engineer is enclosed. Please review and contact this office, if you
have any questions.

Be sure to contact the above newspaper to authorize publication of your notice of
intent to appropriate water and to arrange for payment. Early contact with the paper
can eliminate delays. The publisher has been instructed to publish your notice
once each week for two consecutive weeks with the last publication to occur at least
thirty days before the board meeting. We must receive Proof of Publication before
the application can be considered by the Water Management Board.

Very truly yours,

KEVIN C LARSON
Natural Resources Engineer

Encl. Forms 6&7



Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

605 773-3352
Water Rights Division

No. FC-2

October 19, 1984

Mellette Co. News
Box F
White River SD 57579

Dear Sir:

Enclosed is a Notice of Intent to ~~Appropriate Water~~ by Raymond Lolley
Application No. FC-2, in Mellette County, South Dakota. Please
publish this notice once each week for two consecutive weeks in your paper. The first
publication should be on, or before October 25, 1984.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make
the first publication. The applicant is to pay the cost of publication and should
make the necessary arrangements with you to pay these costs.

Please receipt for this notice IMMEDIATELY after first publication attaching thereto
a copy of the first publication so that it may be compared with the records. For
your convenience, you may use the printed form below for this purpose.

After final publication please complete and mail to this office, the enclosed Form
8 to furnish Proof of Publication. The permit to appropriate water cannot be con-
sidered by the Water Management Board until proof of publication has been received.

Very truly yours,

enclosures

KEVIN C LARSON
Water Resources Engineer

cc: applicant

NO. FC-2

Date _____

TO: Water Rights Division
Joe Foss Building
Pierre SD 57501

We are in receipt of your letter of _____, 19____ enclosing Notice of Proposed
Appropriation of Water, as proposed in Application No. _____ which was first
published in our issue of _____, 19____. ENCLOSED IS A COPY OF THIS FIRST
PUBLICATION.

NAME _____

NEWSPAPER _____

No. FC-2

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Mellette) ss.

I, Kathy Klein hereby

certify that the annexed printed copy of Notice of Intent to Appropriate

Water was taken from the Mellette County News

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

Signet Printing, Inc. of Pierre, White Rivers, SD

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

10/24/84
10/31/84

Kathy Klein
(Signature)

Bookkeeper
(Title)

10/31/84
(Date Signed)

Notice of Hearing

on Application No. FC-2 for a Flood Control Permit

Notice is hereby given that Raymond Lolley, whose
mailing address is Box 45, White River, South Dakota
has made an application for a flood control permit to
construct and maintain flood control facilities consisting
of a diversion dam across the main channel of the Little
White River and a dike in a secondary water channel
both located in NE 1/4 NW 1/4 Section 10, T41N, R29W.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the
Water Rights Division recommends Deferral of
Appliance No. FC-2 because the application was not
completed and received in time to allow a report and
recommendation to be prepared prior to the required
newspaper publication deadline.

This application will be considered by the Water
Management Board at Joe Foss Building, Room 216, 529
petition.

This application is made pursuant to the provisions of
46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-
11, 46-2-13, 46-2-17, 46-5-1 thru 46-5-2, 46-5-47, 46-2A-1 thru
46-2A-12; and Board Rules ARSD 74:02:01:01 thru
74:02:01:15.

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

Any person wishing a copy of the Chief Engineer's
recommendation, further information on this
application or to assure access to the hearing by the
handicapped can contact the Water Rights Division,
DWNr, Joe Foss Bldg., Pierre, SD (605 773-3352) for
assistance prior to the hearing date. The time of the
hearing will be automatically extended for at least
twenty days upon written request of the applicant or any
person who has filed a petition to oppose or support the
application. The request for extension must be filed with
the Chief Engineer by November 23, 1984.

Publ.: October 24 and 31, 1984.



Cost of Printing: 58 lines at 36¢ = 21.72
plus 20% discount on 2nd publication =
16.96 Total cost of printing - 38.68
KWK

Memorandum

To : Tim Schaaf
From : Duane Murphy
Subject: Lolly Dam
Date

As we have previously discussed, there are numerous reasons for the denial of permits for and removal of the dam on the Little White River which was built by Raymond Lolly.

First of all, as I understand the situation (I have not personally been to the site), the dam is constructed primarily of sand and is unstable. When the dam fails, the spoil will be washed downstream and will effect the benthic organisms and ^{It could also affect the hydrology for some distance downstream} negatively impact fish spawning. Secondly, placement of the dam caused a channel change. Indeed, the channel has been changed twice. The channel changes cause temporary destruction of aquatic habitat and also degrade water quality as the sediment, leaf litter, etc. will scour from the new channel until a hydrologic balance is reached. Downstream hydrology may also be changed. Further, approval of either the ~~first~~ ^{third} permits encourages others to avoid the permit process.

If a permit for this activity had been applied for before the fact, we would have recommended denial because of the above problems plus the fact that the activity of building the dam

would degrade water quality with suspended solids. We would have recommended bank stabilization instead. T

MINUTES OF THE 31st MEETING OF THE WATER
MANAGEMENT BOARD DULY CALLED BY CHAIRMAN AREND
ROOM 216, JOE FOSS BUILDING, PIERRE, SD

DECEMBER 5, 1984

Those present for the Water Management Board meeting were Board members: Marian Gunderson, Merwyn Walter, Robert Arend, Dennis Decker, David Waldner and Lee Harms.

Water Rights Staff

John Hatch, Jim Winterton, Kevin Larson, Marv Knecht, Jim Goodman, Gale Selken, Tim Schaal, Greg Powell, Ron Duvall, Del Brosz, Genny McMath, Karen Schlaak

Division of Environmental Quality Staff

Jim Nelson, Duane Murphey, Steve Pirmer

Office of Drinking Water

Mark Steichen

Assistant Attorney General

Dan Doyle, John Guhin

Legislative Oversight Committee

Senator Leland Kleinsasser, Huron, SD

Cancellation Consideration No. 0484-1

C. E. Jordan, Rapid City, SD

Water Permit Application No. 1901-2

Cody Tachenko, Hermosa, SD

Water Permit Application No. 5027-3

Richard DeVries, Huron, SD
Pat Arbuthnot, Huron, SD

Flood Control Application No. FC-2

Mr. & Mrs. Raymond Lolley, White River, SD
Ron Koth, Game, Fish and Parks, Pierre, SD

Future Use Permit Application No. 427-3 & 3142-3

Paul Tobin, Mitchell, SD

Larry Little, Mitchell, SD

Great West Pump Well Drillers License

Terry Tefertiller, Rapid City, SD
Greg Tefertiller, Spearfish, SD

Other

Gay Tollefson, Pierre, SD

The meeting was formally called to order by Chairman Arend at 8:30 am, December 5, 1984.

APPROVAL OF MINUTES

Mrs. Gunderson MOVED, SECONDED by Mr. Waldner that the minutes from the August 7, 1984, August 23, 1984, October 4, 1984 and September 26 & 27, 1984 meetings be APPROVED. MOTION CARRIED.

LITIGATION

Dan Doyle stated the OHWM decision on Waubay Lakes has been appealed to the Supreme Court. The Red Lake OHWM has also been appealed. Discussions are being held, and no final decision has been made, we are waiting with Red Lake until the Supreme Court rules on Waubay Lakes. That ruling may have some impact on the Red Lake arguments. On Romey vs. Landers, we are waiting for a decision from the judge. Mr. Doyle gave an update on the ETSI cases even though the Board is no longer involved.

AGENDA CHANGES

Mr. Hatch stated that the hearing on the Huron Colony crossing had been cancelled. The Colony's lawyer has asked to delay any hearing until there is an on-site meeting. Maybe the issue will be settled without coming before the Board.

BELLE FOURCHE WATER QUALITY CLASSIFICATION REQUEST

Steve Pirner stated that the City of Belle Fourche is requesting a hearing to change the water quality classification of Crow Creek. This is for discharge of liquid effluent from the City's sewage lagoons (letter on file). Currently, the staff is in disagreement with the EPA on what the effluent limitations should be on the discharge permit. The staff has been working with EPA on a model and have come up with an agreeable interim solution. That is to write interim effluent limitations into the discharge permit. This would give the staff a year to two years to collect data on the quality of the discharge, etc. Mr. Pirner stated he was presenting the letter to the Board at this time so the Board is aware of the situation. He did tell the City that they would be requesting that the Board not take any action at this time because there is no data on the situation. Once that data is collected they may be coming back before the Board.

recommendation is for approval with the well interference and artesian well qualifications.

5034-3, Gerald Person, Britton SD

Application is to construct a dam to store 320 acre feet annually from a dry draw. Water to be used for livestock watering, flood control and an additional diversion point to irrigate land covered under Water Permit No. 4938-3. Staff recommendation is for approval with the low flow and irrigation questionnaire qualifications and that approval of this permit authorizes storage of 320 acre feet annually.

Mr. Harms MOVED, SECONDED by Mr. Decker that Application No. 1316-1, 1317-1, 1318-1, 1319-1, 1216A-2, 1411A-2, 1748-2, 1846A-2, 1860-2, 1884-2, 1893-2, 1899-2, 1902-2, 1903-2, 1904-2, 995A-3, 5024-3, 5028-3, 5029-3, 5030-3, 5031-3, 5032-3, 5034-3 be APPROVED with the staff recommendations as stated.
MOTION CARRIED.

CANCELLATION OF LOCATION NOTICE NO. 391-2, Burton Hutton

Mr. Larson stated cancellation of Location Notice No. 391-2 was scheduled for the September meeting. Mr. Hutton requested an automatic continuance. We received a letter from Mr. Hutton's lawyer. Mr. Larson stated the staff sent Mr. Hutton the information we had concerning the cancellation. Nobody has appeared today. Staff recommendation is to cancel. The investigation was done by Del Brosz. It is part of the abandoned Igloo Ordinance Depot. This location notice filing was filed prior to the depot being established. Based on the fact that no irrigation has been developed it was recommended for cancellation. There was also a dam to be constructed which is not there.

Del Brosz stated at the time of the investigation in May 1984, Mr. Hutton agreed that there was nothing there. If there had been anything, the construction of the depot would have destroyed it.

Mr. Decker MOVED, SECONDED by Mr. Walter that Location Notice No. 391-2 be CANCELLED. MOTION CARRIED.

Meeting recessed at 11:14 am.

Meeting reconvened at 1:15 pm.

FC-2 RAYMOND LOLLEY

Mr. Hatch stated Mr. Lolley has submitted an application for Flood Control. The application was submitted after a couple of dams or dikes were constructed on the Little White River. The first dike was constructed in January, 1984. The second dike was constructed in July, 1984. The staff was first notified of the project in April, 1984. The application was received August 1, 1984. The application was complete October 17, 1984, when a map was provided. Because of the time constraints, the application was advertised with the recommendation to defer. If we would have waited, we would have missed the December meeting. The U.S. Corps of Engineers has ordered the dikes removed. One was ordered to be removed in June. The reason was that it was constructed without a 404 Permit. An after the fact 404 Permit was not issued because of environmental concerns

downstream and future damage if the dam failed. Mr. Hatch stated the dikes were constructed to protect the Lolley's home and property which is being endangered because of the eroding bank along the White River. The first dike is 15 feet high, 300 feet long and 20 feet wide and located on the main channel of the Little White River. The second dike is 8 feet high, 200 feet long and 19 feet wide and located on the secondary water channel. The main dike completely dewateres the main channel of the Little White River and diverts the flow into a secondary channel. The Lolleys claim that this is the original river channel. The flows then return to the main channel approximately one quarter of a mile downstream. The drainage area above the dikes is approximately 1200 square miles. Based on USGS flow records, the average flow over 33 years of record, is about 115 cubic feet per second. March 14, 1984 flows as measured by USGS were 326 cfs, April 17 - 224 cfs, May 16 - 145 cfs.

Tim Schaal stated the staff was notified of the project because the diverted water was running over Indian trust land. The BIA office informed us of the matter. The second dike was constructed to keep the water off the Indian trust land. Mr. Schaal showed a map of the area.

Mr. Harms drew a map on the board.

In answer to a question from Mr. Decker regarding what the environmental concerns were, Mr. Hatch stated that the spoil that will be washed downstream will affect the benthic organisms and their habitat.

Mr. Harms stated that benthic organisms live in the bottom of a stream.

Mr. Hatch stated this would have a negative impact on the fish spawning. When the BIA office informed us of the matter, we contacted the Corps of Engineers about the 404 Permit. Mr. Hatch stated the Little White River was flowing about 75 cfs in October. The staff received a June 11, 1984, letter from the Corps ordering the dam to be removed. A letter of extension of the June 11 deadline was received extending the date to August.

Chairman Arend administered the oath to Raymond Lolley.

Mr. Lolley stated he put the dikes in. It is hard to unring a bell after it is rung. Mr. Lolley stated where they diverted the water that is what the Indian Department was complaining about. The whole main flow of the channel was not going down through there. The main flow was going right where they diked it off.

Mr. Waldner asked if after they put in the second dike, everything was doing back into the channel?

Mr. Lolley stated that was correct. Mr. Lolley stated he never talked to anyone from this office. His wife did. He talked with a representative of the Corps of Engineers. In answer to a question of how bad the erosion is, Mr. Lolley stated he is a pilot and he could take a person up in the air and you could see very plain what they are trying to do. It is not visible from the ground. Mr. Lolley stated he drives stakes back to determine the erosion and it just keeps washing them away. It started when the trees died of Dutch Elm disease. It just took off and once it started there was no stopping it. He saw no feasible way of stabilizing the bank with riprap. The bank has eroded 300 to

400 yards. Mr. Lolley stated his house is a couple hundred yards from the bank. Mr. Lolley showed on the map where the river was 10 years ago when he bought the land. Mr. Lolley submitted aerial photos from 1981, 1982 and 1983 marked as exhibits 1, 2 and 3 (photos on file). The erosion started in 1980 when the trees died. The house was built 8 years ago. The river never ran in the old channel since he had been on the land. Mr. Lolley stated they got a map from School and Public Lands which showed the original river channel. The natural process keeps working it toward the original channel.

Mr. Lolley stated he hired a local contractor. Both he and the contractor did part of the work. He rented a cat from the contractor and the contractor helped Mr. Lolley for two days. The contractor did not comment on the legality of what Mr. Lolley was doing. Mr. Lolley stated he did the work because he has neighbors up the stream that have done the same thing. He owns the land on both sides of the river so he just assumed he could do what he wanted to.

In answer to a question from Mr. Harms, Mr. Schaal stated there is no risk of loss of life involved, but the dike is not structurally sound. There is a need for some stabilization, some riprapping. The slopes should be flattened. Sandy material was used to construct the dikes. The dikes need some erosion protection, such as old tires or anchored trees.

Mr. Guhin stated that legally the Board can do whatever they want to regardless of what the Corps is going to do. If you grant the permit, then Mr. Lolley would have a South Dakota Flood Control Permit, but he would still be required to get a 404 permit. The Board could also deny the permit even if the Corps would grant the 404 Permit.

Mr. Harms stated his major problem with the application was approving it after the fact.

Mr. Lolley stated the man from the Corps told him that he could apply after the fact to them.

Mr. Harms stated the Lolley's are trying to protect their property and he was inclined to give them the permit. He did not see that they were damaging anybody by granting the permit.

Mrs. Gunderson stated that common sense tells you that they are going to damage the environment as much by removing the dikes as by leaving the dikes in.

Mr. Harms stated he also had a problem approving something that was not structurally sound.

Mr. Arend stated the permit could be approved with a qualification that they get the expertise from someone on stabilization.

Mr. Lolley stated he will do whatever he has to. If they have to take the dike out, he will take it out. He is not going to cause a bunch of trouble to nobody. He just wants to protect his property.

Mr. Harms stated it is obvious from the photos that there is a real erosion problem.

Mr. Lolley stated the local Soil Conservation Service office in White River will have nothing to do with them.

Further discussion on the need for some sort of bank stabilization continued.

Mr. Hatch stated if the permit was to be approved, the staff believes that stabilization is necessary. The slopes should be changed from the approximate 1:1 to 2:1, in other words flatten the slopes. Seed the banks with native grass, and use old tires stacked or banded together or anchored trees layed parallel to the bank. The Corps recommended that for the stabilization of the bank itself rather than having the dike. If the dike is going to remain, stabilization should take place on the dike.

Mr. Harms MOVED, SECONDED by Mr. Walter that Permit No. FC-2 is approved subject to Mr. & Mrs. Lolley preparing a plan for stabilization of the two dikes. That the stabilization plan is to be completed and submitted to the Chief Engineer for review and approval prior to the next meeting of the Board, March 6 and 7, 1985. If a plan has not been presented to and approved by the Chief Engineer by the March 6 and 7 meeting, then Flood Control Permit No. FC-2 is not valid.

Mr. Lolley stated that the first dike across the main channel where the water is running now has silted in approximately 200 to 300 feet out in front of the dike upstream. There is no water running up against the dike whatsoever, except during high water.

Chairman Arend called for a vote on the motion. MOTION CARRIED.

Meeting recessed at 2:15 pm.

Meeting reconvened at 2:30 pm.

FUTURE USE PERMITS REVIEW

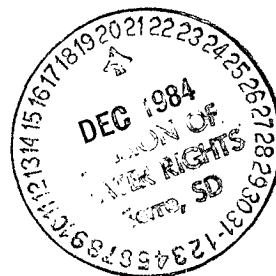
Mr. Larson stated a copy of the notice sent to each municipality had been given to each Board member (copy on file). Each notice includes information for each permit, the amount of water reserved, priority dates, and actions the Board can take following the hearing. The staff recommendation for each municipal permit is No. 3 on the notice except the recommendation for Permit No. 3142-3, Mitchell, and No. 3371-3, Yankton which is No. 2. At the end of 7 years, if these recommended amendments are placed on the future use permits, the municipalities will be subject to paying a fee.

427-3, City of Mitchell SD

Mr. Larson stated the permit was approved December 22, 1960, for 23.4 cfs with a priority date of March 6, 1957.

3142-3, City of Mitchell SD

Mr. Larson stated the permit was approved November 17, 1976, for 10,000 acre feet annually with a priority date of September 9, 1976.



December 18, 1984

MEMO TO: John Hatch

FROM: Duane Murphey *DM*

SUBJECT: Raymond Lolly Dams

On December 11, 1984, I inspected the two dams on the Little White River at the Lolly ranch. I was accompanied by Ray Lolly, Phil Laumeyer (USF&WS-Pierre), Ron Koth (GF&P-Pierre), Jim Suedekamp (COE-Pierre), Mike Rabbe (COE-Pierre), and Bob Mairley (U.S. EPA-Denver). The upper dam (the first one constructed) is represented by the drawing in Figure 1. The river was partially ice-covered which, according to Lolly, had caused a redistribution of flow in the river. The left side of the dam, as you look downstream, was silted in at about the same level as the water level at the time we were there. The right side of the dam was abutting the edge of the stream current and appeared to have some erosion particularly around the car bodies which were built into the dam. The dam was constructed of sand with a small amount of silt and supported a very sparse growth of Kochia weed.

The second dam, which was constructed to prevent the Little White River from cutting a channel across the tribal land, is represented by Figure 2. This dam is constructed entirely of pure sand, a sample of which is attached. The major flow of the river by-passed the dam on the left side. A secondary channel flowed up to the dam and paralleled it to the left to join the major channel. At the left edge of the dam, the secondary channel fell about one foot and created a plunge pool about an additional two feet deep. This falls was obviously head-cutting along the toe of this dam. Enough water was impounded that upstream saplings were flooded and beaver were busily cutting them.

Figure 3 represents the area where the newly created channels rejoin the original channel. The new channel enters the old channel from the right bank, shoots across the old channel at a slightly upstream direction and is causing some scour of the left bank towards Lolly's house. A second channel is beginning to cut upstream of this point where the water is flowing over land and is falling over the bank. This new discharge point is also directed toward Lolly's house.

It is apparent that the river channel between the diversion dam and the confluence of the new and old channels is highly unstable. The two dams are unstable and currently beginning to erode. The channel which will result when

John Hatch
December 18, 1984
Page 2

the situation stabilizes itself, assuming both dams remain, may jeopardize the Lolly residence. It appears to me that a better long term solution would be to stabilize the originally eroding bank, possibly with sheetpiling and backfill, and remove the dams than to continually modify the river as the river attempts to regain stability.

BD1707DM.wq

Fig. 1

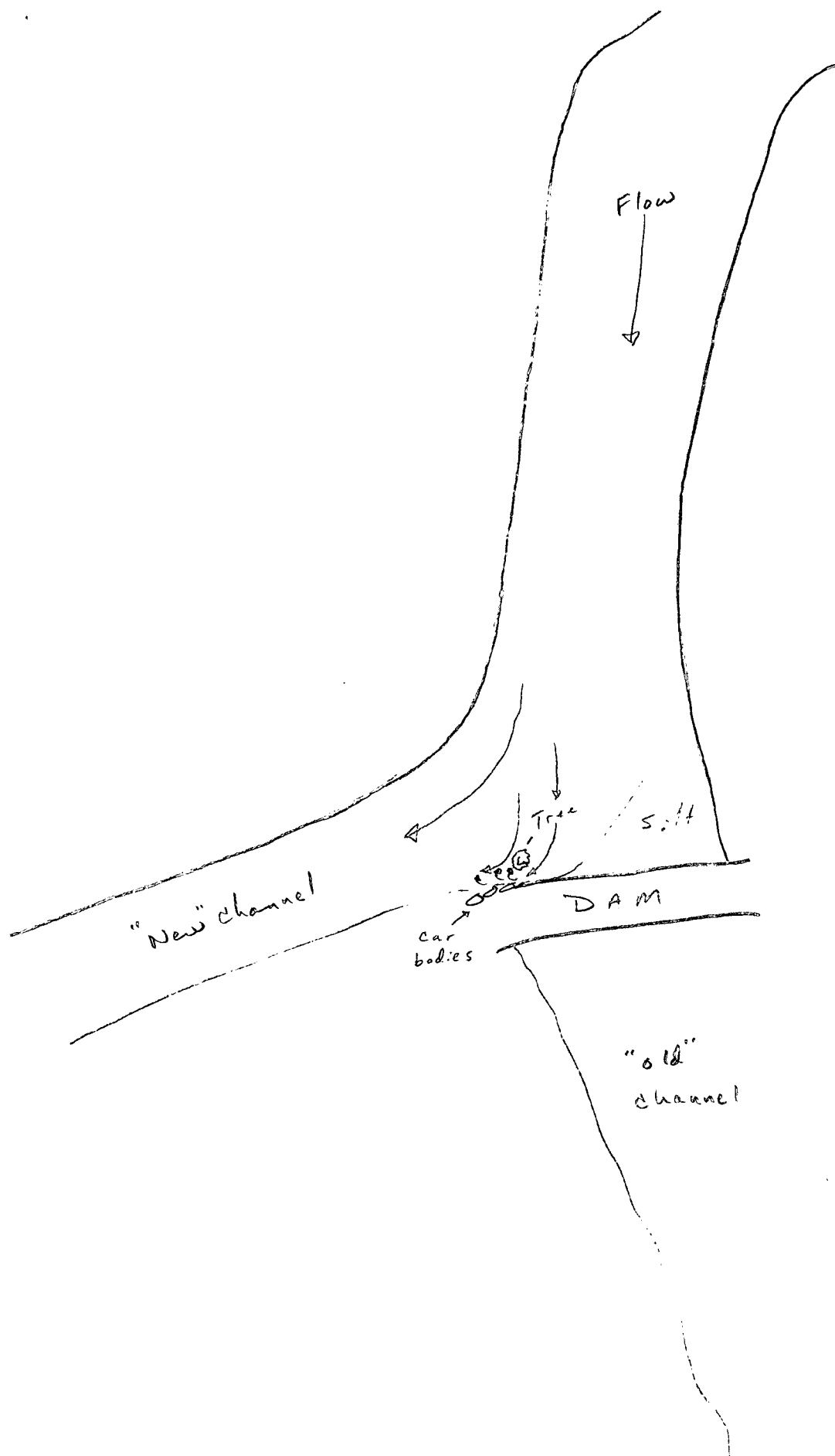


Fig. 2'

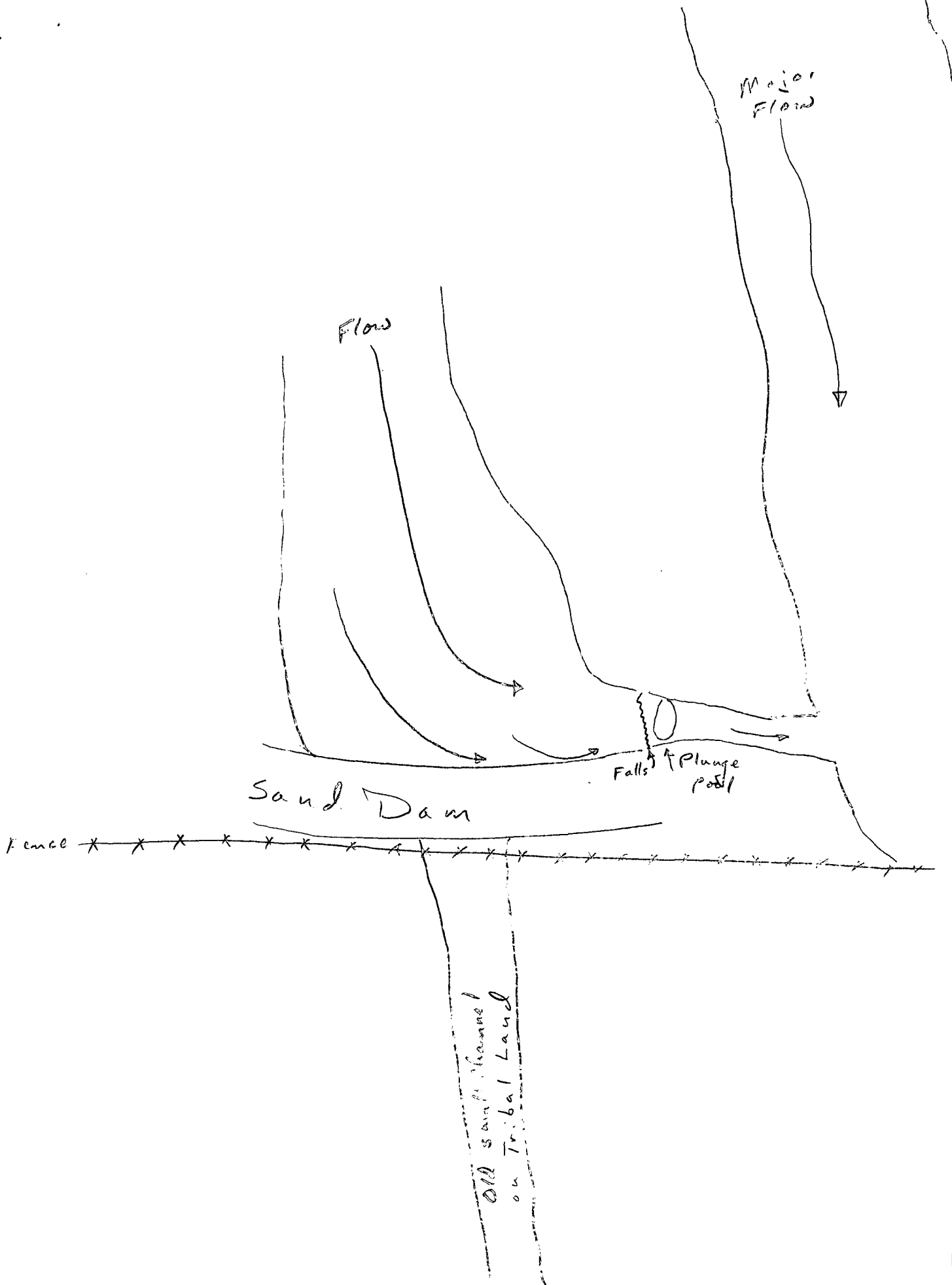
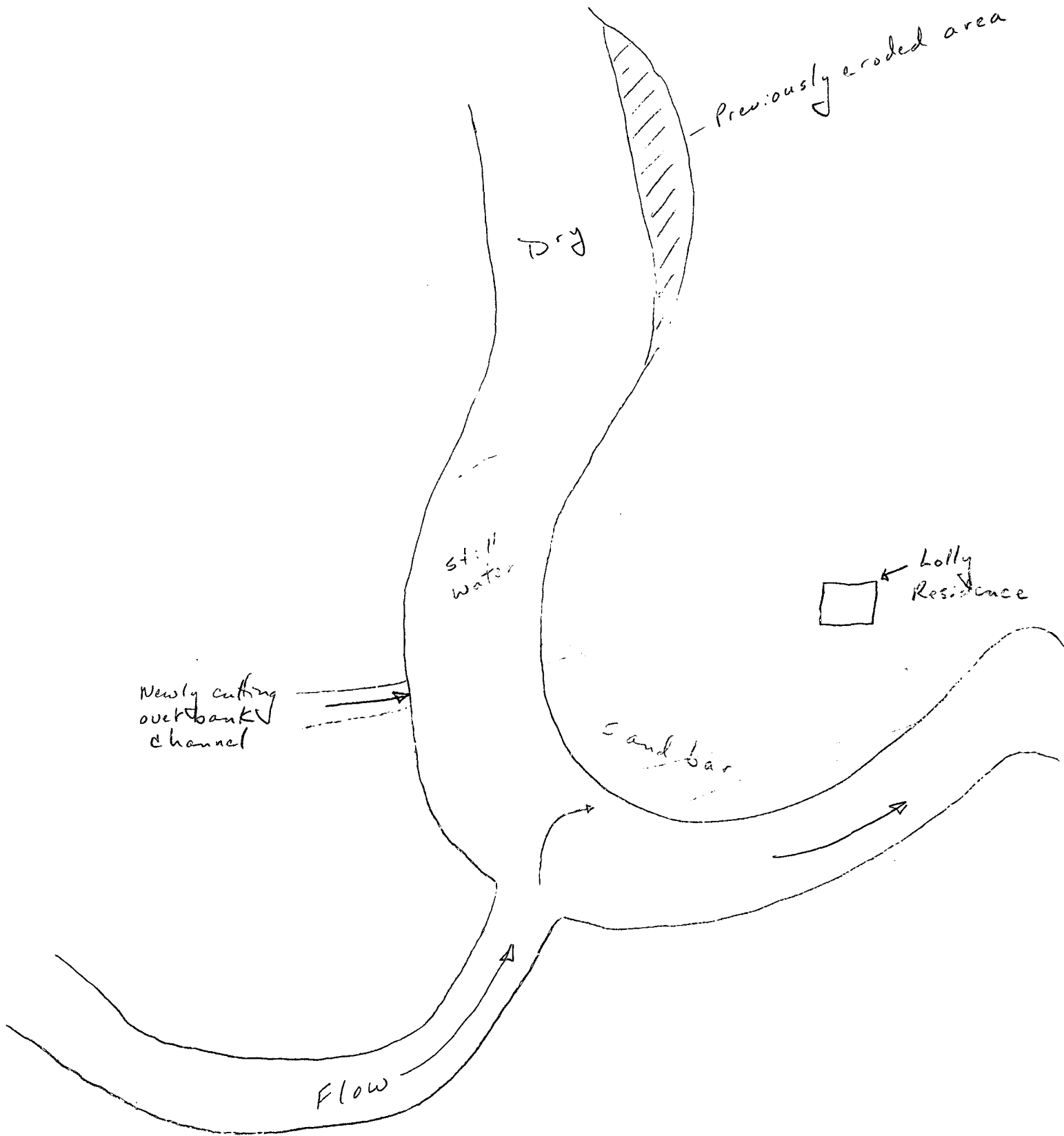
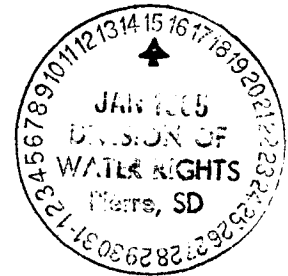


Fig. 3





January 14, 1985

✓ MEMO TO: John Hatch

FROM: Duane Murphey *DM*

SUBJECT: Raymond Lolly site

I was contacted by Jim Suedekamp, Corps of Engineers in Pierre, on January 9, 1985. He said he had been contacted by the SCS regarding stabilization of the Lolly site. Apparently, Lolly told the SCS that he had received permission from both the Board of Water Management and the Corps of Engineers to keep the two dams in place if they were stabilized. Suedekamp says Lolly was trying to get SCS to do the engineering and cost share the construction. Suedekamp was upset because no COE approval had been given. I assured him that the Board was quite explicit that their decision did not give Lolly approval from the COE. Suedekamp requests a copy of the Board testimony and decision.

cc: Jim Nelson

B11103DM.wq



Department of Water & Natural Resources

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

Water Rights Division
605 773-3352

December 26, 1984

Mr. & Mrs. Raymond Lolley
Box 45
White River SD 57579

Dear Mr. & Mrs. Lolley:

I am writing in regard to your Flood Control Permit No. FC-2. As you know, the Water Management Board approved FC-2 with the following qualification:

That Permit FC-2 is approved subject to Mr. & Mrs. Lolley preparing a plan for stablization of the two dikes. That the stablization plan is to be completed and submitted to the Chief Engineer for review and approval prior to the next meeting of the Board March 6 and 7, 1985. If a plan has not been presented to and approved by the Chief Engineer by the March 6 and 7 meeting, then Flood Control Permit FC-2 is not valid.

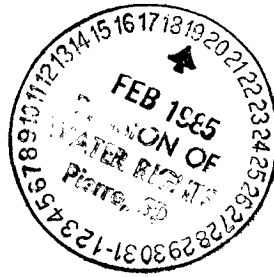
I will need your proposed stablization plan by February 18, 1985 to allow time for review and any changes prior to March 6.

Very truly yours,

A handwritten signature in cursive script that reads "John Hatch".

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ks



February 14, 1985

Mr. Raymond Lolly
P. O. Box 656
Sturgis, S.D

Re: Report - Inspection of Dikes at White River

Introduction

This report summarizes the findings of the inspection performed by the writer on February 12, 1985, of the dikes on and near the property of Mr. Lolly at White River, South Dakota. The inspection of the dikes were requested by Mr. Lolly on February 6, 1985.

The dikes are located along the Little White River near and on the property of Mr. Lolly approximately 1.5 miles south of Highway 44, and approximately two miles west of Highway 83. At this location, the Little White River is flowing towards the Northwest.

It is understood by the writer, based on information provided by Mr. Lolly, that the Little White River in the past few years has caused severe erosion of his property over a distance of several hundred feet along its western bank. According to Mr. Lolly, erosion along the western bank the year before the dikes were placed, moved the river bank nearly 100 feet to the west. Therefore, in order to reduce the erosion of his land, Mr. Lolly constructed a dike across the river immediately southeast of the site of erosion, thereby diverting the river towards the North and East. Also, in order to avoid flooding of neighboring land to the north, a low dike was constructed further North near the northeastern bank of the river.

Inspection of Dikes

The Dikes are constructed of non-engineered fill consisting primarily of fine to medium sand. The southern dike spanning the old river channel is on the order of 10 to 15 feet high. The dike appeared to be stable with no visible signs of distress. The dike is currently pooling a small amount of water in the old river channel immediately upstream of the dike. According to Mr. Lolly, the pool is now nearly silted in, and the depth of the water is on the order of a couple of feet. Because of snow and ice, the water depth could not be observed, however, vegetation protruding through the ice seemed to substantiate that the water currently is very shallow upstream of the dike. Erosion protection was provided by car bodies placed at and near the northern end of the dike. Otherwise, except for natural vegetation, erosion protection was not provided.

The northern dike is approximately 6 - 8 feet high and does not appear to pool a significant amount of water. The dike is located north of a wide and relatively flat area, and north of the existing river channel.

Evaluation

It is the opinion of the writer that the dikes as placed by Mr. Lolly have reduced the high rate of erosion of his property, and as an erosion preventive measure, appear to be functioning well. The stability of the dikes cannot be determined without engineering testing and analysis, however, at the time of the inspection, the dikes appeared stable. In the future, the major threat to the dikes appears to be that from erosion by the river. Breaching of the dikes could occur by either overtopping or, by erosion on the upstream side. However, breaching by overtopping would require a rise of the river of about 6 feet. In this event, it is likely that a large portion of the valley would be flooded, and the presence of the dikes would be of little or no consequence. Breaching of the southern dike by erosion would, in the opinion of the writer, not cause any threat to life or property. Breaching of the southern dike would merely result in the river reverting to its old channel, and since the dike only appears to be pooling a minor amount of water, a surge in the waterlevel of the river downstream would be unlikely.

The breaching of the northern dike could result in minor flooding of the lower lying areas to the northwest of the dike. This land is currently covered by trees and grasses. The breaching of the dike should therefore neither be a threat to life nor property.

Recommendations

In order to minimize the risk of breaching of the dikes by erosion, the southern dike should be protected upstream by a network of logs or equivalent, tied together by steel wire. The northern dike, due to the topography at the location of the dike, seems unlikely to be subjected to significant erosion unless in the occurrence of a major flood. However, it is recommended that the dike be inspected periodically, and that repairs be made to the dike as necessary. If erosion should prove to be of concern, erosion protection of the northern dike may also be required.

Periodic inspection of both dikes is essential to their future performance. If signs of distress should occur, professional advice should be sought and remedial measures taken to preserve the dikes.

Respectfully Submitted



17
Terje Preber, Ph.D., P.E.

cc: Mr. John Hatch

Water Rights Division
605 773-3352

February 20, 1985

Raymond Lolley
Box 45
White River SD 57579

Dear Mr. Lolley:

We have received a copy of the report prepared by Dr. Preber concerning the stability of your dikes located on the Little White River. He recommended actions similar to what we have said; however, Dr. Preber's letter does not constitute a plan. What we need from you before the March 6th Water Management Board meeting is a plan or a letter stating how you intend to follow through with these recommendations and a completion date.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:TS:ks

February 27, 1985

Department of Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501

Dear Mr. Hatch:

Regarding our dike on the Little White River, we intend to cable tires down on the face side of the dike.

We intend to complete this by May 31, 1985.

Sincerely,

Mrs. Raymond Lolley
RAYMOND LOLLEY



MINUTES OF THE 31ST MEETING OF THE WATER MANAGEMENT
BOARD DULY CALLED BY CHAIRMAN AREND
ROOM 216, JOE FOSS BUILDING, PIERRE, SD

MARCH 6 and 7, 1985

Those present for the Water Management Board meeting were Board members: Marian Gunderson, Merwyn Walter, Robert Arend, Dennis Decker, David Waldner and Lee Harms.

Water Rights Staff

John Hatch, Jim Winterton, Kevin Larson, Marv Knecht, Jim Goodman, Gale Selken, Tim Schaal, Ron Duvall, Del Brosz, Greg Powell, Genny McMath, Candice Konop, Karen Schlaak

Division of Environmental Quality

Jim Nelson, Steve Pirner, Forrest Payne

Geological Survey

Merlin Tipton, Vermillion, SD

Assistant Attorney General

Dan Doyle, John Guhin, Bob Vrooman

Water Permit Application No. 4158A-3

Wm. St. Clair, Tulare, SD

Flood Control Permit FC-2

Raymond Lolley, Sturgis, SD

Stablo Ditch Water Right

Leo McGuigan, Spearfish, SD
Jim Jennings, Spearfish, SD
Jim Eddy, Spearfish, SD
Eugene and Karol Johnson, Spearfish, SD
Leland Johnson, Ft. Pierre, SD

Water Quality Variance for Lake Madison

Linda Hilde, Madison, SD
Bill Bradwisch, Sioux Falls, SD

Water Quality Variance for Lake Herman

David Odens, Brookings, SD

Well Construction Rules

Dale Wiles, Bassett, NE
Mr. and Mrs. Wayne Wagner, Sioux Falls, SD
LeRoy and Carol Bullis, Watertown, SD
Vergil H. Worm, Lebanon, SD
Ralph Taylor, Rapid City, SD
Warren and Betty Downen, Rapid City, SD
Roy Alexander, Hill City, SD
Raynie Pullman, Wolsey, SD

Terry G. Grosz, Delmont, SD
Cliff and Gloria Gunnare, Beresford, SD
Jim Hutmacher, Chamberlain, SD
Elmer H. Seidel, Aberdeen, SD
Gerald and Julie Cain, Wessington Springs, SD
Karl Osberg, Huron, SD
Don Merriman, Beresford, SD
Doug Osberg, Huron, SD
Dwaune Lewis, Sturgis, SD
Jim Wetmore, Elk Point, SD
Donald Klapperich, Rapid City, SD

The meeting was formally called to order by Chairman Arend at 8:35 am.,
March 6, 1985.

APPROVAL OF MINUTES

Mrs. Gunderson MOVED, SECONDED by Mr. Waldner that the minutes of the
September 26, and 27, 1984 meeting be APPROVED with the typographical
corrections made. MOTION CARRIED.

FUTURE MEETING DATES

It was the general consensus of the Board that the July meeting be held
July 10 and 11, in Pierre.

AGENDA CHANGES

Mr. Hatch stated the 1:15 agenda item consideration of the permits on Grace
Coolidge Creek had to be postponed to the May meeting.

LITIGATION

Dan Doyle stated a decision had been made in the Romey vs. Landers case
holding the Board's decision. Mr. Doyle stated the court said that the Board
did not have the power to enforce its own orders. If the decision is valid, the
Court will enforce it.

In reference to the OHWM for Waubay Lake, Secretary Neufeld has been
negotiating with the Wildlife Federation and the landowners to get something
worked out. The reason for avoiding going to the Supreme Court is that the
Legislature has been working with the Ordinary High Water Marks Program. The
general fear among all of the parties is that the cure might be worse than the
disease. So they are trying to work something out so that the legislature will
not come up with something unworkable.

Red Lake is being held up because of Waubay Lakes. Judge Miller does not
want to hear that case until he knows what the Supreme court is going to come up
with for Waubay Lakes.

The future of the ETSI case is uncertain. Mr. Doyle stated he did not want
the case dismissed because the Judge's decision is damaging to water development
in the state for the future.

5041-3, Nels J. Sorenson, Vermillion, South Dakota

Application is for 1.8 cfs of water from one well 100 feet deep to irrigate 131 acres. Staff recommendation is for approval with the well interference and irrigation questionnaire qualifications.

5042-3, Nels J. Sorenson, Vermillion, South Dakota

Application is for 1.8 cfs of water from one well 106 feet deep to irrigate 131 acres. Staff recommendation is for approval with well interference and irrigation questionnaire qualifications.

5043-3, Ray A. and David R. Hansen, Wilmot, South Dakota

Application is to irrigate an additional 125.6 acres from a well authorized by Water Permit No. 4992-3. This application does not authorize any increase in the diversion rate approved by Permit No. 4992-3. Staff recommendation is for approval with the well interference and irrigation questionnaire qualifications.

5044-3, Ray A. & David R. Hansen, Wilmot, South Dakota

Application is to irrigate an additional 320 acres for one well authorized by Water Permit No. 4992-3. This application does not authorize any increase in the diversion rate approved by Permit No. 4992-3. Staff recommendation is for approval with the well interference and irrigation questionnaire qualifications.

Mrs. Gunderson MOVED, SECONDED by Mr. Decker that Application Nos. 752A-1, 997A-1, 1321-1, 1323-1, 1324-1, 937-2B, 1551A-2, 1905-2, 1908-2, 1909-2, 1911-2, 1913-2, 1915-2, 2104-3, 3264-3, 4279A-3, 5035-3, 5037-3, 5038-3, 5039-3, 5040-3, 5041-3, 5042-3, 5043-3, and 5044-3 be APPROVED with the staff recommended qualifications. MOTION CARRIED.

PERMIT FC-2, Raymond Lolley

Mr. Harms abstained from this discussion.

Tim Schaal stated at the December meeting the Board approved FC-2. The application involved two flood control dikes on the Little White River protecting the Lolley property and home. Part of the qualification of the permit was to present a plan for stabilization of the dikes. Mr. Lolley contacted the SCS asking them to prepare a plan. Their response was that they could not get involved because of the Corps involvement. Mr. Lolley then obtained the services of Dr. Preber from the School of Mines. Dr. Preber prepared a report with basically the same recommendations as staff had presented. Staff received a letter from Mr. Lolley stating they were going to follow through with Mr. Preber's recommendation (copy on file).

Meeting recessed at 11:20 a.m.

Meeting reconvened at 1:10 p.m.

Chairman Arend administered the oath to Raymond Lolley.

Mr. Lolley stated he was planning on getting the largest tires that he could find and install them and place smaller tires inside of them and run a cable over the top from one end to the other to hold the tires. He could put sand in the tires to weight them down. He will do whatever has to be done. There will be no water up against them except during high water in the spring. They would naturally fill with sand.

Mr. Hatch stated that filling the tires with sand should help to anchor them in place. If Mr. Lolley's proposing to do that, then that is satisfactory. Mr. Hatch stated someone will inspect the project by May 31.

It was the general consensus of the Board that if Mr. Lolley follows through as has been stated this would be satisfactory with the qualifications on his permit for flood control.

CANCELLATION OF THE STABIO DITCH WATER RIGHT FROM SPEARFISH CREEK

Jim Winterton presented the Board with copies of the Notice of Cancellation, Recommendations and Report on Investigation of the Water Right Filing and copies of letters received concerning the cancellation (copies on file). Mr. Winterton stated that Numbers 8 and 9 in the Report on the Investigation were not accurate. A February 1, 1985, letter from Lester Holben corrected the errors in Mr. Winterton's report (copy on file).

Mr. Guhin stated the packet of letters is hearsay. Under some conditions hearsay is admissible before the Board. The Board may want to confine its decision to the evidence actually heard since the people are present.

Mr. Doyle stated staff believes that the whole case comes down to the period between 1963 and 1984 when Mr. Holben was on the land. Staff is not saying that prior to that time the right was forfeited or abandoned. It was during that time that we are concerned with.

Chairman Arend administered the oath to Gene and Karol Johnson.

Mr. Johnson stated he had read through the packet of letters. In clarifying the letter signed by Jim Eddy, Mr. Johnson stated he is not ashamed that he was associated with Johnson Brothers for 25 years. He just worked for the company and was not instrumental in any of the decisions of the company. He worked for wages. He owns this place associated with the water right himself. Johnson Brothers Company has no money involved in it. This is something that he is trying on his own. He also had a packet of letters.

Mr. Guhin stated the Board can rely on hearsay evidence that is otherwise reasonably unavailable and the kind that reasonable business persons would rely on. It is hard to know what that line is. If both sides start offering hearsay, it is going to be hard for either side.

Mr. Johnson stated he appreciated the opportunity to address this critical question before this Board because it will affect his family and himself in years to come. Mr. Johnson stated he is currently a vested water right holder for 125 miners inches on 88 acres in Lawrence County north of Spearfish. Riparian water rights were granted in 1877 by the Dakota Territory. These rights are number five in priority on Spearfish Creek and the diversion is on

WATER RIGHTS DIVISION
(605) 773-3352

April 4, 1985

Raymond Lolley
Box 656
Sturgis, South Dakota 57705

Dear Mr. Lolley:

This letter is a follow up to your discussion March 6, 1985 with the Water Management Board. You described your plan for stabilizing the dikes you have constructed. It is our understanding that you plan to place smaller tires inside larger tires and anchor them with cable and place fill material in the tires. This work is to be completed by May 31, 1985. The staff will make an inspection of the project at that time.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division

JH:ms

Water Rights Division
605 773-3352

May 29, 1985

FC-2

Raymond Lolley
Box 656
Sturgis SD 57705

Dear Mr. Lolley:

An inspection of your flood control project on the Little White River was completed on May 28, 1985. The stabilization of the upstream slope of the main dike appeared satisfactory. The project must be periodically inspected and maintained as necessary.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:TS:ks

 **Department of
Water & Natural Resources**

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

January 6, 1989

FC-2

Ed Krogman
Box 433
White River, SD 57579

Dear Mr. Krogman:

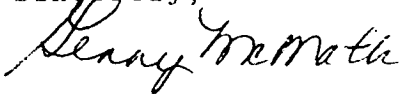
The inspection of the project authorized by Flood Control Permit FC-2, originally obtained by Raymond Lolley has been completed. The final water right document, the water license, can now be issued.

Statutes require that we charge a \$50.00 fee for the inspection and issuance of the water license. Before the license can be issued, the permit should be transferred to your name.

Enclosed is a partially completed "Notice of Transfer" form for use in filing an ownership change on FC-2. Please complete the form and sign in the presence of a notary. A \$2.50 filing fee is required for filing the ownership change.

Please remit a total of \$52.50 (\$50.00 - license and \$2.50 - transfer) as soon as possible. Be sure to include the permit number (FC-2) with your check or money order to insure proper handling of the fee. If you have any questions, please contact us.

Sincerely,



GENNY MCMATH
Natural Resources Analyst
(605) 773-3352

enclosure





Department of Water & Natural Resources

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

June 26, 1990

SECOND NOTICE
Permit No. FC-2

NOTICE OF WATER LICENSE INSPECTION FEE REQUIREMENT

Ed Krogman
Box 433
White River, SD 57579

Dear Mr. Krogman:

January 6, 1989 you were notified the final inspection fee of \$50.00 is due before Water License No. FC-2 can be issued. As of this date, the fee has not been received.

The fee is a final step in the legal process of obtaining and perfecting a water right and is required by SDCL 46-2-13(3). Upon receipt of the \$50.00 fee, your Water License will be sent to you. This is the final document for the perfection of your Water Right. A perfected water right is similar to a property right and once a water right is perfected, it cannot be lost as long as the water is used.

South Dakota Water Law 46-5-30.1 requires that a permit holder may not divert water until the License fee has been paid. Please submit the required fee immediately to avoid jeopardizing your water permit.

A transfer form was sent to you along with the January 6th letter for use in filing an ownership change for FC-2. The permit is still listed in the name of Raymond Lolley. Enclosed is a partially completed "Notice of Transfer of Ownership" form. The form needs to be signed in the presence of a notary and returned to our office with a filing fee of \$2.50.

The total amount due for the license and transfer is \$52.50. If you have any questions, please contact Genny McMath, 773-3352.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ron Duvall".

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

enclosure

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. (Extra charge) 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to: Ed Krogman Box 433 White River SD 57579	4. Article Number P 997 218 500 Type of Service: ☐ Registered ☐ Insured ☒ Certified ☐ COD ☐ Express Mail ☐ Return Receipt for Merchandise Always obtain signature of addressee or agent and <u>DATE DELIVERED</u>.
5. Signature — Addressee X <i>Ed Krogman</i>	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature — Agent X	
7. Date of Delivery 6-27-90	

PS Form 3811, Apr. 1989

★U.S.G.P.O. 4969-238-815

DOMESTIC RETURN RECEIPT

NOTICE OF TRANSFER OF OWNERSHIP

No. FC-2

TO: Chief Engineer
Water Rights Division, DWNR
523 East Capitol
Pierre, SD 57501-3181

Date: 6-29-90



I/We request that Water Permit/Right No. FC-2

formerly owned by: Raymond Lolley

be transferred to: (name & address) Edward E. Krogman Box 433 White
River, SD, 57579 (telephone No.) 605-259-3435

Title to the following described land(s)/property has been transferred as described above:
N $\frac{1}{2}$ Section 10, T41N, R29W

I/We understand that the validity of Water Permit/Right No. FC-2 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

You are requested to file this "Notice of Transfer" in the appropriate file at the Division of Water Rights, as evidence of the change of ownership.

A fee of Two Dollars and Fifty Cents (\$2.50) is attached to cover the filing fees as required under SDCL 46-2-13.

STATE OF SOUTH DAKOTA)
County of Mellette)

I/We Edward Krogman 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, and that I know of my own personal knowledge that the information herein stated is true.

Edward E. Krogman
(Signed)

Subscribed and sworn to before me this 29 day of June, 1990.

Jerry Krogman
(Notary Public)

NOTE: Water permits may be cancelled for nonconstruction within the five year construction period. Once a water permit is developed and the water used, the permit becomes a water right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

412289

Pierre, July 2, 19 90

RECEIVED OF Edward Krogman, Box 433, White River, SD 57579

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use _____		
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>Water FC-2</u>	50	00
Fee for Filing Transfer Form <u>FC-2</u>	2	50
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for _____		
(Any Other Work Provided by Law)	Total	52 50

By John Hatch/mra
Chief Engineer John Hatch/mra

Report Of Examination Of Works And/Or Application Of Water To Beneficial Use

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

I have this day made a thorough examination of the water use system constructed by Raymond Holley
of Box 656 Sturgis, SD holder of
Permit No. FC-2, bearing the priority of August 1 1989 authorizing
the diversion of _____ cu. ft. per second of the waters of _____
for Flood Control purposes, in Mellette County.

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

A. Works used to divert the water:

Main Dike - 15' high, 300' Crest Length, 20' Crest Width
Secondary Dike - 8' high, 225' Crest Length, 18' Crest Width

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

C. Works used to apply water to beneficial use:

The system is in the following condition GoodThe point of diversion is located Main Dike - 990' South & 2053' East and Secondary
Dike - 70' South & 1687' East of the NW corner 10-T4N-R29WThe works are capable of diverting and conveying to the place of use _____
cu. ft. per second of water which is to be used for Flood Control

Water has been put to beneficial use to the maximum extent as follows: The project appears to be
working as designed. The White River has been diverted and
has cut a new channel which appears to be stabilized. The
Main Dike has erosion protection which consists of old tires
anchored down with cables and filled with sand.

comprising a total of _____ acres of land and the license should be issued for _____ cfs

Applicable permit qualifications have been complied with _____ Yes _____ No

Exceptions to compliance are: _____ Date November 21, 1988

Timothy H. Schaal
(signature)

STATE OF SOUTH DAKOTA

FLOOD CONTROL LICENSE NO. FC-2

(1) Raymond Lolley, Box 45, White River, SD 57579 made Application No. FC-2, August 1, 1984, for a flood control permit to construct and maintain flood control facilities consisting of a diversion dam across the main channel of the Little White River and a dike in the secondary water channel located in Mellette County, South Dakota. Flood Control Permit No. FC-2, with a priority date of August 1, 1984 was approved December 5, 1984 subject to the permit holder preparing a plan for stabilization of the two dikes. The stabilization plan was to be completed and submitted for review prior to March 6 - 7, 1985.

On July 2, 1990, Water Permit No. FC-2 was transferred to Edward E Krogman, White River, SD.

(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the construction of the facility to prevent or alleviate flood damage and is entitled to maintain the flood control facility with the main dike located - 990'S and 2053'E and the secondary dike located - 70'S and 1687'E of the NW corner of Section 10, T41N, R29W.

(3) Pursuant to Section 46-5-30.1, Edward E Krogman, Box 433, White River, SD 57579 the holder and owner of Flood Control Permit No. FC-2 is issued a license to divert water for flood control purposes. FC-2 has a priority date of August 1, 1984 and is subject to the limitations or qualifications approved by the Water Management Board December 5, 1984 and subject to South Dakota State Law.



JOHN HATCH, Chief Engineer
Water Rights Division
Department of Environment & Natural Resources

NOV 14 1994

date

Charles J. Kelly, Jr.
1909
USGS
Geologist

S
—
Z

End
Dike

NW CORNER
SEC 10, T 41 N, R 29 W

1087

990'

2053

Main
Dike

FC-2



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

NOV 14 1994

FC-2

Edward E. Krogman
Box 433
White River, SD 57579

Dear Mr. Krogman:

Enclosed is Flood Control License No. FC-2 and Receipt No. 412289 for \$52.50 which you paid for filing a transfer and the inspection and issuance of the license. Flood Control License No. FC-2 is the final document which completes the process of obtaining a water right.

If you have any questions, please contact us.

Very truly yours,

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

gm
enclosures