

No. *11 S 172-2*

**Office of State Engineer  
DOCUMENT FILE**

*Rept. Apr. - Brockman  
Custer Co.*

*Priority: July 10, 1937  
Sec. 12, T 4 N 9 E*

*1.025 acre ft.*

Form 24A

CERTIFICATE OF CONSTRUCTION OF WORKS

and

APPROPRIATION

Billy Hay Pen No.2 Reservoir  
Name of Project

U. S. Water Right No. 172-2

Fall River Water District

TO ALL WHOM IT MAY CONCERN:

This is to Certify, that the United States of America, Department of  
Agriculture, Forest Service, has complied with the  
State Laws and has been issued a withdrawal No. US 172 bearing date of  
July 10, 1939 withdrawing from further appropriation 1.02 acre-  
feet per annum of water for storage; of the waters of Billy Hay Pen Creek,  
County of Custer, State of South Dakota, at a point S. 82 O' E.,  
5050 feet distant from the NW Cor. Sec.12, T.48., R.1E.  
for livestock, fish culture, domestic, fire protection, recreation purposes;  
has fully complied with the provisions of the laws of the State of South  
Dakota relating to completion of the works set out and described in  
Section 61.0137, that said works are completed in accordance with infor-  
mation filed in the office of the State Engineer, and 1.02 acre-feet  
per year is thereby appropriated for the above purposes bearing date of  
priority of July 10, 1939

Witness my hand this 5th day of January 1939/40

\_\_\_\_\_  
State Engineer.

Form 23A

WITHDRAWAL NO. US172

Water Division No. 2

Fall River Water District

CERTIFICATE OF EXAMINATION OF WORKS

DEC 22 1939

Report of Examining Engineer

OFFICE OF STATE ENGINEER

Date December 5  
By Walter Walkling

Billy Payton  
No. 2 Reservoir  
Project Name and Number

Billy Payton Creek  
Source of Appropriation  
(Stream)

To the State Engineer, Pierre, South Dakota:

Dear Sir: I hereby certify that in accordance with your letter of authorization dated August 11 1939, I have made a thorough examination of Billy Payton No. 2 reservoir, ditch, or pipe line constructed by the United States of America, Department of Agriculture, Forest Service, Region 2, Denver, Colorado, holder of withdrawal No. US 172 issued upon Notice of Intention bearing date July 7 1939, authorizing the withdrawal from further appropriation of 1.02 acre feet, or second feet of the waters of Billy Payton Creek, tributary of Tepes Canyon for livestock, fish culture, domestic fire protection, irrigation, recreation purposes. I have to report on the condition of the same as follows:

The impounded and diversion works comprise:

Dam: Type Earth fill Foundation gravel  
Size: Max. Length 108 ft. Maximum height to spillway flow line 4.4 ft. Freeboard 2 ft.  
Section: Upstream slope 3:1  
Downstream slope 2:1  
Top width 6 ft.  
Yardage (Approx.) 250 cu. yds.  
Reservoir: Area Normal Pool Level 0.23 acres  
Capacity 0.33 acre feet  
Nature of Shore line grassy  
Spillway: Type open channel riprap Location left end  
Width 20 ft. Depth 2 ft.  
Capacity 40 cubic feet per sec.  
Outlet: Size none Control Location  
Ditches: Open Earth Open rock  
Pipe Length  
Section Capacity  
Location or as shown on plans

The system is in the following condition: good

The outlet of the reservoir or the point of diversion of the ditch, canal or pipe line is located S. 82° 0' E. 5050 ft.  
feet distant from the 15W Corner of Section 12 Township 4S  
Range. 1E

The works are capable of utilizing 1.02 acre-feet of water  
annually or                      second-feet of water.

The legal subdivisions to be irrigated are                     

comprising a total of                      acres of land.

The domestic and stockwater uses comprise household purposes and  
water for live stock

The utilization for Public recreational, game and fish propagation and  
fire protection comprises bathing, rearing fish and water supply for  
fire fighting equipment.

The project was completed 1935

Witness my hand, this 5th day of December A.D. 19 39

Walter W. Kling  
Examining Engineer

Profile Center Line Profile  
1.5% maximum grade

LETTER OF AUTHORIZATION  
for  
InspectionAugust 11,      1939Walter WalkerDavid City, S. Dak.Billy Hay Pen No. 2 Reservoir  
Name of Project  
Water Division No. 2  
Fall River Water District  
Billy Hay Pen Creek  
Source of Appropriation  
(Stream)

Dear Sir:

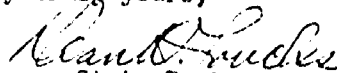
The United States of America, Department of Agriculture, Forest Service, Denver, Colorado, having filed "Notice of Intention" to utilize certain specified waters of the State, and there having been issued a withdrawal from further appropriation as provided in Section 61.0137, 1939 Revised Code of South Dakota and identified as Withdrawal No. U.S. 172, on Billy Hay Pen Creek (stream) County of Custer on the Harney Forest, has informed this office that the construction for the diversion, storage, appropriation and application of water to beneficial use has been fully completed and is ready for examination.

You are, therefore, hereby authorized to arrange with the holder of said withdrawal for an examination of the Billy Hay Pen No. 2 reservoir, ditch, or pipe line constructed and owned by the United States of America, Department of Agriculture, Forest Service, on the Harney Forest and also an inspection to determine the amount of water stored and applied to beneficial use.

In this examination you will ascertain whether or not the constructed works comply fully with the plans submitted and are capable of using quantities of water as set forth in the "Notice of Intention", and give in complete form all the information which is suggested by the statements in the Certificate of Inspection which is herewith enclosed, in the attached instructions, and such other information as will enable the State Engineer to act intelligently and judiciously in the matter of determining the status of completion of the projects.

You should also arrange with the holder of the withdrawal for the payment of your fee for this service and such proper expenses as you incur in making this examination and report and taking the testimony.

Very truly yours,

  
State Engineer.



FORM A

CERTIFICATE OF WITHDRAWAL  
of  
WATER FOR APPROPRIATION  
to the  
UNITED STATES OF AMERICA  
DEPARTMENT OF AGRICULTURE  
FOREST SERVICE.

No. U. S. 172

Billy May Fen No. 2 Reservoir  
Name of Project

Water Division No. 2  
Fall River Water District

Custer  
County

Billy May Fen Creek  
Source of Appropriation - Stream

The United States of America, Department of Agriculture, Forest Service, having filed "Notice of Intention" to utilize certain heretofore unappropriated public waters of the State of South Dakota, in accordance with the requirements of the statutes of the State of South Dakota, such statutes and authority being contained in Section 61.0137 1938 Revised Code of South Dakota, now therefore:

This is to certify that there is hereby reserved, of the heretofore unappropriated waters of Billy May Fen Creek, the annual amount of 1.02 acre-feet of water to maintain storage in Billy May Fen No. 2 reservoir created by damming said stream at a point S. 62 - CO. E., 5050 feet distant from the NE Corner of Section 12, Township 4S., Range 1E. The purpose of such storage is Livestock, fish culture, domestic, fire protection, irrigation, recreation.

This is to certify that there is hereby reserved, of the heretofore unappropriated waters of \_\_\_\_\_ a maximum of \_\_\_\_\_ cubic feet per second to be diverted through the \_\_\_\_\_ ditch, canal or pipe line at a point located on the \_\_\_\_\_ bank \_\_\_\_\_ feet distant from the \_\_\_\_\_ Corner of Section \_\_\_\_\_, Township \_\_\_\_\_ Range \_\_\_\_\_ for the purpose of \_\_\_\_\_ during the months of \_\_\_\_\_.

This certificate and withdrawal shall in no manner prejudice, alter, amend or affect the rights of any prior appropriator or prior appropriation of water, nor of any application for appropriation pending on the date of this certificate, but the rights and privileges of any and all such prior appropriators or applicants for appropriation of water shall remain inviolate and intact, the same as if the within withdrawal had not been made.

This certificate shall be and is subject to cancellation in accordance with the provisions of the statutes hereinbefore referred to and under the authority of which this certificate is issued.

In accordance with the provisions of the statutes hereinbefore referred to, this certificate is executed at the State Capitol at Pierre, South Dakota, this 10th day of July 1939.

\_\_\_\_\_  
State Engineer

E  
WATER RESOURCE  
Water Rights

NOTICE OF INTENTION  
to the  
STATE ENGINEER  
of the  
STATE OF SOUTH DAKOTA

RECEIVED  
JUL 10 1939  
OFFICE OF STATE ENGINEER  
DENVER, CO. 80002

Reservoir  
Billy Hay Pen No. 2 / Project

Denver, Colorado.

Harney Forest  
South Dakota

July 7, 1939

Date

Notice of Intention to divert, store and appropriate water for beneficial uses from certain streams in South Dakota by the United States of America, Department of Agriculture, Forest Service.

The United States of America, Department of Agriculture, Forest Service, through its officers duly appointed to administer the National Forests in South Dakota, hereby notifies the State Engineer of South Dakota of its intentions to appropriate, by construction, diversion, storage and beneficial use, the unappropriated public waters of South Dakota, under Section 61.0137 of the 1939 Revised Code of South Dakota. Application is hereby made for the withdrawal of certain unappropriated public waters of the State of South Dakota in an amount sufficient to maintain storage in Billy Hay Pen No. 2 Reservoir, or to satisfy the requirements of the \_\_\_\_\_ ditch, canal or pipe line, and the following information is furnished:

1. Representative of the United States of America authorized to act in procurement of water rights.

Ans. Regional Forester, United States Department of Agriculture, Forest Service, Region 2, Denver, Colorado.

2. Name of intending appropriator.

Ans. United States of America, Department of Agriculture, Forest Service.

3. Name and address of agency representing intending appropriator.

Ans. United States Department of Agriculture, Forest Service, Region  
2, Denver, Colorado.

4. Name of reservoir, ditch, canal or pipe line.

Ans. Billy Hay Pen No. 2 Reservoir

5. County in which water is to be diverted, stored and appropriated.

Ans. Custer County

6. Name of stream from which water is to be diverted, stored and  
appropriated.

Ans. Billy Hay Pen Creek

7. The outlet of the reservoir or the point of diversion of ditch,

canal or pipe line is located S. 32<sup>0</sup>, 00' E., 5050 feet

distant from the NW Corner of Section 12 Township 4 S.  
Range. 1 E.

8. Uses to which water directly diverted or diverted and stored, is to be  
put.

Ans. Livestock, fish culture, domestic, fire protection, irrigation, recreation.

9. The available capacity of reservoir in acre feet.

Ans. 0.33 acre feet

10. The carrying capacity of ditch, canal or pipe line in cubic feet per  
second.

Ans.

11. Acre feet of water to be appropriated annually for diversion and  
storage in reservoir.

Ans. 1.02 acre feet

12. Cubic feet of water per second to be appropriated for direct diversion  
by ditch, canal, or pipeline.

Ans.

13. Location of lands to be irrigated.

Ans.

14. Class of plans accompanying "Notice of Intention".

Ans. Standard plans.

ALLEN S. FECK,

Regional Forester

By



Acting .