

NO. *U.S. 33-2*

**Office of State Engineer
DOCUMENT FILE**

Dept. Interior Park Service
Quaker Co.

Spring Creek

8-28-37 Priority

0.20 sec. ft.

Sec. 32, T-5N, R-5E

Location: Sec. 32, T-5N, R-5E

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Chicago, Illinois
54

October 6, 1947.

State Engineer,

Pierre, South Dakota.

Dear Sir,

Effective with the close of business on October 10, the National Park Service will close its office in Chicago, and will move to Washington, D. C. Please correct your records accordingly. The new address is:

National Park Service,
Department of the Interior,
Washington 25, D. C.

The change should be made in connection with the following water right matters:

- Federal Withdrawal No. 512 for Badlands National Monument.
- Federal Withdrawal No. 32-2 for Jewel Cave National Monument.
- Federal Withdrawal No. 33-2 for Wind Cave National Park.
- Federal Withdrawal No. 508 for Wind Cave National Park.

Sincerely yours,

(Signed) A. van V. Dunn

A. van V. Dunn,
Chief, Water Division.

J. 41

CERTIFICATE OF WITHDRAWAL

OF

PUBLIC WATERS

CUSTER COUNTY

SPRINGS

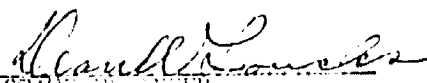
The National Park Service of the United States Department of Interior having made application for the withdrawal of certain heretofore unappropriated public waters of the State of South Dakota, and having complied with the requirements of the statute of the State of South Dakota providing for such withdrawal, such statute and authority being contained in and described as Vol. 2, Chapter 2, Article 1, Paragraph 8243 of the Revised Code of 1919, now therefor;

This is to certify that all of the unappropriated waters of springs in Sec. 32 and Sec. 28, T.5 S., R.5 E., tributary to Cold Spring Creek which is tributary to Beaver Creek, within the boundaries of Custer County, State of South Dakota, are hereby withdrawn from future appropriation during the continuance of the right herein granted and contained.

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 upon 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 statute hereinbefore referred to and under the authority of which this certificate is issued.

In accordance with the provisions of the statute hereinbefore referred to this Certificate is executed at the State Capitol at Pierre, South Dakota on this 11th day of September, 1937.


— Charles E. Smith —
STATE ENGINEER.



NOTICE OF APPROPRIATION OF WATER BY THE UNITED STATES

(Under Sec. 8243, Compiled Laws of South Dakota)

TO THE STATE ENGINEER OF THE STATE OF SOUTH DAKOTA:

Notice is hereby given by the Superintendent of Wind Cave National Park located at Hot Springs, South Dakota, who is a properly authorized officer of the United States and authorized by law to construct works for the utilization of waters within this State, that the United States intends to utilize certain specified waters for the benefit of Wind Cave National Park, part of the National Park System, as follows, TO-WIT:

Source of Supply: Springs outside the park in Sec. 32 and Sec. 28, T. 5 S., R. 5 E., tributary to Cold Spring Creek which is tributary to Beaver Creek.

System: In Sec. 32, a collecting system of 8-inch and 6-inch drain tile and a reinforced concrete cut-off wall collect the water in a concrete intake box and settling basin; 16,100 ft. of 6-inch C. I. pipe discharging into Buffalo Reservoir.

Middle Spring, in Sec. 28, is covered with a concrete box. From the box two miles of 2-inch C. I. pipe to park boundary, then 3420 ft. of 2½-inch line, which reduces to 2-inch again for the final 3600 ft. to Park Service reservoirs. Two reservoirs are of concrete, one 25,000 gallon and one 15,000 gallon capacity. From the reservoirs 2069 ft. of 4-inch wood pipe service line run to Park Headquarters.

The overflow from Middle Spring flows into the 6-inch line supplying Buffalo Reservoir. A lower connection, lower down, permits water to be turned from the 6-inch line into the 2-inch line.

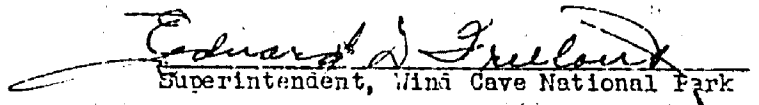
** The concrete reservoir of the Biological Survey draws water from the 2½-inch line and a 2-inch service line connects it to the Biological Survey buildings.

The construction of the diversion for the utilization of such waters has been completed by the United States, and final construction reports filed with the National Park Service by Engineer Walter G. Attwell December 9, 1931, and June 20, 1932.

Note: All buildings and facilities of the U. S. Biological Survey in Wind Cave National Park were transferred to the National Park Service on July 1, 1935.

The tract in Sec. 32 contains 100 acres. There are nine springs and a combined flow from them on June 13, 1932, of 86,400 gallons per day (0.134 second feet). The entire 100 acres and an additional 40 acres in Harney National Forest have been fenced for protection of the watershed.

According to the final construction report by Associate Engineer Walter G. Attwell, two tracts of land, several springs, and a 10-foot right of way from the springs to the park, were purchased in 1931 from Robert and Fannie McAdam. Such data has been recorded in the Court House at Custer, regarding the purchase of the springs and land in connection with the park water system. No increased use of water is anticipated at Wind Cave National Park.


Superintendent, Wind Cave National Park

WITNESSED BY:


H. M. Sherman
Clerk: Wind Cave Nat'l. Park

WITHDRAWAL NO. 1

Water Division No. 2

Fall River Water District

CERTIFICATE OF EXAMINATION OF WORKS

Report of Examining Engineer

Date September 9, 1939
By A. van V. DunnWind Cave Pipe Line
Project Name and NumberSprings tributary to Beaver Creek
through Cold Spring 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 15, 1939, I have made a thorough examination of Wind Cave Nat. Park water system, designated Wind Cave pipe line constructed by the United States of America, Department of Interior, National Park Service, holder of withdrawal No. 38 issued upon Notice of Intention bearing date Sept. 8, 79 1937, authorizing the withdrawal from further appropriation of - acre feet, or 0.20 second feet of the waters of Springs-Guster Co., tributary of Beaver Creek through Cold Spring Creek for domestic, recreational, fire protection, and wild-life propagation purposes. I have to report on the condition of the same as follows:

The impounded and diversion works comprise:

Dam: Type Concrete Foundation Bed rock
(Diversion) Size: Max. Length 200' Ex. height to spillway 8', all below ground flow line 5' (at water table) Freeboard 3' at this date (varies with water table)
Section: Up stream slope Vertical
Down stream slope Vertical
Top width 10'
Yardage (Approx.) 40
Reservoir: Area Normal Pool Level No surface reservoir acres
Capacity Not known (raises water table 1' this 9/9/39 date)
Nature of shore line -
Spillway: Type None Location -
(Flood waters would flow across whole dam crest)
Width - Depth -
Capacity will over flood flow cubic feet per second
Outlet: Size 6 inch Control gate valve
Location as shown on plan - valve 10 feet below dam
Ditches: Open Earth none Open rock 5
Pipe 1670 of 8" 11,764 of 6" 11,204 of 2 1/2" 6700 of 2"
11,764 of 6" 8" 61-22-61 Capacity 0.25 sf to Norbeck Reservoir
Location or as shown on plans as shown (bal. 0.08 sec ft.)
Distrib. Reservoirs are as shown on plan except: at
additional 25,000 gal. unit has been added sta. 87+41 near
park headquarters, in section 2.
an 8000 gal reservoir has been installed to serve utility area,
in NE 1/4 section 1.
all distribution reservoirs provided with float valves to
prevent overflow.

For Norbeck dam and reservoir, see rider, page 3.

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 3.52-50 E 2431.26, (Spring # 6 N 56-08 W 1129.52 from SE Corner Section 28 feet distant from the N. 3 Corner of Section 32 Township 5 S Range 3 E.

The works are capable of utilizing 170 acre-feet of water annually of & 0.75 second-feet of water.

The legal subdivisions to be irrigated are SE 1/4 - 1 ac; NE 1/4 - 1 ac both in Section 2; SW 1/4 - 1 ac; NW 1/4 - 5 ac; NE 1/4 - 2 ac; SE 1/4 - 1 ac; NW 1/4 - 2 ac, all in Section 1, and all in T 6 S, R 5 E; and NE 1/4 - 1 ac; in Section 35, T 5 S, R 5 E, all incidental to other uses, comprising a total of 11.75 acres of land.

The domestic and stockwater uses comprise 25 permanent residents @ 110 gpdpc-2750
5-15 temporary rangers @ 85 gpdpc (average 10) 850
200 men on construction and maintenance @ 55 gpdpc 11000

The utilization for public recreation, game and fish propagation, fire protection, comprises: 625 visitors @ 15 gpdpc using comfort stations & restaurant 9390
200 buffalo; 60 antelope; 60 deer; 150 elk - total 470 head, obtain all water from 3680
reservoir at Norbeck dam in dry years, and most of it in all years

The project was completed in 1932, having been started in 1929.

Witness my hand, this 9 day of September A. D. 19 39.

A. van V. Dunn

A. van V. Dunn
Examining Engineer.

Norbeck D. Type Earth fill found on earth with debris and top
rip-rap both sides soil removed.

Size: Max.Length 295'. Max.Height to spillway 36'
flow line 21'. Freeboard 5'

Section: Up stream slope 3/1
Down stream slope 2/1
Top width 40'

Yardage (approx) 35,000

Reservoir: Area normal pool Level 12.5 acres

Capacity approx. 170 acre feet

Nature of shore line grassy hill sides

Spillway: 1'x5' wier into concrete lined ditch around south end
of dam.

Canal: T-6'; b-5'; d-2'; s-0.005; n- 0.014 ; Q = at least 46.6 s.f.

intended over-flow capacity seems to have been about
5.0 sec.ft., but full ditch capacity would not
damage structures. By spill along 100 feet of ditch,
and using full 3' for d, capacity is far in excess
of probable flood flow.

Outlet: Size 12" Control gate valve
Cast iron on 2% grade

The outlet is approximately 5 feet above low point of
reservoir, on north side, and is for emergency
draining. No draft is made for Park use.

Incidental Irrigation: All irrigation is incidental to domestic and recreational
uses, and done by standard garden hose, to provide lawns around
various buildings.

Recreational Use: is largely for public comfort stations, and a restaurant. There
is also a campground which normally serves about 15 people per
night, in addition to the domestic type of use at the campground,
water is used for dust laying and light irrigation.

Fire protection: The administration and utility areas are provided with 6" fire
lines from the distribution reservoirs. These reservoirs are as
described on page 1.

Public Attendance: varies between 20,000 and 30,000 people per year, with most
of it during a 100 day summer season. Daily attendance runs as high
as 625 per day at seasonal peak. Although not so noticeable at Wind
Cave, annual increases of 10% are normal throughout the National
Parks.

Available Water Supply: Normal summer spring flow is about 0.08 second feet, with
winter and spring flow roughly 0.20 second feet. The remainder of
pipe capacity (0.75 s.f.) is obtained from stream flow when
available. The full capacity has been available twice in 10 years,
between which years, the reservoir at Norbeck dam has become
nearly dry from evaporation and wild life watering.

(CP)

Variations in Pipe Line Operation:

With increasing domestic and recreational demands at the headquarters utility areas, since the pipe line was installed there has been a need for a larger pipe from the game ranch to the headquarters reservoirs. Pending allotment of appropriations for enlargement, several regulatory measures have been possible:

1. By the use of float valves it has been possible to obtain a full effective grade from the C" main to the headquarters reservoir.
2. By cutting out the springs at Middle Spring area, when flow was available at upper springs, an effective grade of approximately 57 feet per 1000 and capacity of 0.08 sec. ft. has been available to the headquarters area.
3. A valve on the C" line just below the 2 1/2" pipe junction is closed to prevent waste at the Norbeck reservoir when the available water is low, and when preferred need arises at the headquarters area.
4. During the present, very dry season, lawn irrigation has been largely prohibited during August.
5. As high as 7000 gallons per day have been hauled to the utility area reservoir when low spring flow required all supplies with the resulting loss of the maximum head on the 2" pipe.

(21)

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
/ECW/ REGION FOUR
601 SHELDON BUILDING
SAN FRANCISCO, CALIFORNIA

RECEIVED

DEC 13 1937

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

December 8, 1937.

State Engineer,
Pierre, South Dakota.

Dear Sir:

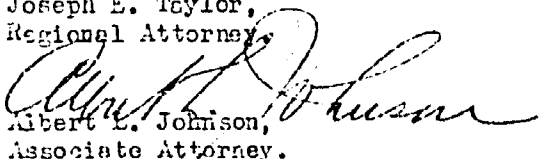
Reference is made to filing for appropriation of water by the United States at Wind Cave National Park and Jewel Cave National Monument, under date of September 8, 1937.

Following receipt from the Regional Director of a letter notifying us that these notices of appropriation have been filed, we would like to be informed if any further notice is required by your office with reference to such appropriations.

Under Section 8243, the Statute seems to contemplate that no notice shall be given your office, especially where the construction has been complete at the time of the original filing.

Yours very truly,

Joseph E. Taylor,
Regional Attorney.

By 
Albert L. Johnson,
Associate Attorney.

C O P Y

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Chicago 54, Illinois

March 16, 1945

Mr. Dear. W. Loucks
State Engineer
Pierre, South Dakota

Dear Mr. Loucks:

The Water Rights Division, Branch of Engineering, of the National Park Service, has been transferred from San Francisco to Chicago. Accordingly, all matters relating to the perfection and preservation of water rights for the national parks and monuments should hereafter be sent to the Director's Office in Chicago. It will be appreciated if you will change the address on the rights which have already been initiated. Also, as far as possible, when special cases require direct communication with our Regional Offices or field officials, we should like to have a copy of the letter forwarded to the Director.

This procedure relates to the following water rights which have already been recorded in your office:

Federal Withdrawal No. 32 - for Jewel Cave National Monument
Federal Withdrawal No. 33 - for Wind Cave National Park
Federal Withdrawal No. 508 - for Wind Cave National Park.
Federal Withdrawal No. 512 - for Badlands National Monument.

Very truly yours,

(Signed) Millery A. Tolson,
Acting Director

CERTIFICATE OF COMPLETION OF WORKS

and

APPROPRIATION

U. S. Water Right No. 33-2

Wind Cave Pipe Line
Name of Project

Fall River Water District

TO ALL WHOM IT MAY CONCERN:

This is to Certify, that the United States of America, Department of Interior, National Park Service, has complied with the State Laws and has been issued a withdrawal No. U. S. 33 bearing date of September 14, 1937 withdrawing from further appropriation all of the unappropriated waters of springs in Sec. 32 & Sec. 28, T. 5S., R. 5E. of the waters of Cold Spring Creek, County ofuster, State of South Dakota, the outlet being located at a point ^S 53 50' E. 2431.36' (and designated as Station 0 00 on the map furnished with the Notice) from the N. Cor. of Sec. 32, T. 5S., R. 5 E. and the works further located as shown on the above map and described in the Notice for domestic, recreation, fire protection, stockwater * purposes; has fully complied with the provisions of the laws of the State of South Dakota relating to completion of the works as set out and described in Section 31.0137, that said works are completed in accordance with information filed in the office of the State Engineer, and 0.20 sec. feet is thereby appropriated for the above purposes bearing date of priority of August 28, 1937.

Witness my hand this 18th day of September 1939.

State Engineer

* Includes buffalo, antelope, deer and elk.

October 21, 1938

Joseph E. Taylor,
Regional Attorney
601 Sheldon Building
San Francisco, California

Dear Sir:

Replying to your letter of October 17th relative to the omission of the letter "S" in the seventh line of the "Certificate of Construction of Works and Appropriation" relating to U. S. Water Right No. 33-2, we find that this omission was due to a typographic error in this office and have corrected our copy accordingly.

Very truly yours,

DEAN W. LOUCKS,
State Engineer.

WLD:n

cc Wind Cave Park Supt.

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
REGION FOUR
SAN FRANCISCO, CALIFORNIA

601 Sheldon Building
October 17, 1939

RECEIVED
OCT 20 1939

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Hon. Dean W. Loucks,
State Engineer,
Pierre, South Dakota.

Dear Sir:

Enclosed is copy of a memorandum of October 13 from the Acting Regional Director of Region II, referring to omission of the letter "S" in the seventh line of the "Certificate of Construction of Works and Appropriation" relating to U. S. Water Right No. 33-2, forwarded to us with your letter of September 18.

Since the original of this certificate has been sent to the Superintendent of Wind Cave National Park, we are unable to determine whether the omission was made in this office in typing the copies, or whether the omission occurred in the original certificate.

Request is made that you refer to your copy of the certificate, and if the omission appears thereon that you make the necessary correction upon the official records.

Yours very truly,

Joseph E. Taylor
Joseph E. Taylor,
Regional Attorney.

Encl.

C O P Y

UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

REGION TWO

OMAHA, NEBRASKA

October 13, 1939.

Memorandum for the Regional Attorney, Region IV:

Receipt of a copy of your memorandum for Superintendent Liek, in reference to water withdrawals Nos. 32 and 33, to which were attached copies of various certificates in connection with these withdrawals, is hereby acknowledged.

The Regional Engineer has examined these certificates and notes that, on the copy of the "Certificate of Construction of Works and Appropriation" in connection with U. S. Water Right No. 33-2, Wind Cave Pipe Line, in the seventh line of the main body of this certificate, the letter "S" is omitted from the bearing that locates the point of diversion.

/s/ Paul V. Brown,

Acting Regional Director.

LETTER OF AUTHORIZATION
for
Inspection

August 16, 1939

Wind Cave Pipe LineA. van V. Lunn, EngineerNational Park ServiceDivision No. 2
Fall River Water District
Beaver Creek (Springs)
Source of Appropriation
(Stream)

Dear Sir:

The United States of America, Department of the Interior, National Park Service, San Francisco, California, 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 01.0157, 1939 Revised Code of South Dakota and identified as withdrawal No. U. S. 33, on Beaver Creek (springs) County of Custer on the Wind Cave Nat'l. Park, 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 Wind Cave Pipe Line constructed and owned by the United States of America, Department of Interior, National Park Service, on the Wind Cave National Park 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.

WITHDRAWAL NO. _____

Water Division No. _____

Water District _____

CERTIFICATE OF EXAMINATION OF WORKS

Report of Examining Engineer

Date _____
By _____

Project Name and Number _____

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 _____ 19____, I have made a thorough examination of _____ pipe line constructed by the United States of America, Department of Interior, National Park Service, holder of withdrawal No. _____ issued upon notice of intention bearing date _____ 19____, authorizing the withdrawal from further appropriation of _____ acre feet, or _____ second feet of the waters of _____, tributary of _____ for _____ purposes.

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

The impounded and diversion works comprise:

Dam:	Type _____	Foundation _____
Size:	Am. Length _____	Am. Height to spillway _____
flow line	Frameword _____	
Section:	Up stream slope _____	
	Down stream slope _____	
	Top width _____	
	Tardage (Approx.) _____	
Reservoir:	Area Normal Pool Level _____	area _____
	Capacity _____	acre feet _____
	Nature of shore line _____	
Spillway:	Type _____	Location _____
	Width _____	depth _____
	Capacity _____	cubic feet, or second _____
Outlet:	Size _____	Control _____
	Location _____	
Pipelines:	Open Earth _____	Open rock _____
	Pipe _____	Length _____
	Section _____	Capacity _____
	Location or as shown on plans _____	

The System is in the following condition; _____

The outlet of the reservoir or the point of diversion of the ditch, canal or pipe line is located _____
feet distant from the _____ Corner of Section _____ Township _____ Range _____.

The works are capable of utilizing _____ 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 _____

The utilization for public recreation, game and fish propagation, fire protection, comprises; _____

The project was completed _____

Witness my hand, this _____ day of _____ A. D. 19 _____.

Examining Engineer.

September 14, 1937.

National Park Service,
U.S. Department of the Interior,
Wind Cave National Park,
Hot Springs, So. Dak.

Attention: Edward D. Freeland, Supt.,

Dear Mr. Freeland:

This will acknowledge receipt under date of August 28, 1937, of Notices of appropriation of water by the United States Government at Wind Cave National Park and Jewel Cave National Monument, located in South Dakota.

We are enclosing herewith Certificates of Withdrawal of such waters as described in the notices.

We note that construction work in both cases has been completed, and would appreciate receiving for our files, plans of the work as set forth in the section pertaining to this particular right.

Very truly yours,

DEAN W. LOUCKS,
State Engineer.

DW:L:klp
encl/2

December 17th, 1937,

Joseph E. Taylor,
Regional Attorney,
Region Four,
501 Sholeon,
San Francisco, California.

Attention: Albert L. Johnson,
Associate Attorney,

Dear Sir:

Reference is made to your inquiry as to further notice to this office in connection with the filing for appropriation of water by the U. S. at Wind Cave National Park and Jewel Cave National Monument (Withdrawals number 32 and 33). No further notice is required except Section 8243 provides that a map showing the irrigation works in its relation to land lines be filed in this office for each project.

Very truly yours,

DEAN W. LOUCZS,
State Engineer.

REL:fkf

45 33-0

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

500 EAST CAPITOL
Pierre, South Dakota 57501 5070
Phone (605) 773 3215
FAX# (605) 773 4106



MARK W. BARNETT
ATTORNEY GENERAL

LAWRENCE E. LONG
CHIEF DEPUTY ATTORNEY GENERAL

December 9, 1996

Mark Rath
Water Rights Program
Department of Environment
and Natural Resources
Joe Foss Building
Pierre, SD 57501

Re: U.S. withdrawal

Dear Mark:

You have made two inquiries about U.S. withdrawals made pursuant to Section 8243 of the 1919 Code.

The first issue is whether U.S. withdrawals made under Section 8243 constituted an appropriation for which the public notice requirements applied. Based on my reading of this provision it appears that public notice was not required for the U.S. withdrawals. Although all other water appropriations have been required to comply with public notice requirements since March 7, 1907, the U.S. withdrawal situation appears to be an exception. Section 8243 provided that the chief engineer was to refrain from authorizing the appropriation of public waters of the state to any other party if the United States intended to utilize certain specified waters and did, in fact, apply the waters to use. The provision does not appear to contemplate any public notice requirements. Review of two U.S. withdrawal files also indicates that no public notice was, in fact, made.

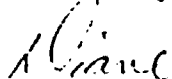
Given the foregoing circumstances, you have also inquired whether some additional act is required at this time to clarify or validate the U.S. withdrawals. Since it appears that the U.S. withdrawals were properly perfected and filed with the chief engineer, it appears that no additional process would be necessary in order to continue water right use that has been legally continuous from the date of construction. In the event that water rights are no longer being used, cancellation may be

Mark Rath
December 9, 1996
Page 2

appropriate under SDCL 46-5-44. Additionally, the provisions of SDCL 46-5-37 would be applicable.

If you have further questions regarding this matter, please feel free to contact me.

Sincerely,



Diane Best
Assistant Attorney General

DB:do
Enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 17 1996

Jeffrey C. Hughes
National Park Service
Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

Dear Mr. Hughes:

I am writing this in reference to Wind Cave National Park's US Withdrawal No. US33-2 for the Cold Springs gallery. US33-2 appropriates 0.20 cfs from springs with a priority date of August 23, 1937. The water has been continually used for domestic, recreation, wildlife, and fire protection within Wind Cave National Park.

A question was raised at a May 1, 1996, meeting between National Park Service and SD Water Rights staff whether all statutory requirements had been met when the US withdrawal was issued. The South Dakota Attorney General's Office was asked to research this question (see attached letter). Based upon this information, it appears the requirements for US withdrawals had been met by the National Park Service at the time US Withdrawal No. US33-2 was issued and that no additional action is needed now.

If you have any additional questions, please contact Mark Rath of the Water Rights Program at phone (605) 773-3352.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Program

enclosure

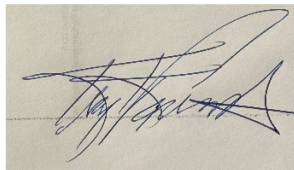
**Request for Chief Engineer (South Dakota Water Rights Program) to
Investigate Potential Forfeiture or Abandonment of US33-2 (US National
Park Service) Pursuant to SDCL 46-5-37.1**

I, Kerry Papendick (owner of Stolen Water Ranch, LLC) formally request that the SD DANR Water Rights Program investigate water right US33-2, which authorizes appropriations of water from Cold Creek Springs and Middle Spring, (T 5 S, R 5 E Sections 32 and 28, respectfully) in Custer County, for domestic, recreational, fire protection, fish and wildlife production purposes. It is my belief that US33-2 has become subject to review based on my knowledge of (attach additional pages):

(See Attached Sheet)

First and Last Name-- Kerry Papendick

Signature _____

A handwritten signature in blue ink, appearing to read 'Kerry Papendick', is written over a light-colored rectangular background.

Date--March 26, 2026

Additional Information to support Abandonment of US33-2

During drought and Great Depression of the 1930s, Robert and Fannie McAdam (brother and sister) sold some land, a pipeline easement and water rights to the National Park Service (NPS) for a water supply. Wind Cave National Park (WCNP) needed more water for their Headquarters and other facilities to support the growing number of Cave visitors. Additionally, WCNP had plans to supply water to a 170 ac-ft reservoir to support the Buffalo herd but also antelope, deer and elk. The reservoir was initially called Buffalo and later officially named Norbeck Reservoir. Construction of the water works began in 1932. Final inspections of the works by the State Engineer occurred in 1939 with a priority date for the water right established as 8-28-1937 for 0.20 cfs.

From a report on the Water Resources of Wind Cave published in 2016ⁱ and local newspaper reports of the time, the Cold Springs sources were determined to be inadequate as early as the 1950s, as quoted here-- "the Water Supply Springs source that in the preceding years was not found to be adequate." As a result, Park Well #1 was drilled in 1956 into the Madison Limestone aquifer. Other wells followed thereby supplanting the Cold Creek Springs sources from being used as a domestic water supply.

The Norbeck Reservoir, similarly, reported in WCNP documents, never held water and the dam and outlet works were removed by the Bureau of Reclamation in 1989. Thereby negating the intended beneficial use of the pipeline water.

The water works system was constructed of cast iron pipes and even some wooden pipe. As far as is known, the pipes have never been replaced or substantially repaired since initial construction nearly 100 years ago. The system was designed as a gravity flow system which requires the pipelines to be pressurized to deliver water from the topographic low point along Cold Spring Creek (within the Park) and then flow over a divide to reach the Park Headquarters. It is suspected that leaks in the pipes over time have prevented the system from being properly pressurized. But more importantly, the water may simply be leaking into the subsurface. Again, not being used as intended.

A question arose in 1996 whether the original withdrawal of these waters of Cold Springs Creek was properly done. In a letter to Mark Rath of DENR Water Rights from Diane Best, Assistant Attorney General of South Dakota, she answered in the affirmative. However, the letter concludes with this statement--"In the event that water rights are no long being used, cancellation may be appropriate under SDCL 46-5-44."

We contend that the waters being diverted and exported from the Cold Springs Creek watershed to this day are not being used as originally authorized under US33-2. As such, these diverted waters should be returned to the natural channel of Cold Spring Creek and flow unimpeded into WCNP as nature intended. As such, WCNP will not be deprived of any water for subsequent recharge to the Madison Aquifer in Beaver Creek.

ⁱ Ohms, Marc (2016) **Water Resources of Wind Cave National Park** Natural Resource Report NPS/WICA/NRR—2016/1247