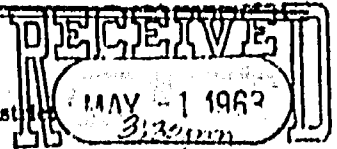


No. 1041-3Water Division No. 3

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

WHEATSTONE CREEK

VESTED RIGHT **APPLICATION FOR PERMIT**

STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

To appropriate Water within the State of South Dakota

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

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

I. If a corporation

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

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

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

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

(b) Cash on hand, \$ _____

(c) Treasury stock, \$ _____

(d) Bonds to be issued, \$ _____

(e) Other resources, \$ _____

2. Name of diversion work COTTONWOOD LAKE - Roberts County
As required to fill lake to outlet level - approximately 2950
 3. Amount of water claimed acre feet per year cubic feet per second _____
 4. Source of water supply Cottonwood Creek
 5. Location of point of diversion One point in the watershed located in the SESE 1/4, Sec. 32,
Township 128 North, Range 49 West. on _____ bank _____ County _____
 6. Annual period or periods during which water is to be used All year
 7. To be used for:

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

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

(b) Legal subdivisions to be irrigated _____

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

(c) Statement as to domestic use (giving location, etc.) Public use to the ordinary highlevel of the inundated portions of sections 20, 29, 32 & 33 of T. 128, R. 49,

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

- (a) Nature of use
- Public recreation

Name any of the above uses claimed

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

Amount claimed for engine cooling _____

(c) Location of plant _____

(d) Method of developing power _____

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

SEE MAP NO 682-3

8. Estimated cost of work:

(a) Head Gates, \$----- (b) Pumping plant, \$-----
 (c) Fluming, \$----- (d) Canal-earth, \$----- Rock, \$-----
 (e) Other structures \$----- Total, \$-----

9. Description of diversion works:

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

Information requested not applicable.

II. Dimensions of works.

Cottonwood lake is a meandered lake with a maximum depth

(a) Dam: Height of about four feet; length at bottom ----- feet; length at top ----- feet; thickness at bottom ----- feet; thickness at top ----- feet; slope at front water face -----; slope at back face ----- material used in construction -----

(b) Reservoir: Capacity when filled ----- acre feet. Surface area at highwater mark 987 ----- acres.

DEPTH AT OUTLET-Feet	SURFACE AREA AT EACH DEPTH AT OUTLET--ACRES	FEET ACRE-Feet CAPACITY

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

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

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

(Give dimensions where reductions in size are made.)

10. Time required for completion of work ----- years. Not applicable - a meandered lake

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

12. Choice of newspaper for publication of notice of intention to appropriate -----

STATE OF SOUTH DAKOTA

County of Hughes } ss.

I, Walter J. Fillmore

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

Signed Walter J. Fillmore

Subscribed and sworn to before me this 1st day of May 1963

Notary Public (or other qualified officer.)

Remarks by State Water Resources Commission:

"VESTED RIGHT" CLAIMED

STATE OF SOUTH DAKOTA
County of HUGHES ss.

Pierre, South Dakota,

JUNE 18, 1963

This is to certify that the foregoing application was received by the Commission at 3:30 o'clock

7 m. upon the 15th day of MAY, 1963

State Water Resources Commission

By:

[Signature]
Chief Engineer, Executive Officer

Number of permit 1041-3

Date of first receipt of application MAY 1, 1963

Date of return to applicant for correction, amendments or changes required as follows: _____, 19____

Date of receipt of corrected application _____, 19____

Date from which applicant may claim right 1889, 1963

Approved JUNE 18, 1963, Recorded in Book 8 Page 86

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

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

2nd. The whole of said work is ~~to be~~ completed on or before _____, 19____

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

completed, 19____

4th. The water appropriated shall be used for the purpose of public recreation

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

6th. The amount of the appropriation herein granted shall not exceed 2950 acre feet annually ~~public feet per second~~; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually used for public recreation ~~was~~

and beneficially ~~applied for irrigation~~ used for public recreation on or before June 30, 1965; said water to be used during the following described annual period:

Continuously

Witness my hand this 18th day of June, 1963

State Water Resources Commission

By:

[Signature]
Chief Engineer, Executive Officer

Certificate of Construction Issued June 18, 1963

Water License issued June 18, 1963

Permit No. 1041-3

Water Division No. 3 Whetstone Creek
Water District

Certificate of Completion of Works

TO ALL WHOM IT MAY CONCERN:

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

of Pierre, County of Hughes, and State of South Dakota, the holder of Permit No. 1041-3, issued upon Application No. 1041-3, bearing date of priority of 1839, authorizing the diversion of 2950 acre feet annually of the waters of Cottonwood Creek, County of Roberts, State of South Dakota, at a point in the S $\frac{1}{2}$ SE $\frac{1}{4}$, Section 32, T128N, R49W

for public recreation

purposes, has fully complied with the provisions of the laws of the State of South Dakota relating to proof of completion of the works of diversion set out and described in said Permit; that said works are recognized as satisfactory condition for diverting and conveying to the place of intended use 2950 acre feet annually

water; and that the works proposed to be constructed for the diversion of water are described as follows, to wit: to be used in place for public recreation.

Witness my hand this 18th day of June A. D. 1963

State Water Resources Commission

By: J. W. GRIMES
Chief Engineer, Executive Officer

STATE OF SOUTH DAKOTA

WATER LICENSE No. 1041-3

WHEREAS, On the 1st day of May A. D. 1963
the South Dakota Department of Game, Fish and Parks

of Pierre County of Hughes and State of
South Dakota duly made application (No. 1041-3) to us for a Vested Right
annually permit to use 2950 acre feet
of the waters of Cottonwood Creek
County of Roberts, State of South Dakota, for public recreation
purposes; and

Vested Right WHEREAS, On the 18th day of June A. D. 1963
/Permit No. 1041-3 was issued to said applicant for the diversion of said water, recognizing
completion of the works of diversion therein described work before the
XXXXXX and XXXXXX application to beneficial use of said
water XXXXXX and XXXXXX

WHEREAS, On the 1st day of May A. D. 1963
the holder of said permit duly made proof of the completion of adequate works for the diversion of 2950 acre
feet annually of said waters, as evidenced by our Certificate No. 1041-3
dated June 18, 1963 confirming the completion of works of sufficient capacity for
diverting and conveying to the place of intended use 2950 acre feet annually
priority of 1889 of water, with date of
and,

WHEREAS, On the 1st day of May A. D. 1963
proof was duly made of the application to beneficial use of 2950 acre feet annually
to be used in place for public recreation

NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota,
We hereby grant and confirm to the South Dakota Department of Game, Fish and Parks
of Pierre the holder and owner of said Vested Right permit No. 1041-3
a water right, dating from 1889 to the use of 2950 acre feet annually
~~of the waters of~~ Cottonwood Creek
In the County of Roberts and State of South Dakota, or so much thereof as may be
necessray for the purposes hereinbelow mentioned, to be diverted at a point in the S $\frac{1}{2}$ SE $\frac{1}{4}$, Section 32,
T128N, R49W
and ~~conducted to and upon~~ stored in place

for the purpose of public recreation

subject, however, to the laws of the State of South Dakota applicable to a license for the use of the waters of the
State, and subject, also to the local or community customs, rules and regulations which have been or may be
adopted from time to time by a majority of the users from a common source of supply, canal or lateral from
which such water may be taken, when such rules and regulations have for their object the economical use of such
water.

WITNESS, My hand and seal of our office at Pierre, South Dakota,
this 18th day of June A. D. Nineteen
Hundred and Sixty-Three

State Water Resources Commission

By:

J. W. GRIMES
Chief Engineer, Executive Officer

STATE OF SOUTH DAKOTA

Water License No. _____

To _____

Source of Supply _____

County _____

Amt _____ c. f. s.

Point of Diversion _____

Place of Use _____

Purpose _____

Date of Priority _____

Recorded _____

In Book _____ of _____ Page _____

Location No.

Water Division No. Water District

Proof of Application of Water to Beneficial Use**PETITION OF HOLDER**

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

Ans. South Dakota Department of Game, Fish and Parks, Pierre, South Dakota
Cottonwood Lake - Roberts County

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

Ans. _____

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

Ans. SDC 25.0166 (1) gives the Game, Fish and Parks Commission authority over
meandered lakes

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

Ans. Cottonwood Creek - One point in the watershed located in the S19E4, Sec. 32,
Township 128 North, Range 49 West.

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

Ans. On site impoundment - up to 4 feet deep

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

Ans. To be used for on site recreation

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

Ans. Used in place in lake or reservoir

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

Ans. As required to fill lake to outlet level - approximately 2950 acre feet
per year

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

Ans. _____

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

Ans. A meandered lake, Used by the public for uses specified except for that
amount lost by evaporation and seepage

(Sign) Sheta J. Tillman

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Pierre, County of Hughes
State of South Dakota, on this 1st day of May A. D. 1963.

Witnesses. Alvin H. Allen

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

Location No. _____

PROOF OF APPLICATION OF
WATER TO BENEFICIAL USE

PETITION OF HOLDER

Amount of Water _____ c. f. s.

Source _____

County _____

Purpose _____

Place of Use _____

Date of recording _____

Received and filed _____

1041-3

South Dakota
Department of
Water & Natural Resources

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

September 21, 1988

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

Dear Mr. Beringson:

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

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

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

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



September 21, 1988

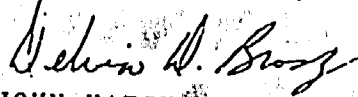
Richard Beringson, Secretary

Page 2

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

Please advise if you have any questions.

Very truly yours,



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

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