

No. 21-3

**Office of State Engineer
DOCUMENT FILE**

City of Redfield
Spenk Co.
Furtle Creek
Records - Bk. 2, Page 470-471

NO. 21-3Water Division No. 3 James River Water District.
(Blanks to be filled by the State Engineer.)**APPLICATION FOR A PERMIT
To Appropriate Water Within the State of South Dakota****RECEIVED**
MAR 6 1940
OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

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

1. Name of applicant City of Redfield
Postoffice address Redfield, County Spink, State So. 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 the 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 works
- Lake Redfield Spillway
-
3. Quantity of water claimed
- 1568 Acres Feet annually for storage and use
-
- cubic feet per second.
-
4. Source of water supply
- Turtle Creek
-
5. Location of point of diversion
- 1570 feet South 70 degrees west of N.E. corner of
-
- Section 9 Township 116 Range 64
- Dam and spillway
- on
- bank.
-
- (Right or left bank looking down stream.)
-
6. Annual periods during which water is to be used
- Jan. 1st to December 31st
-
7. To be used for:
- Recreational, public water supply and irrigation

I. Irrigation or domestic use:

- (a) Number of acres to be irrigated
- 47
- on Permit No. 23-3
-
- SW 1/4 of Section 3-116-64
- 40 Ac.
-
- North 360 ft of NW 1/4 of Sec. 10-116-64 - 7 Ac.
-
- (b) Legal subdivisions to be irrigated
-
- (NOTE—A list of land 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.)

II. Mining, power, manufacturing, transportation, or other purposes:

- (a) Nature of use
-
- (b) Amount of power to be generated
- horse power.
-
- (c) Location of plant
-
- (d) Method of developing power
-
- (e) Point where water will be returned to stream

3. Estimated cost of works:
- (a) Head gates, \$..... (b) Pumping plant, \$.....
- (c) Fluming, \$..... (d) Canal-earth, \$..... R. & C. \$.....
- (e) Other structures..... \$..... Total, \$.....

9. Description of diversie, works:

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

Reservoir Dam and spillway

II. Dimensions of works:

- (a) Dam: Height..... 14.....feet: length at bottom..... 600.....feet; length at top..... 600.....feet; thickness at bottom..... 26.....feet; thickness at top..... 16.....feet; slope of front (water) face..... 3 to 1.....; slope of back face..... 1 to 1.....; material used in construction..... earth, stone & steel piling.....
- (b) Reservoir; Capacity when filled..... 1568.....acre feet. Surface area at highwater mark..... 329.2.....acres.

DEPTH AT OUTLET—FEET	SURFACE AREA AT EACH.....FEET OF DEPTH AT OUTLET—ACRES	CAPACITY AT E-FOOT

- (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
AtMile.....	feet	feet	feet	feet
AtMile.....	feet	feet	feet	feet
AtMile.....	feet	feet	feet	feet
AtMile.....	feet	feet	feet	feet
AtMile.....	feet	feet	feet	feet

(Give dimensions where reductions in size are made.)

10. Time required for completion of work.....5.....years.
11. Time required for complete application of water to the proposed beneficial use.....9.....years.
12. Choice of newspaper for publication of notice of intention to appropriate.....Redfield Press.....

STATE OF SOUTH DAKOTA,

County of Hughes } ss.

I F. W. Marmon, being first duly sworn

on my oath depose and say: That my relation to the above described undertaking is that of

City Auditor, that I have read the above and
(owner, manager, engineer.)

for-going statement, and 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 F. W. Marmon

Subscribed and sworn to before me this.....6th.....day of.....March....., 1910

N. B. Savage
Notary Public (or other qualified officer.)

Remarks by State Engineer:

STATE OF SOUTH DAKOTA,

County of Hughes } ss.

Pierre, South Dakota, April 26, 1940

This is to certify that the foregoing application was received at this office at 1:00 o'clock P. m. upon the 6th day of March 1940 and that after examination it was found to conform to the Water Laws of South Dakota and a "Notice of Intention" was advertised as required by law and the matter was taken up by the State Engineer at his office at Pierre on April 19, 1940, and no objections to the appropriation were made or received.

Dean W. Loucks

State Engineer.

Number of permit 21-3

Date of first receipt of application 1:00 P. M. March 6, 1940

Date of return to applicant for correction 10

Date of receipt of corrected application 10

Date from which applicant may claim right 1:00 P. M. March 6, 1940

Approved April 26, 1940, Recorded in Book 2 Page 470-471

This is to certify that I have examined the foregoing application for a permit to appropriate water of the state of South Dakota, and I 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 October 26, 1942

2nd. The whole of said work is to be completed on or before April 26, 1945

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is April 26, 1949

4th. The water appropriated shall be used for the purpose of Storage for recreation, fire protection, public water supply, and irrigation

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 10 cubic feet of water per second of time; 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 and beneficially applied for irrigation on or before April 26, 1949; said water to be used during the following described annual periods:

January 31st to December 31st.

Witness my hand this 26th day of April, 1940.

*Water License
Issued 2-4-49*

Dean W. Loucks

State Engineer.

Permit No. 21-3Water Division No. 3 James River Water District**Certificate of Construction of Works.**No. 1

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That the CITY OF REDFIELDof Redfield, County of Spink, and State ofSouth Dakota, the holder... of Permit No. 21-3, issued upon ApplicationNo. 21-3, bearing date of priority of March 6, 1940, authorizing the ~~diversion~~ ^{storage} of1568 ~~acre~~ ^{acre-feet} of the waters of Turtle RiverCounty of Spink, State of South Dakota, ~~by~~ ^{by means of a dam}
located 1570 feet S. 70°W. of the N.E. Cor. of Sec. 9, Twp. 116N, Range 64Wfor Municipal (including park irrigation)

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 adequate for divert-

ing and ~~providing~~ ^{storing at} 1568 acre-feet to the place of intended use.~~diversion~~ of water, and that the lands proposed to be irrigated by the use of said water are described as follow

to-wit:

See Water Right 23-3Witness my hand this 4th day of February A. D. 1940

DEAN W. LOUCKS, State Engineer of South Dakota.

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 21-3

WHEREAS, On the 6th day of March A. D. 1940

CITY OF REDFIELD

of Redfield County of Spink and State of

South Dakota duly made application (No. 21-3) to me for a permit to ~~use~~ store

1568 acre-feet ~~1568 acre-feet~~ of the waters of Turtle River

County of Spink State of South Dakota, for Municipal

purposes; and

WHEREAS, On the 25th day of April A. D. 1940

Permit No. 21-3 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 26th day of

April A. D. 1945 and for the application to beneficial use of said

water on or before the 26th day of April A. D. 1949

and,

WHEREAS, On the 1st day of February A. D. 1949

the holder of said permit duly made proof of the completion of adequate works for the ~~diversion~~ storage of 1568

acre ~~1568 acre~~ feet per second of said waters, as evidenced by my Certificate No. 1

dated February 4, 1949 confirming the completion of works of sufficient capacity for

diverting and ~~conveying~~ storing at the place of intended use 1568 acre-feet ~~1568 acre-feet~~ of water

with date of priority of March 6, 1940 and,

WHEREAS, On the 1st day of February A. D. 1949

proof was duly made of the ~~application~~ storage for beneficial use of 1568 acre-feet ~~1568 acre-feet~~ of

said water;

NOW, THEREFORE By virtue of the authority vested in me by the laws of the State of South Dakota, I hereby grant and confirm to the CITY OF REDFIELD of Redfield, S. Dak. the holder and owner of said permit No. 21-3 a water right, dating from March 6, 1940 annual 1568 acre-feet to the use of

~~of the waters of~~ of the waters of Turtle River in the County of Spink and State of South Dakota, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be ~~divided~~ impounded by a dam with spillway protection located 1570 feet

~~and contained in and upon~~ S. 70⁰⁰W. of the N.E. Cor. of Sec. 9, Twp. 116 N., Range 64W.

for the purpose of storage for municipal use

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 the seal of my office at Pierre, South Dakota, this 4th day of February A. D. Nineteen Hundred and Forty-nine

DEAN W. LOUCKS, State Engineer.

Location No.

Water Division No. 21

3

Water District.

Proof of Application of Water to Beneficial Use

Petition of Holder

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

Ans. C.G. Hopkins, Mayor, Redfield, South Dakota

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

Ans. City of Redfield, Redfield, S.D.

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

Ans. March 6, 1940 - April 26, 1940

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

Ans. Lake Redfield - 1570 feet South 70* 00' west of the Northeast corner of Section 9-116-64

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

Ans. Earth dam 600 feet long 22 feet high, 125 foot concrete spillway. water can be diverted through spillway to supply 22-3 and 23-3 as needed. Completed in 1936 and new spillway built in 1948 by State Game and Fish department.

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. Water is stored for use, and diverted through spillway to supply 22-3 and 23-3 as needed.

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

Ans.

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

Ans. Amount in storage

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. Water is diverted through spillway as needed to supply
22-3 and 23-3 especially during summer months.

(Sig. )

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 Redfield, County of Spink
State of South Dakota, on this 1st day of February A. D. 1919

Witnesses.



City Auditor, Redfield, S.D.

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 second feet	
Source	
County	
Purpose	
Place of use	
Date of recording	
Received and filed	

Permit No. 21-3

Water Division No. Water District

Certificate of Examination of Works**Report of Examining Engineer**

To the State Engineer, Pierre, South Dakota:

Dear Sir: I hereby certify that in accordance with your letter of authorization dated December 3
 1948, I have this day made a thorough examination of the diversion works constructed by
City of Redfield
Spink County, South Dakota, holder of permit No. 21-3, issued
 upon application No., bearing date of priority of March 6, 1940, authorizing the
 diversion of 1568 ~~XXXX~~ ^{Acre} feet of the waters of Turtle Creek for Storage
 purposes. I have to report on the condition of the same as follows:

The diversion works comprise: Earth dam and concrete spillwayand the system is in the following condition: Good

The point of diversion is located 1570 feet South 70 degrees west of the Northeast
corner of Section 9-116-64

The works are capable of diverting and conveying to the place of use 1568 ~~XXXX~~ ^{acre} feet of water,
 which is to be used for storage

The legal sub-divisions to be irrigated are:

comprising a total of acres of land.

The domestic use intended comprises

The utilization for power, mining, or other beneficial uses comprises:

In witness my hand, this 1st day of February

Arthur J. Kramer
 Examining Engineer

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA }
 County of Spink } ss.
Chas. M. C. Woodland being duly
 sworn, deposes and says the annexed printed copy of Notice
 of Intention to Appropriate Water was taken from the
Redfield Press a newspaper which
 during the whole time of publication of said notice herein-
 after stated, has been and is printed and published in the
City of Redfield, County of
Spink and State of South Dakota;
 that the said notice was published in said newspaper on the
 following dates:

March 14, 1940

March 21, 1940

March 28, 1940

April 4, 1940

in each and every issue of the full number thereof, the first
 publication being made on the 14 day of March
1940 and the last publication on the 4 day of
April 1940, upon which days or times
 of publication aforesaid the newspaper was regularly pub-
 lished, and that during the whole time of said publication he
 was The manager, the printer and publisher of
 the said newspaper.

Chas. M. C. Woodland

Subscribed and sworn to before me this 13 day of April A. D. 1940

Notary Public Spink County, S. D.

APPROPRIATION OF WATER.

Office of the State Engineer, ..
 Pierre, S. Dak., March 11, 1940.
 Notice is hereby given that The City of
 Redfield, Spink County, S. Dak. has made
 an application in accordance with the pro-
 visions of the Irrigation laws of South
 Dakota for a permit to appropriate for bene-
 ficial use 1505 Acre-feet per annum for
 storage in Lake Redfield and for fire pro-
 tection and 0.12 cu. ft. per sec. for Park
 Irrigation, the point of diversion for storage
 being located 1570 feet South 79 Degrees
 west of the N. E. Corner of Sec. 9, Twp.
 116N., Range 64 W.; The point of diversion
 for fire protection and public water supply
 being located 440 feet South 40 Degrees
 West of the N. E. Corner of Sec. 9, Twp.
 116N., Range 64 W. and the point of
 diversion for Park Irrigation being located
 1270 feet South 37 degrees, 45 minutes east
 of N. W. Corner of Sec. 10, Twp. 116N.
 Range 64 W. Said water to be used for
 the purpose of providing Recreation, fire
 protection and a public water supply and
 irrigation.

This application will be taken up by the
 State Engineer at his office at Pierre for
 consideration upon the 10th day of April
 1940, at 11:00 A. M. All persons who
 believe that their prior rights would be
 injuriously affected, or that the allowance
 of the permit would be detrimental to the
 public welfare shall file such protest with
 the State Engineer in writing prior to the
 above date and may appear on the day and
 place above mentioned in person for the
 purpose of discussing further, the infor-
 mation presented.

Appropriate action will be taken by the
 State Engineer after suitable time has
 elapsed for the consideration of any and
 all information presented.

DEAN W. LOUCKS,

State Engineer.

(March 14-21-28; April 4)

Notice of Intention to Appropriate Water.
 No. 21-3, 22-3, 23-3.

RECEIVED
 APR 15 1940

OFFICE OF STATE ENGINEER
 PIERRE, S. DAK.

STATE OF SOUTH DAKOTA

Office of

STATE ENGINEER

Pierre

March 6 1940

City of RedfieldRedfield,South DakotaGentlemen:

You are hereby notified that your Water Right application Nos. (21-3)(22-3)(23-3) for a permit to appropriate water from Turtle Creek for storage in Redfield Lake, for fire protection & Park Irrigation have been examined and found to comply with the irrigation law of South Dakota and the regulations thereunder. You are now instructed to publish a notice of your intentions in relation to this proposed appropriation once a week for four consecutive weeks in some paper of general circulation in the locality of the stream system in which the works are to be located, in accordance with Section 61.0124 of the Irrigation Code.

A notice is enclosed herewith which you are directed to publish in the Redfield Press printed at Redfield, South Dakota, in compliance with the law, you making the necessary arrangements with the publisher as indicated in the letter to him, also enclosed.

The proof of publication, also sent herewith, must be filed in this office on or before May 10, 1940, this date being sixty days from the date of these instructions. In case of failure to file satisfactory proof within the time stated, your application will thereafter be treated as an original application filed on the date of the receipt of proof of publication in proper form. It is to your interest, therefore, to see that the proof is promptly returned.

Very truly yours,

Dean C. Houcke,
State Engineer.

TURTLE CREEK

August 1977

- 18-2 REDFIELD STATE HOSPITAL - PRIORITY 9-4-1939 FOR 400 CFS TO IRRIGATE 133 ACRES. HAVE SMALL DAM BELOW CITY'S THREE DAMS, BUT ABOVE SEWAGE TREATMENT PLANT. LICENSED (GOOD SUMMARY OF RESPECTIVE LOCATION OF DAMS IN CITY PROTEST TO THIS APPL.)
- 20-3 GREENLAWN CEMETARY ASS'N. PRIORITY 5-16-1940 FOR 10015 CFS TO WATER 13.3 ACRES. NO STORAGE
- 21-3 CITY OF REDFIELD - PRIORITY 3-6-1940 FOR STORAGE IN LAKE DAM (BIG DAM FOR LAKE REDFIELD) 1568 ACRE FEET ANNUALLY - LICENSED. INDICATES FOR MUNICIPAL USE -
- 22-3 CITY OF REDFIELD - PRIORITY 3-6-1940 - (FIRE DAM - FOR SAME AMOUNT AS LAKE DAM - SEPARATE MAINS FOR FIRE PROTECTION - LICENSED - BELOW LAKE DAM
- 23-3 CITY OF REDFIELD - PRIORITY 3-6-1940 - (DOBRAZ DAM - .42 CFS TO IRRIGATE 42 ACRES OF PARK. BELOW FIRE DAM - LICENSED.
- 84-3 MRS EDNA SCHMIDT - PRIORITY 12-24-1952 (ABOVE LAKE DAM - PUMPING FROM REDFIELD LAKE 1.5 CFS - 150.5 AC. IN S², SECTION 7, T116N, R64W - SEE REMARKS BY STATE ENGR SHEET IN FOLDER
- 87-3 CLARENCE BACKER - PRIORITY 1-8-1953 LAKE REDFIELD FOR 1.77 TO IRRIGATE 126 ACRES IN E², SECTION 9, T116N, R64W
- 96-3 DELVIN C. DEMMERS (FORMERLY JOSEPH ALBRECHT) PRIORITY 2-11-1953 REMARKS BY STATE ENGR IN APPLICATION. FROM LAKE REDFIELD FOR 2.0 CFS TO IRRIGATE 140 ACRES IN SW⁴, SEC. 5, T116N, R64W
- 408-3 STUART BENNING - PRIORITY 2-11-1957 FOR 1.35 TO IRRIGATE 95 ACRES THINK THIS IS BELOW CITY SEWAGE DISPOSAL PLANT

662-3 WESLEY BOORE . PRIORITY 10-6-59 2.88 CFS TO
IRRIGATE 202 ACRES APPROX 10 MILES ABOVE
REDFIELD DAM - LETTER IN FOLDER REGARDING BUILDING
UP DAM - LICENSED.

1730-3 MARK J. CLEBERG PRIORITY 5-17-70 FOR 1.00 CFS TO
IRRIGATE 70 ACRES ABOVE BOORE APPL. - DON'T
KNOW IF THIS HAS BEEN USED.

87-3 Clarence Barker

96-3 Delvin C. Demmire
Former owner of land Josephine
claims a vested right for
2.0 c & 3 which take priority over
city use - W.R. 96-3 does not
affect the ~~the~~ vested right
claimed for this property &
the vested right ~~is~~ ~~is not~~ claimed
& has never been proved
or established as a ~~prior~~ claim
prior to ~~the~~ 21-3

96-3 was approved in
addition to any vested rights
claimed

The State Engineer had no authority
to grant a priority before the
time an application was received.
The State Engineer had authority
to recognize a vested right,
but the priority could not be
set prior to receipt of the
appl.

The W.R.C. now has this authority
if any vested right claim ~~is~~
properly documented the W.R.C.
can recognize the vested right
& the original priority date.

21-3

municipal use
storage for recreation, fire protection,
public water supply & irrigation

Redfield lake

~~22-3~~

could open
up dam
outlets
for maintenance,
but would
probably need
to be done
in early spring

63-3 Mrs. F. Ina Schmidt

permit was granted with understanding
that the City of Redfield Right is
prior & that the Schmidt Right
can in no way affect the City
Right.

if city
is not
going to
use water,
it can not
be released
for downstream
creek & irrigation,
but water must
be left for
up stream
irrigation, great
recreational water
must be kept,
if city did not
want water
for recreation,
fire protection or
other public use,
it could

The City Rights are prior to the
Schmidt right & the test would be
whether Schmidt is using water
that would otherwise be used
under the City Right.

The fact that the water may be
below the spillway level is not
a measure of the availability of
water for the City or irrigation
by Schmidt. Since the reservoir
has been filled each year the
Redfield water right has been sacrificed
& other Irrigators Schmidt, — ,
& can pump water when
water is flowing into the Lake

662-3 Wesley Booye
3.2c5s

Not authorized a dam

This W. R. is subject to
Redfield W. R. & other downstream
water rights

We understand that there is
a dam to the north on
land ~~which was~~ owned by Kenny
Boub ~~that~~ which has been
there several years.



Department of Natural Resource Development

WATER RIGHTS COMMISSION

Joe Foss Building, Pierre, South Dakota 57501

Phone 605/224-3151

September 19, 1977

Mr. Galen Gillette
28 E. 7th Ave.
Redfield, SD 57469

Re: Water Right No. 21-3

Dear Mr. Gillette:

Mr. Robert A. Schuurmans has asked that we write to you concerning permits on Turtle Creek and Redfield Lake. The City of Redfield has a Water Right No. 21-3 with a priority date of March 6, 1940 for Redfield Lake. The water right includes storage for recreational purposes, fire protection, public water supply and park irrigation. The main use of the lake at this time is probably for recreational purposes.

Three junior priority water rights have been issued to take water from the lake and Turtle Creek, No. 63-3, Mrs. Edna Schmidt, No. 87-3, Clarence Backer, and No. 96-3, Delvin C. Demers. These three permits were granted with the understanding that the City of Redfield water right is the senior right and that the three junior water rights can not affect the city water right. No. 84-3 has a priority date of December 24, 1952; 87-3 has a priority of January 8, 1953; and No. 96-3 has a priority of February 11, 1953.

The test as to whether the three irrigation permits may be pumped or not is whether the water diverted through the three projects is using water that would otherwise be used under the City of Redfield water right. The fact that the water may be below the spillway level on Redfield Lake is not a measure of the availability of water for the city or for these three permits. Once the reservoir has been filled each year, the Redfield water right has been satisfied and these three permits can then pump water when water is flowing into the lake.

The City of Redfield can not release water from their dam just to clean out the creek bed or to flow downstream unless the upstream water rights have been satisfied.

Permit No. 96-3, when approved was approved in addition to any vested rights which were claimed. A vested right with a priority date senior to the Redfield right was claimed by the applicant when the application was considered by the State Engineer. At the time the application was submitted, the State Engineer did not have the authority to grant a priority earlier than the time that an application was received. The State Engineer did have authority to recognize a vested right claim, but the priority could not be set before the receipt of the application. The State Water Rights Commission

Mr. Vernon Boozelle
September 19, 1977
Page Two

now (since 1955) has this authority. If any vested right claim is properly documented, the Water Rights Commission can recognize a vested right and the original priority date. Water Right No. 96-3 does not reflect the vested right claim for the same property. The vested right has been claimed in the past by the land owner, but the Right has never been proven nor established as a claim with a priority senior to the Redfield water right 21-3.

In regard to the Wesley Boozé permit No. 662-3, this permit does not authorize construction of a dam. The Water Right is subject to downstream domestic use which would normally be livestock use, the Redfield water right and other downstream senior water rights. It is our understanding that there is a dam located to the north of the Boozé land owned by Kenny Boub which has been there several years, based upon correspondence in our files dated 1965.

We do not know at this time the situation on the dam mentioned above. Mr. Boozé could pump water as long as the City of Redfield's water right to Redfield Lake has been satisfied with one filling and providing the downstream senior water right holders have been satisfied as well as water for any domestic use.

If you have additional information on this dam, we would appreciate being advised of it.

Very truly yours,

JOHN HATCH, Chief Engineer
Water rights Commission

JH:plh

cc: Robert A. Schuurmans
723 W. 1st Street
Redfield, SD 57469

