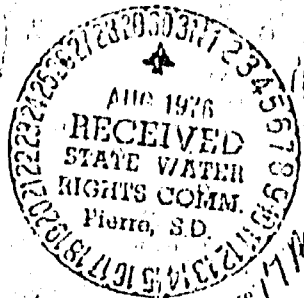


No. 3009-3

Map No. 2336-3 Water Division No. 3 JAMES RIVER

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



**APPLICATION FOR PERMIT**  
**ABERDEEN MUNICIPAL WATER SUPPLY**

**To appropriate Water within the State of South Dakota**

(NOTE - Draw a line through items not applicable)

1. Name of Applicant City of Aberdeen  
 Postoffice address P. O. 1299 Aberdeen State South Dakota  
 If a corporation show date and place of incorporation \_\_\_\_\_  
 2. Method of accomplishing work (contract, employment of others, or by direct labor) Existing  
 3. Name of diversion work Aberdeen Municipal Water Supply  
 4. Amount of water claimed (cubic feet per second) 14,536 A.F. (17 cfs) See Attached Exhibit A  
 5. Source of water supply Elm River, Maple River, Ground Water, Willow Creek  
 6. Location of point of diversion See Attached Exhibit C  
 \_\_\_\_\_ County Brown

7. Annual period or periods during which water is to be used Continuous  
 8. Use to be made of water, (irrigation, industrial, municipal, commercial, recreation, etc.) Municipal Domestic  
 9. For irrigation use, \_\_\_\_\_ Total number of acres to be irrigated \_\_\_\_\_

List below each forty acre subdivision, or lot, or fraction thereof and show number of acres to be irrigated in each.

Land Description	No. Acres Irr.	Land Description	No. Acres Irr.

Attach sheet if more space is needed

10. Time required to complete construction of water supply system Existing years Additional time required to complete application of water to the proposed beneficial use \_\_\_\_\_ years  
 11. Choice of newspaper for Notice of Intent to appropriate Water publication Aberdeen American News  
 12. Principal Features of the Proposed Water Supply System.

A. Works proposed to divert water from its natural source.

Elm Lake Dam; Willow Lake Dam; Elm River Dams ( );  
 Pumping Station on Elm River; Pumping Station on abandoned gravel pit.

B. Works proposed to transport water to place of use.

Elm River

C. Works proposed to apply water to beneficial use.

City Water Purification Plant and Intake Structure  
 and City Water Distribution System

Estimated Total Cost \$ Existing

Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. 1. Attach map. (See instructions concerning preparation.)

STATE OF SOUTH DAKOTA )

County of Brown )

I, J. C. S. ... the applicant certify that I have read the foregoing application and have examined the attached map and that the matter therein stated are true and that I intend, and am able to complete the necessary construction.

Signed [Signature]

Subscribed and sworn to before me this 19 day of Aug 1976

[Signature]  
 Notary Public (or other qualified officer)

WATER RIGHT APPLICATION APPROVAL

The Water Rights Commission hereby approves Water Right Application No 3009-3

CITY OF ABERDEEN

Box 1299, ABERDEEN,

(Applicant)

(Post Office Address)

SOUTH DAKOTA 57401

(State)

With the following modifications:

This Permit No. 3009-3 consolidates several older Permits held by the City of Aberdeen. The applicable portions of Permits No. 15-3, 500-3, 2102-3 and 2551-3 have been incorporated into this Permit No. 3009-3, and Permit No. 15-3, No. 500-3, No. 2102-3 and No. 2551-3 are cancelled. Approval of this Permit authorizes storage of 20,236 acre feet of water annually in Elm Lake Dam, Willow Creek Dam and the in-channel dams in the Elm River.

1. Priority dates that apply to this Permit No. 3009-3.

December 23, 1933 (Permit No. 15-3) this date covers direct diversion of 12.0 cfs from the Elm River and also the in-channel dams and attendant storage of 936 acre feet of Elm River Dams #1, #2, and #4.

1937 (recognized as a "Vested Right" under this Permit) covers Elm Lake Dam and storage of 15,200 acre feet. The City has available the top 12 feet above the spillway crest amounting to 9,500 acre feet. below

October 7, 1957 (Permit No. 500-3) covers storage of 4,100 acre feet of water in Willow Creek Dam.

September 11, 1974 (Permit No. 2102-3) covers diversion of 18.56 cfs of flood flows of the Maple River for storage in Willow Creek Dam.

February 20, 1976 (Permit No. 2551-3) covers diversion of 5.0 cfs of ground water from the Eystone Gravel Pit.

The Water Rights Commission hereby grants and issues this Water Right Permit No. 3009-3 authorizing the construction of the water use system and the putting of water to beneficial use as stated in the Application and as modified in the Water Right Application 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 work above specified is to be completed on or before
3. The whole of said work is to be completed on or before 19 \_\_\_\_\_
4. The limit of time from onset of beneficial use of water appropriated in accordance herewith is COMPLETED 19 \_\_\_\_\_
5. The water appropriated shall be used for the purpose of MUNICIPAL USE

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 injuriously affected by this appropriation.

7. The amount of the appropriation herein granted shall not exceed 17.0 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 for the existing proposed appropriation must be limited to one cubic foot per second per year and be limited to not more than 170 acre feet of water per acre of land for which water

actually and beneficially applied for irrigation on or before AUGUST 30, 1976; said water to be used during the following described annual period: CONTINUOUSLY

Witness my hand this 24th day of October 19 79

WATER RIGHTS COMMISSION

By:

*John F. [Signature]*

Chief Engineer, Executive Officer

Certificate of Construction Issued \_\_\_\_\_ 19 \_\_\_\_\_

Water License Issued \_\_\_\_\_ 19 \_\_\_\_\_

WATER RIGHT APPLICATION APPROVAL

The Water Rights Commission hereby approves Water Right Application No. 3009-3

CITY OF ABERDEEN  
(Applicant)

Box 1299, ABERDEEN,  
(Post Office Address)

SOUTH DAKOTA 57401  
(State)

With the following modifications:

Date of first receipt of application \_\_\_\_\_ AUGUST 30 19 76

Date of return to applicant for correction, amendments or changes required \_\_\_\_\_ 19 \_\_\_\_\_

Date of receipt of corrected application \_\_\_\_\_ 19 \_\_\_\_\_

Approved SEPTEMBER 30 19 76 Recorded in Book 21 Page 63

WATER RIGHT PERMIT NO. 3009-3

The Water Rights Commission hereby grants and issues this Water Right Permit No. 3009-3 authorizing the construction of the water use system and the putting of water to beneficial use as stated in the Application and as modified in the Water Right Application 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 work above specified 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 COMPLETED \_\_\_\_\_ 19 \_\_\_\_\_
5. The water appropriated shall be used for the purpose of MUNICIPAL USE

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 injuriously affected by this appropriation.

7. The amount of the appropriation herein granted shall not exceed 17.0 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 use served, ~~and if for the irrigation purpose, said appropriation must be limited to not more than \_\_\_\_\_ cubic feet per acre per year and be limited to not more than \_\_\_\_\_ inches (1/70) of an inch in total of water per acre of irrigated land to which water~~

actually and beneficially applied for irrigation on or before AUGUST 30 19 76; said water to be used during the following described annual period: CONTINUOUSLY

Witness my hand this 24th day of October 19 79

WATER RIGHTS COMMISSION

By: John Ketch  
Chief Engineer, Executive Officer

Certificate of Construction Issued \_\_\_\_\_ 19 \_\_\_\_\_

Water License Issued \_\_\_\_\_ 19 \_\_\_\_\_

NOTE: This Form is supplemental to Form 2, and is to be used when an affidavit pertaining to construction and water use already completed, is needed.

AFFIDAVIT OF CONSTRUCTION OF WATER USE SYSTEM AND APPLICATION OF WATER TO BENEFICIAL USE

Name of Applicant (Same as Form 2) City of Aberdeen

Post Office Address: P. O. 1299 Aberdeen, State South Dakota

If a Corporation show date and plate of incorporation \_\_\_\_\_

13. Notice of Appropriation (If available)

Date of Posting \_\_\_\_\_ Date of Recording \_\_\_\_\_

Recording Date \_\_\_\_\_

14. Date of start of construction of water supply system Existing - See Exhibit A

15. Date that water was first applied to beneficial use See Exhibit A

16. Name of owner of original water supply system City of Aberdeen et. al., See Exhibit A

17. Amount of water originally applied to beneficial use 2 c. f. s.

18. Present Use of Water

Amount of water now being used 17 c. f. s.

Date that this amount of water was first used March 1976

19. Chronological History of Water Use - See Exhibit B

Attach to this Form 2B. any copies of notices, postings, filings, publications, affidavits, or other records that apply. You may also attach any written statement by you, or by others, that you deem pertinent.

STATE OF SOUTH DAKOTA )

County of Brown ) ss.

I, Jeff Salum, the applicant, certify that I have read the foregoing and that the matters therein stated are true

Signed [Signature]

Subscribed and sworn to before me this 37<sup>th</sup> day of July, 1976.

[Signature]  
(Notary Public or other qualified Officer)

I, the undersigned, do hereby certify that I know about the water use system described above that I have read the foregoing and that the matters therein stated are true.

ABERDEEN MUNICIPAL WATER SUPPLY

EXHIBIT A  
SYSTEM DESCRIPTION

INTRODUCTION

The City of Aberdeen in attempting to provide a sufficient, reliable, raw water supply for its population, have obtained various water right permits since 1933, and have made several constructions since that time to impound or procure water provided for in those permits. The purpose of this application is to consolidate previous applications into one single modern permit for ease of identification.

The attached tabulated shows the elements existing to date comprising the Water Supply System for the City of Aberdeen.

ABERDEEN MUNICIPAL WATER SUPPLY

Form 2A - Wells, Dugouts or Water Storage Dams (Supplement to form 2)

12. Principal Features of the Proposed Water Supply System (continued.)

D. Well Information or Estimates

(1) Drill Hole, Diameter \_\_\_\_\_, Depth \_\_\_\_\_

(2) Casing, Type \_\_\_\_\_, Diameter \_\_\_\_\_, Thickness \_\_\_\_\_  
(wood, concrete, steel, etc)

(3) Perforated Screen.

Type \_\_\_\_\_, Diameter \_\_\_\_\_, Length \_\_\_\_\_

(4) Gravel Pack, Thickness \_\_\_\_\_, Length of gravel pack \_\_\_\_\_

E. Dugout Information or Estimates.

(1) Surface dimensions \_\_\_\_\_, Depth \_\_\_\_\_

F. Fill out for Either a Well or a Dugout.

(1) Water Bearing Materials. (Please attach a copy to test well log if available.)

Character of Water bearing materials \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Depth to top of water bearing material \_\_\_\_\_

Depth to bottom of water bearing material \_\_\_\_\_

Thickness of water bearing material \_\_\_\_\_

Depth to water (ground surface to water level) \_\_\_\_\_

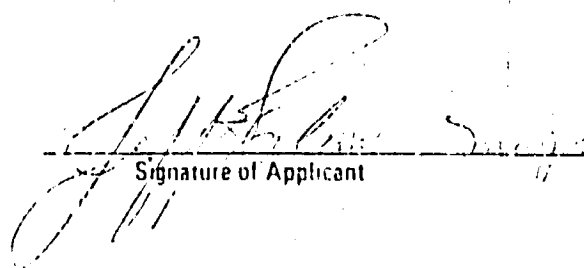
(2) Distance to nearest existing household or livestock watering wells.

On same owner's property \_\_\_\_\_ rds. On property owned by others \_\_\_\_\_ rds.

G. Water Storage Dams.

If the proposed water use system contains one or more water storage dams, please show in the space below, the height, maximum water depth, surface area and storage capacity of each storage dam. The location of each water storage dam should be shown on the water right map.

See Attached Exhibits A and C

  
\_\_\_\_\_  
Signature of Applicant

Form 2A - Wells, Dugouts or Water Storage Dams (Supplement to form 2)

12. Principal Features of the Proposed Water Supply System (continued.)

D. Well Information or Estimates

- (1) Drill Hole, Diameter \_\_\_\_\_, Depth \_\_\_\_\_
- (2) Casing, Type \_\_\_\_\_ Diameter \_\_\_\_\_ Thickness \_\_\_\_\_  
(wood, concrete, steel, etc)
- (3) Perforated Screen,  
Type \_\_\_\_\_, Diameter \_\_\_\_\_, Length \_\_\_\_\_
- (4) Gravel Pack, Thickness: \_\_\_\_\_, Length of gravel pack \_\_\_\_\_

E. Dugout Information or Estimates

- (1) Surface dimensions \_\_\_\_\_, Depth \_\_\_\_\_

F. Fill out for Either a Well or a Dugout.

- (1) Water Bearing Materials. (Please attach a copy to test well log if available.)  
Character of Water bearing materials \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Depth to top of water bearing material \_\_\_\_\_

Depth to bottom of water bearing material \_\_\_\_\_

Thickness of water bearing material \_\_\_\_\_

Depth to water (ground surface to water level) \_\_\_\_\_

- (2) Distance to nearest existing household or livestock watering wells.

On same owner's property \_\_\_\_\_ rds. On property owned by others \_\_\_\_\_ rds.

G. Water Storage Dams

If the proposed water use system contains one or more water storage dams, please show in the space below, the height, maximum water depth, surface area and storage capacity of each storage dam. The location of each water storage dam should be shown on the water right map.

Elm Lake Dam

Height - 50'

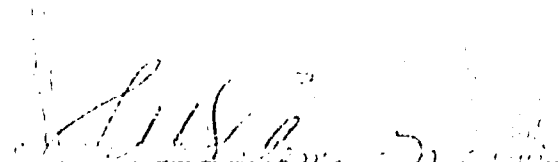
\* Maximum Water Depth - 34'

\* Surface Area - 1520

\* Storage Capacity - 15,200 A.F.

\* Available to City 9,500 A.F.

\* Relative to Spillway

  
 \_\_\_\_\_  
 Signature of Applicant



ABERDEEN MUNICIPAL WATER SUPPLY

EXHIBIT A

WORKS	LOCATION	PRIORITY DATE	PHYSICAL FEATURES				COMMENTS
			Height Ft.	Max. Depth Ft.	Surface Area Ft.	Storage Capacity Ft.	
Elm Lake Dam	S.E. 1/4 Sec. 31-128-65	Used since 1937; Vested Rights applied for 1976	50	34	1520	15,200 total - (9,500 avail to City in top 12')	built jointly by Aberdeen, Brown County, and S.D. Dept. Game, Fish and Parks. City of Aberdeen utilizes not more than top 12', measured from the spillway
Willow Lake Dam	Center Sec. 19-127-64	October 7, 1957 W.L. 500-3	40	27	400	4100	Constructed by City of Aberdeen in 1935. Went out in 1943. Repaired in 1957. Prime Source of water supply.
Elm River Dam #1	S.W. 1/4 Sec. 15-124-63	December 23, 1933 W.P. # 15-3 W.L. # 15-3	9	9	18	181	Authorized two dams and water purification plant. Diversion Rate 12 cfs. This dam is considered a part of treatment plant and constitutes intake suction pool for the plant.
Elm River Dam #2	S.W. 1/4 Sec. 4-124-63	December 23, 1933 W.P. # 15-3 W.L. # 15-3	12	12	52	522	One of two authorized dams for W.L. 15-3. Permit provided for 250 MG (767 A.F.) storage.
Elm River Dam #4 (Krusc)	N.E. 1/4 Sec. 4-125-64	December 23, 1933 W.P. # 15-3 W.L. # 15-3	9	9	23	233	One of two authorized dams for W.L. 15-3. Permit provided for 250 MG (767 A.F.) storage.
Maple River Diversion Project	N.W. 1/4 Sec. 20-126-64	September 11, 1974 W.P. # 2102-3	Pumping Station	N.A.	N.A.	N.A.	Pumping Station and Pump Control Pool Permit provides for diversion rate of 18.568 cfs. of Maple River Flood waters into Willow Lake Dam.
Eyesone Pit-Abandoned Gravel Pit	W. 500' S.E. 1/4 & N.E. 1/4 Sec. 6-124-63	March 1976 W.P. # 255-1-3	Dugout & Well	20-70	10	5 cfs	Abandoned gravel pit proposed as large diameter surface well. Diversion works to be irrigation pumps initially with permanent pump settings if to be used continuously. W.P. # 255-1-3 provides for 5 cfs.

## ABERDEEN MUNICIPAL WATER SUPPLY

### EXHIBIT B CHRONOLOGICAL HISTORY

During the initial settlement of Aberdeen, the community obtained its water from an adjacent slough. It soon became necessary to supplement this source and for a time water was hauled by railroad from the James River, 12 miles to the east. When water in the river ran low, the railroad company decided to attempt a well, and in 1882 water was struck at a depth of 920 feet below the surface in the underlying artesian basin of the Dakota Formation. This initial well produced water at a rate of 2000 gpm and a pressure of 180 psi. Initially, the Railroad shared this water with the town, but later the City sank its own well. Construction began in February, 1884. Water began to flow on May 23, when drilling reached a depth of 900 feet and discharged 2500 gpm at a pressure of 155 psi.

With an adequate quantity of water available, the community continued to develop and by 1930 had reached a population of 16,465. Throughout this period, the City continued to rely on the untreated water from the artesian Dakota aquifer for its water supply; however, over the years, consumers became increasingly dissatisfied with the ground water supply for a variety of reasons such as poor chemical quality, sand in the water, and a reduction in the quantity due to decreasing artesian pressure. Plans were formulated to switch to a softer, surface supply, and with the construction of the water treatment plant near Ordway, Elm River water was substituted in 1935. Aberdeen initially appropriated its new water supply from the Elm River, and obtained Water License No. 15-3 with a priority date of December 23, 1933 to divert 12.0 cubic feet per second (cfs) for domestic water supply and usual municipal uses.

Due to the wide fluctuation and intermittent nature of Elm River surface flows, it has been necessary to develop a system of reservoirs to store water during periods of relatively high runoff for later use when stream flows are less than Aberdeen's demands.

Four relatively small channel storage reservoirs were constructed on the Elm River in conjunction with the initial surface water development. These reservoirs originally provided a total storage capacity of 467 million gallons or 1,433 acre-feet. Since that time, Dams No. 3 and No. 4 were breached during the flood of 1952. Dam No. 4 has been reconstructed, however, the City agreed not to reinstall flash boards in order to prevent flooding of upstream farm land. As a result, its storage capacity has been reduced from 139 million gallons to 76 million gallons. Dam No. 3 has never been replaced.

All of the channel storage reservoirs are of similar construction, being of the low, full-length concrete weir type with provisions for flash boards. The structures are supported on piling with steel sheet piling along the upstream face and abutments to form a cut-off against underseepage. During periods of high runoff, the dams are entirely submerged and, on occasion, water will flow outside the abutment walls. Each dam has a valved drain line to permit the passage of stored water downstream. Dam No. 1 forms the suction pool for the low service pumps for the treatment plant.

Willow Creek Reservoir was originally constructed by the City as a Public Works Administration Project during the early 1930's. When completed in 1935, it impounded the runoff from 160 square miles. The reservoir was constructed, completed, and placed in operation during the extended dry period of the 1930's and, due to minimal runoff and the necessity to supply water to the City, was not filled until early in the summer of 1943. On December 24, 1943, the concrete side channel spillway failed, emptying the reservoir in 10 hours. The spillway was reconstructed in 1957 and the reservoir refilled in 1960. Since then, this reservoir has

operated satisfactorily and has been used in conjunction with the channel reservoirs as the primary operating storage for the City.

Aberdeen's Water Use Permit No. 500-3 dated October 7, 1957 provides for storage of 4,100 acre-feet in Willow Creek Reservoir. However, reports indicate an actual capacity of only 3,840 acre-feet or 1.250 million gallons.

A second large earthfill dam was constructed as a WPA project on the main stem of the Elm River during the 1936-1938 period. This dam, with Aberdeen, Brown County, and the State Department of Game, Fish and Parks as participants, impounds water from a drainage area of 309 square miles to form the reservoir known as Elm Lake. The reservoir has a total volume of 15,190 acre-feet, with the first 5,700 acre-feet up to elevation 1422 assigned as a permanent inactive pool. The upper 12 feet of depth, comprising 9,500 acre-feet of storage, is available to Aberdeen for water supply during "emergencies". This reservoir also was completed during the dry period of the late 1930's, and did not fill for several years.

Although these two reservoirs did yield some water to the City during these early years, stream flows and available storage were still deficient to meet demands and it was necessary to augment natural stream flows and reservoir storage to meet the water demands of the City. This was accomplished by pumping water from the Pickus and Eyestone gravel pits into the Elm River for transmission to the treatment plant. During the period from July 25, 1939 to April 1, 1940, 422 million gallons were pumped from the Pickus pit, and 100 million gallons from the Eyestone pit. Pumping was again required from January through March 1940, from August 1940 to March 1941, and in March 1942. The Eyestone pit has subsequently been acquired by the City and is retained as a standby emergency reserve.

During periods of sustained drought reservoir levels have been lowered to the point where the raw water supplies were inadequate to meet the communities needs. In 1974 the City applied for a permit to divert flood waters from the Elm and Maple Rivers to the Willow Lake by a river side pumping station and piping. The

City obtained Water Permit No. 2102-3 to divert 18,568 cfs with a priority date of September 11, 1974. Construction of the facility was begun in the fall of 1975 and basically completed in the spring of 1976 at a cost of \$250,000. Remaining to complete the facility is a low head dam to create a suction pool for the pumping station. When completed, the project will divert a portion of the normally lost flood flows from the river into storage behind Willow Dam. At full pumping capacity, it is estimated that the Willow could be filled from an empty condition.

In 1976, the City applied for and received a water permit to divert 5 cfs from its Eyestone Pit into the Elm River. Water Permit No. 2551-3 was issued in March of that year. The pit is an abandoned gravel pit of 15.2 acres of which approximately 10 acres is open water from 3-20 feet deep. In years past, the City has augmented its water supply with water pumped from the Eyestone Pit. Although undeveloped as a well, the pit contributed significantly in emergencies and its yield might be expected to increase with development and deepening. The pit is currently being held in reserve for extreme emergencies and will be pumped with conventional low head irrigation pumps when the need arises.

The above account completes the chronological uses of the existing sources of water supply for the City of Aberdeen.

FRANCIS E. BRINK

City Engineer

August 24, 1976

Permit No. 3009-3

Water Diversion No. 3 James River Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify That the City of Aberdeen

the holder \_\_\_\_\_ of

Permit No. 3009-3 issued upon Application No. 3009-3 bearing date of priority of Dec. 21, 1933, 1937;  
Oct. 7, 1957; Sept. 11, 1974

Feb. 20, 1976 authorizing the diversion of 17.0 cu. ft. per second of the waters of \_\_\_\_\_

Elm River, Maple River,  
Willow Creek, & groundwater County of Brown State of South Dakota at \_\_\_\_\_

points in the SW $\frac{1}{4}$ , Sec. 5, T124N, R63W; SE $\frac{1}{4}$ , Sec. 19, T126N, R64W; NW $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
Sec. 20, T126N, R64W; SE $\frac{1}{4}$ , Sec. 31, T128N, R65W and NE $\frac{1}{4}$ , SEC. 6, T124N, R63W

for municipal

purpose has \_\_\_\_\_ 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 found in satisfactory condition for diverting and conveying to the place of intended use 17.0 cu. ft. per second of water

Date October 10, 1979

John Hatch  
JOHN HATCH, Chief Engineer  
Water Rights, WID

WATER LICENSE NO. 3009-3

(1) WHEREAS, On the 30th day of August A. D. 1976 the City of Aberdeen

made Water Right Application No. 3009-3 for a permit to use 17.0 cubic feet per second of the waters of Elm River, Maple River, Willow Creek and groundwater County of Brown State of South Dakota, for municipal purposes; and

(2) WHEREAS, On the 10th day of October A. D. 1979

Permit No. 3000-3 with a date of priority of Dec. 23, 1933, 1937, Oct. 7, 1957, Sept. 11, 1974 & Feb. 20, 1976 was issued to said applicant for the diversion of said water, indicating the completion of construction of the water supply system therein described and the application to beneficial use of said water on or before the

Permit No. 3009-3 was issued consolidating several old permits held by the City of Aberdeen, and recognizing the storage in Elm River Dam under the "vested right" portion of South Dakota statutes. Priorities and other pertinent portions of Permits No. 15-3, No. 500-3, No. 2102-3 and No. 2551-3 have been incorporated into Permit No. 3009-3, with the resultant cancellation of Permits No. 15-3, No. 500-3, No. 2102-3 and No. 2551-3.

and:

(3) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to completion of the construction of the water supply system and is entitled to divert 17.0 cubic feet per second of water for beneficial use and.

(4) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to the application of water to beneficial use of the following extent.

water is diverted to and through the City's water distribution system for the purpose of municipal use.

(5) 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 City of Aberdeen

xx

the holder \_\_\_\_\_ and owner \_\_\_\_\_ of said permit No. 3009-3 a water right, dating from Dec. 23, 1933; 1937; Oct. 7, 1957; Sept. 11, 1974 and Feb. 20, 1976 to use of 17.6 cubic feet per second of the waters of Elm River, Maple River, Willow Creek and groundwater

in the County of BROWN and State of South Dakota, or so much thereof as may be necessary, for the purposes hereinbelow mentioned, to be diverted at from the Elm River in SW $\frac{1}{4}$ , Section 5, T124N, R63W from Willow Creek Dam in SE $\frac{1}{4}$ , Sec. 19, T126N, R64W; from Maple River in NW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 20, T124N, R64W, from Elm River Dam in the SE $\frac{1}{4}$ , Sec. 31, T128N, R65W, and from groundwater in the NE $\frac{1}{4}$ , Sec. 6, T124N, R63W

and conduct<sup>ed</sup> ~~xxxxxxx~~ to and through the City's water distribution system.

for the purpose of municipal use

Subject to any limitations listed in Water Right Permit No. 3009-3 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota this 10th day of October D. Nineteen Hundred and Seventy-Nine

Board of Water Management

By: John Hatch  
Chief Engineer JOHN HATCH

# Public Voice By Our Readers

Put the blame  
where it belongs

TO THE EDITOR — It appears that people in this city are afraid we are running out of water. Consequently, they're frantically trying to find shoulders to put the blame on. Well, how about putting the blame on ourselves?

Why must we become indignant when we are asked to cut down on our water usage? I saw people watering their lawns to death this summer, whether they needed it or not. These are the same people who are complaining now, because they no longer have water whenever they need it.

The problem, is that we've been spoiled by having too much water at our disposal. Water is a natural resource. It's not impossible that we run low.

The reason we had restrictions last summer wasn't because we couldn't pump enough water to the city. It was because we didn't have the water to pump. We've had, for the past few years, a drought which depleted our raw water supply. Anyone who was near Elm Lake lately knows that. Why shouldn't commissioners pass ordinances to restrict use of water? Would you rather use all you want now until there is no more and end up with an even bigger problem?

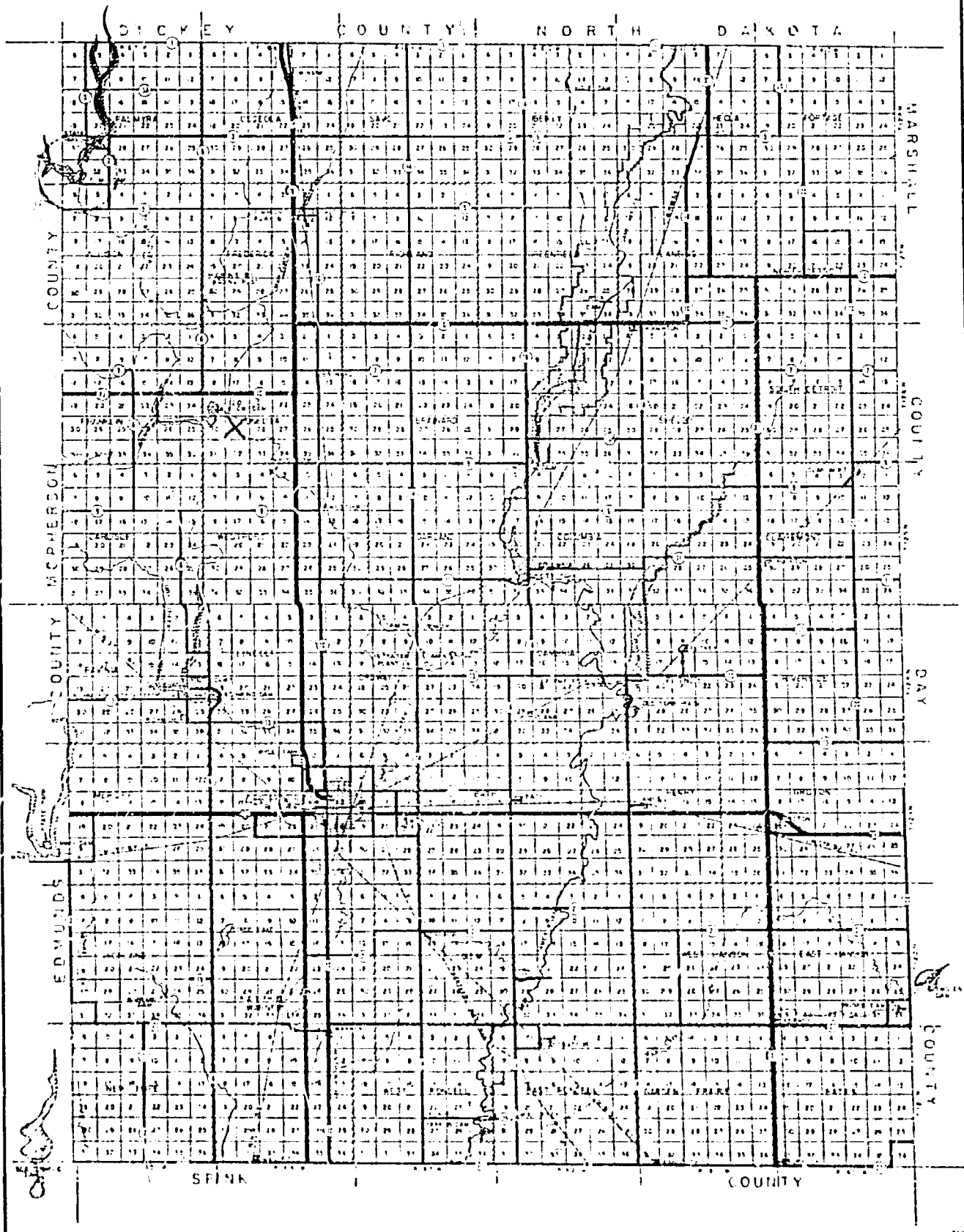
Let's stop whining like children. Why get upset over a simple request like, "Try and use as little water as possible." Let's admit whose fault it is; who really should be held accountable. Let's stop acting like children and trying to blame only the Water Department. Put the blame where it really belongs — on ourselves. — ROBI NIKOLAS, Aberdeen.

# BROWN COUNTY S DAK.

## WATER RIGHT MAP

SCALE IN MILES

ELM LAKE VESTED RIGHT

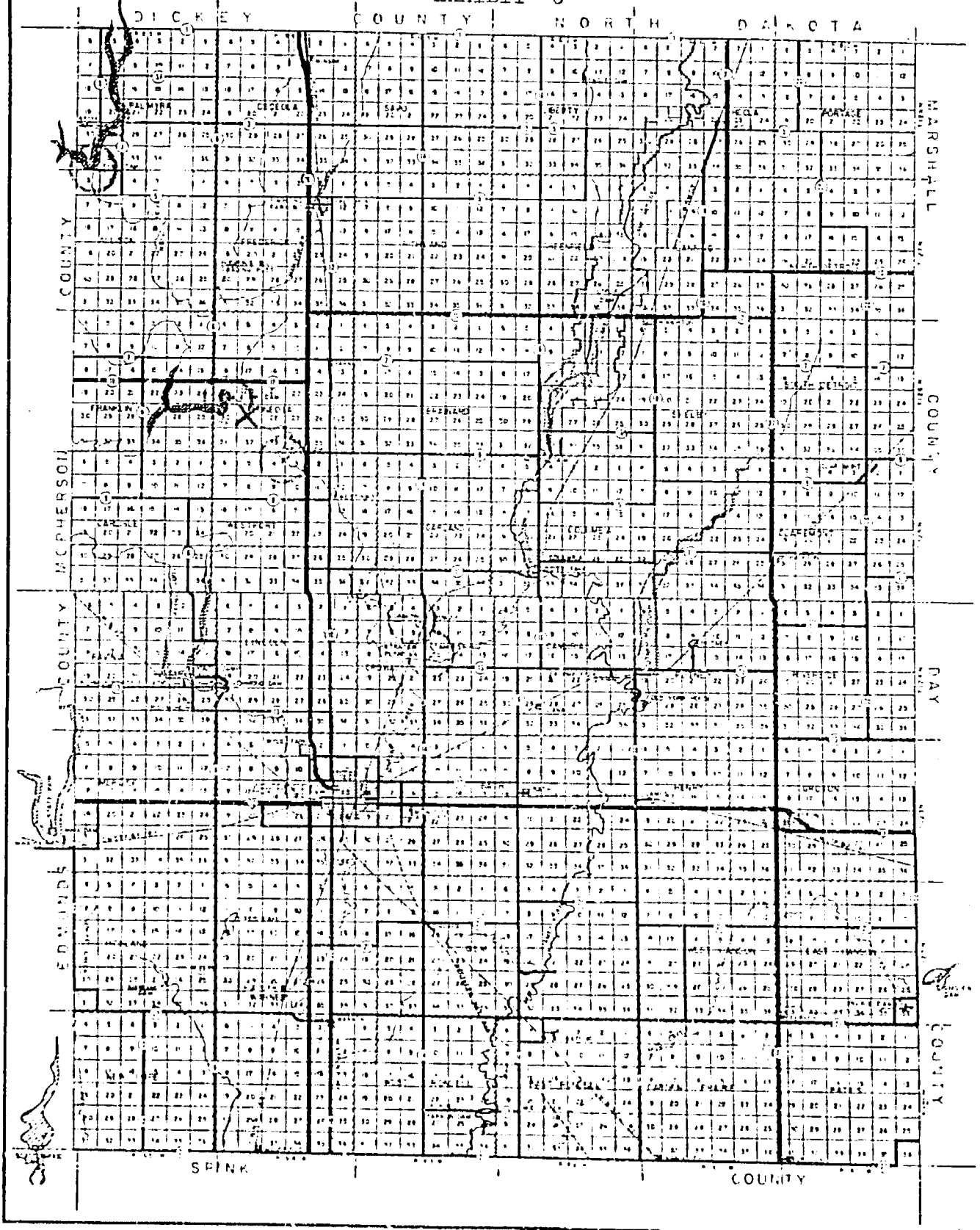


Prepared by *Francis E. Brink*, City Engineer, Aberdeen, South Dakota, August 26, 1976  
FRANCIS E. BRINK, P.E.

# BROWN COUNTY S DAK.

SCALE IN MILES 

## ABERDEEN MUNICIPAL WATER SUPPLY EXHIBIT "C"



Prepared by *Francis E. Brunk*, City Engineer, Aberdeen, South Dakota. August 26, 1976  
FRANCIS E. BRUNK, F.E.

C O N T R A C T

THIS AGREEMENT made and entered into this 28<sup>th</sup> day of July, 1969, by and between the City of Aberdeen, the Fish and Game Department of the State of South Dakota, and Brown County.

WITNESSETH:

WHEREAS, the Elm River Dam west of Frederick is urgently in need of repair by reason of extensive damage to the spillway caused by the high water this Spring, and

WHEREAS, said dam was built as a WPA project under the joint sponsorship of the City of Aberdeen, the Fish and Game Department of the State of South Dakota, and Brown County, and

WHEREAS, in consideration of the City's contribution to the cost, the City of Aberdeen was granted the right to the use of the top twelve (12) feet of water measured from the spillway level, and

WHEREAS, the proposed repairs are necessary to preserve the dam and protect the rights of the City of Aberdeen to water, and also to preserve the lake for recreation and other public purposes, and

WHEREAS, the parties hereto have agreed to bear the cost of such repairs proportionately; that is, each a one-third (1/3).

NOW, THEREFORE, IT IS AGREED between the parties hereto as follows:

- (1) That the repairs on said spillway be completed as soon as possible.
- (2) That the City of Aberdeen shall let the necessary contracts for such repairs.
- (3) That the total cost of such repairs over and above any amount contributed by the Federal Government shall be borne equally between the Fish and Game

Department of the State of South Dakota, the County  
of Brown, and the City of Aberdeen; and that upon  
proper vouchers showing such costs shall make payments  
of their proportionate share over and above the  
Federal contributions.

Dated this 28<sup>th</sup> day of July, 1969.

CITY OF ABERDEEN

By William E. Hunt  
Mayor

By Harold Krest  
Auditor

FISH AND GAME DEPARTMENT OF THE  
STATE OF SOUTH DAKOTA

8/18/69

By R. Q. Hodgins

BROWN COUNTY

By Paul Anderson  
Chairman

COMMISSIONERS

DEBIL W. DUNDAN	CHAIRMAN	NITCHELL
OLIVER FEINVEYER	VICE CHAIRMAN	ESTELLINE
HOLDER ANDERSON	BIGON FALLS	PIERRE
WALTER H. BUIKE	MILBANE	SUFFALO SPA
CHRIST CHRISTIAN	HIDE-ON	LEMMON
DAVE H. CONSER		
JAMES O. DOWD		
NEWELL E. KRAUSE		

ADDRESS REPLY TO THE DIRECTOR

October 21, 1957

W. W. Holl,  
City Attorney  
Aberdeen, South Dakota

Re: Elm Lake

Dear Sir:

I am writing to acknowledge the receipt of your letter of October eighteenth and the proposed agreement.

The agreement is satisfactory except I would suggest that the following paragraphs be added:

(7) WHEREAS, benefits from said Elm Dam are shared jointly by the City and the Commission and said Elm Dam and the spillway thereof may require repairs and maintenance from time to time; the City of Aberdeen and the Game, Fish and Parks Commission shall share equally any expenses involved in such repairs.

- (8) Same as paragraph (7)
- (9) Same as paragraph (8)
- (10) Same as paragraph (9)

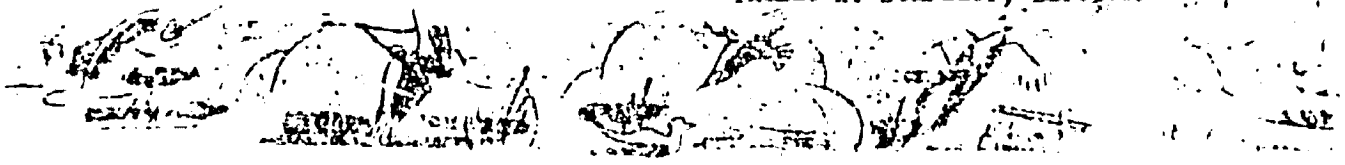
(11) IT IS FURTHER AGREED, that in accordance with paragraph 7 that after concurrence with the Engineer of the Department of Game, Fish and Parks and the Engineer of the City of Aberdeen on the type of repairs required, the city and the Commission shall share equally in the expenses involved in maintenance or repair of the dam and/or spillway.

(12) Same as paragraph (10)

If you would re-draft the agreement containing essentially these two paragraphs and secure the approval of the City Commission, I will submit it to the Game, Fish and Parks Commission for their consideration at their next meeting.

Sincerely,

*Thomas A. Schrader*  
Thomas A. Schrader, Director



# BEST IMAGE POSSIBLE FROM POOR ORIGINAL

## AGREEMENT

(1) WHEREAS, the City of Aberdeen, Brown County, and the Department of Fish and Game of the State of South Dakota in 1936 jointly sponsored a W.P.A. project for the construction of a dam on the Elm River to be known as Elm Dam, and certain smaller dams, which said Elm Dam was to be constructed on the Southeast Quarter (SE<sup>1</sup>/<sub>4</sub>) of Section Thirty One (31), Township One Twenty Eight (28), Range Sixty Five (65), Brown County, for the purpose of impounding water back of said dam, and

(2) WHEREAS, the City of Aberdeen contributed to the sponsored share of said W.P.A. project the sum of \$15,000.00 in return for which the City of Aberdeen was to acquire rights to the use of water impounded behind said Elm Dam for municipal purposes, provided, however, that such use should be limited so that no more water should be used from said Elm Lake at any time which would lower the level of the lake more than twelve feet (12') from the top of the spillway of said dam.

(3) WHEREAS, said dam was constructed in 1936 and 1937 in accordance with the above agreement, and

(4) WHEREAS, the records of the W.P.A. project setting forth in detail the agreement heretofore set forth are not presently available, and

(5) WHEREAS, the City of Aberdeen has since the construction of said dam, and in accordance with the above agreement, from time to time let water down from said dam for municipal uses of the City of Aberdeen, and

(6) WHEREAS, the City has in all respects at all times refrained from using more water than was permitted by the agreement above set forth, and has at all times lived up to the agreement with the Department of Fish and Game, and has refrained from lowering said lake beyond the distance permitted, and

# BEST IMAGE POSSIBLE FROM POOR ORIGINAL

WHEREAS, the City of Aberdeen and the Game, Fish, and Parks Commission desire to reduce said above described agreement in writing in order that the rights of the City and of the Game, Fish, and Parks Commission may be definitely defined in order to authorize the allocation of water rights by the State Water Resources Commission of the State of South Dakota under the provisions of Chapter 170 of the Laws of 1955.

NOW THEREFORE IT IS AGREED between the City of Aberdeen, a municipal corporation, hereinafter referred to as the City, and the Game, Fish, and Parks Commission, hereinafter referred to as the Commission, as follows:

(1) THAT CERTAIN AGREEMENT between the City and the Commission referred to in Paragraph (2) of this Agreement is hereby in all things approved and ratified, and the City is hereby granted the right to the use of water now, or which may hereafter be, impounded back of Elm Dam, known as Elm Lake, for municipal purposes, provided however, that said City at no time shall draw water from said lake which would lower the level of the lake more than twelve feet (12') from the top of the spillway of said dam.

(2) IT IS FURTHER AGREED that the City shall at its own expense at all times keep in repair the valves located in said dam and through which water passes to the Elm River.

(3) THE CITY FURTHER AGREES that it will use only such water from the Elm Lake as is needed for municipal purposes and will not waste or permit said valves to be opened unless such water is needed for municipal purposes of the City of Aberdeen.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 1957.

ATTEST:

CITY OF ABERDEEN, a municipal corporation

BY \_\_\_\_\_

City Auditor

Mayor

GAME, FISH, & PARKS COMMISSION

BY \_\_\_\_\_

Director

We, the undersigned, do hereby file in writing with the Water Rights Commission, Pierre, S.D., the following complaint:

The complaint being that the City of Aberdeen, S.D., has used more than its rightful share (the first twelve (12) feet of water from the spillway level) of water from Elna Lake, located in Brown County, South Dakota.

We, the undersigned, do urge the Water Rights Commission, Pierre, S.D. to take action against the City of Aberdeen and close the Lock gates until such time that the water level is such that the City of Aberdeen can rightfully draw water from said Elna Lake.

We further urge the Water Rights Commission to ensure that the twelve foot maximum is enforced in the future.

<u>NAME</u>	<u>ADDRESS</u>	<u>DATE</u>
Harold Schlessner 329-2061	Frederick S.D.	2-17-78
Robert W. Cypell 329-2289	Frederick S.D.	2-17-78
Robert Johnson 329-2404	Frederick S.D.	2-17-78
Leland Van Dine	Frederick S.D.	2-17-78
Deane Weckley	Frederick S.D.	2-17-78
Lewis H. Fierline 994-2172	Frederick S.D.	2-17-78
Lyle Chapman	Frederick S.D.	2-17-78
L. B. Bello	Frederick S.D.	2-17-78
C. W. King 329-2293	Frederick S.D.	2-17-78
Joseph Lezyer 329-2002	Frederick S.D.	2-17-78
William Cantwell 329-2361	Frederick S.D.	2-17-78
Edward A. Heier	Brown County S.D.	2-17-78
Ray W. Wilson	Brown County S.D.	2-17-78
Ed. Payne	Frederick S.D.	2-17-78
Merrill Payne 329-2057	Frederick S.D.	2-17-78
W. Arthur Emery 329-2259	Frederick S.D.	2-17-78

We, the undersigned, do state that on the Eighth day of February, 1978, we were present on the site of Elm Lake, located nine (9) miles west, one (1) north, and one (1) west of Frederick, S.D., when, in the presence of Aberdeen City Commissioner Allen Gates, a reading was taken of the depth of the water level of Elm Lake in relation to the spillway level and that such reading indicated that Elm Lake's present water level is more than twelve (12) feet below the level of the spillway; this level being in excess of the City of Aberdeen's right to the top twelve (12) feet only from the spillway level.

<u>NAME</u>	<u>ADDRESS</u>	<u>DATE</u>
Harold Schlosser	Frederick S. D.	2-17-78
Donald Van Dover	Neola S. D.	2-17-78
Deane Westbrook	Frederick S. D.	2-17-78
Kella Emery	Frederick S. D.	2-17-78
Merrill Payne	Frederick S. D.	2-17-78
Ira Payne	Frederick S. D.	2-17-78
C. Hullo	Frederick S. D.	2-17-78

# Feelings calmed over Elm Lake water use

3009-3

E-26-77

Abd. Am. News

CITY action to reduce the amount of water coming from Elm Lake to Aberdeen has apparently soothed worries of people in northern Brown County that the lake would drain dry.

While John Hatch, chief engineer for the S.D. Water Rights Commission visited Aberdeen and the Frederick area Thursday and Friday to investigate the allegation that the city was taking too much water, his appearance apparently mediated the situation.

Hatch said Friday afternoon the complaint filed by residents of the Elm Lake area would not be forwarded to the full water commission; that the situation was alleviated, at least for the time being.

Harold Schlosser, a Frederick area farmer and spokesman for the Save Elm Lake Committee, said Friday his group is satisfied with the city's action "as long as they (city officials) leave the water turned down and quit wasting it."

City officials decided last week to slow down the amount of water coming to Aberdeen from Elm Lake

from about four or five million gallons a day to just one million gallons a day.

While the Elm Lake users are satisfied with that, Schlosser said the action comes too late.

"It took too darn long for them to admit the water was being wasted," Schlosser said.

And while city officials said last week the city at one point this month had used about three inches more water than its allowed 12 feet from Elm Lake, Schlosser said the level as of Friday was closer to being 13 feet down.

The S.D. Game, Fish and Parks Department holds

water rights to the remaining water in the lake and Hatch said his office has received no complaints from that department.

If the city's water situation in the near future requires more water from the Elm Lake than currently being released,

Hatch said city officials can request more from the state Water Rights Commission.

Schlosser said his group will be satisfied as long as city officials "go through the proper channels" to get more water rather than "stealing it" without permission.

2-23 & 24, 1978

W.R. 3009-3

Elm Lake 1936 (WPA project)  
3 sponsors - City of Aberdeen  
(also pay for - C.F. & P  
any maintenance  
and repairs) - Brown County Commission  
Height at spillway 50'  
Map. depth 34'  
surface area 1520 acres  
Storage Capacity 15,200 A.F.

Aberdeen has W.R. to top 12' (9500 A.F.)  
as measured from top of spillway

City has been releasing water from  
the dam for about 60 days  
@ about 4-5 mgd water  
shut down 2-23-78 to about 100,000  
gpd - being allowed to run at  
reduced rate to prevent freezing  
of ~~control~~ valves and area

Water levels measured by City Engineer  
personnel with survey instruments.

W.L. measured -

Jan 4, 1978	down 9.65'
Feb 7	" 11.49'
Feb 16	" 12.29'
Feb 23	shut down to minimum flow

## Water availability for city

- Willow Lake dry
- Flow in Elm River <sup>about Eycott's pit</sup> reduced to less than 2 mgd - due to ice
- Above Dam No. 1, about 4' of ice, storage limited to approximately 12 mg
- Now pumping <sup>in barge</sup> from Eycott's pit - for about 1 week.
- Elm Lake at 12' level
  - release of water from Elm Lake does not ~~reach~~ reach treatment plant
    - looking into dry draws up stream
  - Expect runoff into Elm Lake this spring
  - lowering level below 12' will not harm fish at this time - when this lake ~~with~~ is expected to fill this spring from runoff
  - if water would reach treatment plant, then should allow water to continue to be lowered if necessary
  - 4' of ice on Elm Lake

steps city has taken ~~to <sup>the</sup> ~~the~~ ~~water~~~~

- strict conservation measures
- stopped 1 mgd leak in town
- contract let with some work done last fall to develop Eysenrich pit. construction of infiltration gallery
  - $5 \text{ cfs} \times .65 \text{ mg} = 3.25 \text{ mgd}$
- check of flow records show, can expect 50% chance of runoff about middle of March in Elm River
  - $\$$  - April 1 90% chance of runoff
    - 5 out of 39 years runoff occurred later

~~Conclusion~~

City not in intentional violation of W.R.  
G.F. & P. nor County Commission have  
expressed any complaint

State law specifies that water  
of State is to be put to beneficial  
use to the fullest extent possible,  
wastes an unreasonable method of  
use of water prohibited, & that the  
conservation of such water is to  
be reasonable and beneficial use  
thereof in the interest of the people  
& for the public welfare.

No direct contact w/ city officials responsible  
for water from people North of town.

JH

# CITY OF ABL. JEN

<u>N<sup>o</sup></u>	<u>AMOUNT</u>	<u>PRIORITY</u>	<u>SOURCE</u>
75-3	12.00		ELM RIVER W. WILLOW CR.
500-3	12.00		WILLOW CR.
2102-3	18.56		MAPLE RIVER
2551-3	5.00		GROUND WATER
3009-3	COMBINES ABOVE PERMITS & ADDS V/R STORAGE IN ELM RESERVOIR		
		<u>E.U.</u>	
142-3	11.00		GROUND WATER
3427-3	10.00		" "
3428-3	24.00		MAPLE & ELM RIVERS

## State official checks water usage complaint

JOHN Hatch, chief engineer for the S.D. Water Rights Commission, met with Aberdeen city officials Thursday afternoon, according to City Water Commissioner Alton Westby.

Hatch is in the Aberdeen area investigating a complaint that the city has used more water than it holds rights to at Elm Lake.

Sixteen residents of the Frederick-Hecla area made the complaint this week to the Water Rights Commission.

Hatch was reportedly discussing the complaint with Frederick and Hecla

persons Friday morning and was expected to confer again Friday afternoon with Aberdeen officials.

The city of Aberdeen holds water rights to the top 12 feet of Elm Lake. The S.D. Game, Fish and Parks Department (GF&P) hold rights to the remaining water.

Hatch said earlier this week GF&P officials had not complained of Aberdeen's water usage to his office.

Westby declined to comment Friday morning on Hatch's inquiries. He said a report of the investigation would be made at a later time.

Westby said Friday morning the level of water in dam No. 1 at the city's water treatment plant had gained "a couple of inches" since Thursday morning.

He said conservation of water by city residents is still encouraged but "not to the extent that it would cause any hardships."

- abdn - 2/24/78 -

5009-3



Feb. 5, 1978  
Frederick, S. C.

Dear Sir,

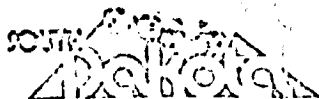
I read with some concern about the complaint that you received about the handling of the Edenville dam. I think that it may have been from some kind of trouble maker. I do know that it is not the opinion of the majority of the people of Frederick.

I have been here all my life and am sixty one years old. And I do believe that the dam was built for flood control. And I think the more water they get out this spring the better off they will be.

As far as hurting myself at this time there is no danger. As there is around twenty to twenty five feet of water at the lower end of the lake. There are maybe four or five people that like to fish. And they

would like to make it hard on  
a lot of people. Because they  
think they have all the answers  
There has only been a year or  
two in the history of the Dem that  
it has not filled in the spring.  
that I know of. And I am very  
sure that it will run over this  
spring.

Yours Truly,  
Ralph Grange  
Town of Frederick,  
RR1 Box 71  
Frederick, S. D.  
57441



# Department of Natural Resource Development

## WATER RIGHTS COMMISSION

Joe Foss Building, Pierre, South Dakota 57501  
Phone 605/224-3151

March 2, 1978

Alton Westby, Commissioner  
City of Aberdeen  
P.O. Box 1299  
Aberdeen, SD 57201

Dear Mr. Westby:

This letter is in regard to the investigation of the complaint filed by 16 persons in the Frederick-Hecla area against the city of Aberdeen concerning water levels in Elm Lake. The complaint dealt with the concern that the city of Aberdeen has lowered the Elm Lake water level below the 12 foot level authorized by Aberdeen's water right.

Although the persons who filed the complaint are concerned, we do not believe there is a serious problem at this time, even though the water level of Elm Lake did drop several inches below the 12 foot level. The concern of the people in the area was that the water level would continue to be lowered in Elm Lake to such extent that fish life would be affected.

The city is aware that it has a right to the top 12 feet (9500 acre feet) of water in Elm Lake as measured from the top of the spillway. The city has been releasing water from the dam for about 60 days at a daily rate of about 4 to 5 million gallons per day. The release was reduced February 23, 1978 to about 1 million gallons per day. This amount is being allowed to run to prevent the control structure from freezing up.

The following conditions were reported:

1. Willow Lake is dry.
2. The flow in the Elm River above Eyestone Pit is reduced to less than 2 million gallons per day due to ice conditions.
3. Above the No. 1 dam, 4 feet of ice has been measured which limits storage to approximately 12 million gallons.
4. The city is presently pumping 1.6 million gallons per day from the Eyestone Pit.
5. Releases of water from the Elm Lake do not seem to reach the treatment plant.

Page 2  
March 2, 1978

6. Runoff into the Elm Lake this spring should more than fill the lake.
7. The city has taken several steps to improve the water supply situation.
  - a. Conservation measures have been implemented by the city.
  - b. A one million gallon per day leak in the distribution system has been located and repaired.
  - c. A contract was let with some work completed last fall to develop the 5.0 cfs from the Eyestone Pit authorized by the City's water right.

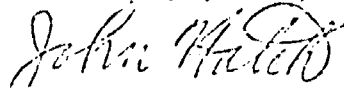
The people to the north of the City reported their main concern was that the water level would continue to be lowered. With the reduced flow from the Elm Lake, we believe the concerns of the people in the area have been met.

- If we may, we would like to offer the following recommendations.
1. That City of Aberdeen officials meet with area residents who are concerned with Elm Lake water levels to discuss the operation of the Elm Lake Dam.
  2. That a permanent measuring point be established, if possible, and use the measurement point for future regulation of the water levels at Elm Lake.
  3. That the City consider installing a permanent pipeline from the Eyestone Pit or other ground water source direct to the water plant to provide some assurance of a continuous water supply in the future in the event problems similar to those of the past 3 years are again experienced by the city.

If additional water from the Elm Lake is necessary when the water level is below the 12 foot level, a formal request must be made to the Water Rights Commission in order to determine any adverse impacts on other water rights held on the stored water.

Thank you for your cooperation in this matter.

Very truly yours,

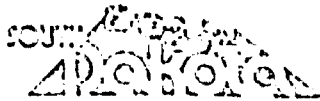


JOHN HATCH, Chief Engineer  
WATER RIGHTS COMMISSION

JH/gy

cc: Francis Brink, City Engineer  
Winston Douglas, Game Fish & Parks

RE: 3009-5



# Department of Natural Resource Development

## WATER RIGHTS COMMISSION

Joe Foss Building, Pierre, South Dakota 57501  
Phone C05/224-3151

March 2, 1978

Harold Schlosser  
Frederick, SD 57441

Dear Mr. Schlosser:

This letter is in reference to the complaint filed by persons in your area concerning the operation of Elm Lake by the City of Aberdeen. This matter was discussed with you in Frederick, February 24, 1978.

It was my understanding that the main concern of persons signing the complaint was that the water level in Elm Lake would continue to be lowered to such extent that fish life would be affected. With the flow from Elm Lake reduced to less than one million gallons per day, we believe your concerns have been met at this time.

We have told the City of Aberdeen that if additional water from Elm Lake should become necessary when the water level is below the 12 foot level, a formal request must be made to the Water Rights Commission. I believe everyone agrees that Elm Lake will fill and overflow when snowmelt occurs this spring.

We have recommended to the City of Aberdeen that City officials meet with Elm Lake area residents to discuss operation of the Elm Lake Dam and that a permanent measurement point be established, if possible, and that the measurement point be used for future regulation of the water levels. Due to ice conditions in the winter it may not be feasible to use a measurement point at all times.

Please advise if you have any questions or comments on this matter.

Very truly yours,

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

JOHN HATCH, Chief Engineer  
WATER RIGHTS COMMISSION

JH/gy

cc: Alton Westby, Commissioner, City of Aberdeen  
Winston Douglas, Game, Fish & Parks

Permit No. 3009-3

Water Division 3 JAMES RIVER Water District

REPORT OF EXAMINATION OF WORKS  
AND/OR APPLICATION OF WATER TO BENEFICIAL USE

TO: Water Resources Commission, State Office Building No. 2, Pierre, South Dakota 57501

I have this day made a thorough examination of the water use system constructed by THE CITY OF ABERDEEN of \_\_\_\_\_

holder DECEMBER 23, 1933, 1937, OCTOBER 7, 1951,  
of Permit No. 3009-3, bearing date of priority of SEPTEMBER 11, 1974 & FEBRUARY 20, 1976

authorizing the diversion of 17.0 cu. ft. per second of the waters of ELM RIVER, MAPLE RIVER, WILLOW CREEK & GROUND WATER (INCLUDING STORAGE OF 14,536 AC FT ANNUALLY)  
for MUNICIPAL purposes, in BROWN County.

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

The Water Use System consists of,

A. Works used to divert the water:

SEE ATTACHMENT

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: GOOD

The point of diversion is located IN ATTACHMENT

The works are capable of diverting and conveying to the place of use 17.0

cu. ft. per second of water which is to be used for MUNICIPAL USE

Water has been put to beneficial use to the maximum extent as follows: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

comprising a total of \_\_\_\_\_ acres of land.

Date JULY 12, 1979  
[Signature]  
(Signature)

In addition to this Permit 3009-3, the City holds the following:

Future Use Permit N<sup>o</sup> 1923 - for future development of 11.0 cfs from the ground water supply along Elm River.

Future Use Permit N<sup>o</sup> 3428-3 for future development of <sup>24.0 cfs of</sup> surface water from the Elm & Maple Rivers

Future Use Permit N<sup>o</sup> 3427-3 for an additional 10.0 cfs for future development from the Elm & Maple Rivers.

Permit N<sup>o</sup> 1024-3. For the well located near the Shyde Park development.

Permit N<sup>o</sup> 3896-3. For diversion of .40 cfs from McCombs Creek to irrigate 20 acres of Park area on the E<sup>2</sup> N<sup>2</sup>, Section 25, T123N, R64W.

# RECEIPT

WATER RIGHTS COMMISSION  
State of South Dakota

No 4 6998

PIERRE, August 16, 1970

RECEIVED OF City of Aberdeen, SD

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

Fee for Application for Permit to Appropriate Water No. _____ (examination, processing, recording and filing) _____		
Fee for Inspecting Construction, and issuing Cert. of Construction No. 7000-3		
Fee for Inspecting Beneficial Use, and Issuing Water License No. 3000-3		50 )
Fee for Issuing Location Certificate-Dry Draw, No. _____		
Fee for filing _____		
Fee for certified copy of _____		
Fee for Print copy of map _____		
Fee for Certifying _____		
Fee for _____ (any other work as provided by law)		
<b>TOTAL</b>		<b>50 0</b>

WATER RIGHTS COMMISSION

By *John Hatch*  
Chief Engineer, Executive Officer  
JOHN HATCH  
ay 20

October 24, 1979

Francis Brink  
City of Aberdeen  
Box 1299  
Aberdeen SD 57401

Dear Mr. Brink:

Enclosed herewith is you Water Permit and License No. 3009-3 and Certificate of Construction.

Water License No. 3009-3 is the final water right document completing the process of obtaining a water right.

As long as the City of Aberdeen uses the water beneficially, as stated in the Water License, the State Water Laws provide that the City has a continuing right to use the water.

This Permit No. 3009-3 consolidates several older Permits held by the City of Aberdeen. The applicable portions of Permits No. 15-3, 500-3, 2102-3 and 2551-3 have been incorporated into this Permit No. 3009-3; and Permits No. 15-3, 500-3, 2102-3 and 2551-3 are cancelled.

Very truly yours,

JOHN HATCH, Chief Engineer  
Water Rights, WND

JH:kw

enclosures

## ATTACHMENT TO INSPECTION REPORT

The City of Aberdeen relies on the Elm River, Maple River, Willow Creek and ground water for its municipal water supply.

Water use from direct diversion from the Elm River, plus three in-channel dams with a storage capacity of 936 acre feet was started December 23, 1933. Water is taken from the pond formed by Elm Dam #1 adjacent to the City Treatment Plant in the SW $\frac{1}{4}$ , Section 5, T124N, R63W. Two additional in channel dams provide storage for releases to Dam #1. The treatment plant now has a sustained capacity of 8,000,000 gpd with up to 12,000,000 gpd possible in emergency conditions. (Plans are underway to add 4 cells to the treatment plant. It is estimated that up to 18,000,000 gpd can then be treated at the plant.) Two lines, one 20" and one 24" transport the treated water about 8 miles to the City. The City has a 1,500,000 elevated steel storage, plus a 3,000,000 ground storage reservoir. (A 5,000,000 gallons ground storage reservoir is under construction.)

Elm Lake Dam was constructed during the period 1936-1938 as a cooperative venture between the City of Aberdeen, Brown County and the South Dakota Department of Game, Fish & Parks. Under agreement the City has the right to the 12' above spillway crest (9,500 acre feet of the stored water). The stored water is released thru release tubes (20" diameter steel) into the Elm River and picked up at the treatment plant.

Willow Creek Dam was originally constructed in 1935, but in 1943 the spillway failed. The spillway was reconstructed in 1957. This provides 4,100 acre feet of storage, which is released through release tubes (24" diameter steel) to the Elm River, and is picked up at the treatment plant.

Pumping of flood flows from Maple River was approved in 1974. This water is diverted to Willow Creek Dam through approximately 1 $\frac{1}{2}$  miles of 24" buried concrete pipe. The system has two Smith-Lovelace Model 10DG pumps, powered by 200 HP Westinghouse electric motors. Pumps are located in a dry well set-up about 60'W of full length 5' high concrete weir at the diversion point. By-pass of the weir is provided by 2-24" tubes through the concrete abutments. Pumping rate of the two pumps is 8,300 gpm or 18.5 cfs. Delivery of the water to the City is through the Willow Creek Dam.

Supplemental supplies are pumped from ground water from the Eyestone Gravel Pit located in the NE $\frac{1}{4}$ , Section 6, T124N, R63W. Diversion is presently through 4 barge mounted Berkeley 12" intake - 10" discharge pump model H-2360 CW, powered by Duetz Diesel 150 HP motor capable of diverting 4,500 gpm. Water is pumped through a 24" buried concrete pipe to the Elm River, and is picked up at the treatment plant. (Plans are to do further testing on sustained capability of the Eyestone Pit, and to install an 8' diameter dry well with 3-2250 gpm pumps. Also included in these plans are to install a 24" buried line directly to the treatment plant. Applications to develop the additional water from the City's future use Permits, will be submitted when yield tests are completed.)

## ATTACHMENT TO INSPECTION REPORT

The City of Aberdeen relies on the Elm River, Maple River, Willow Creek and ground water for its municipal water supply.

Water use from direct diversion from the Elm River, plus three in-channel dams with a storage capacity of 936 acre feet was started December 23, 1933. Water is taken from the pond formed by Elm Dam #1 adjacent to the City Treatment Plant in the SW $\frac{1}{4}$ , Section 5, T124N, R63W. Two additional in-channel dams provide storage for releases to Dam #1. The treatment plant now has a sustained capacity of 8,000,000 gpd with up to 12,000,000 gpd possible in emergency conditions. (Plans are underway to add 4 cells to the treatment plant. It is estimated that up to 18,000,000 gpd can then be treated at the plant.) Two lines, one 20" and one 24" transport the treated water about 8 miles to the City. The City has a 1,500,000 gallon elevated steel storage, plus a 3,000,000 gallon ground storage reservoir. (A 5,000,000 gallon ground storage reservoir is under construction.)

Elm Lake Dam located in the SE $\frac{1}{4}$ , Section 31, T128N, R65W was constructed during the period 1936-1938 as a cooperative venture between the City of Aberdeen, Brown County, and the South Dakota Department of Game, Fish, & Parks. Under agreement the City has the right to the 12' below spillway crest (9,500 acre feet of the stored water). The stored water is released thru release tubes (20" diameter steel) into the Elm River and picked up at the treatment plant.

Willow Creek Dam located in the SE $\frac{1}{4}$ , Section 19, T126N, R64W was originally constructed in 1935, but in 1943 the spillway failed. The spillway was reconstructed in 1957. This provides 4,100 acre feet of storage, which is released through release tubes (24" diameter steel) to the Elm River, and is picked up at the treatment plant.

Pumping of flood flows from Maple River was approved in 1974. This water is diverted to Willow Creek Dam through approximately 1 $\frac{1}{2}$  miles of 24" buried concrete pipe. The system has two Smith-Lovelace Model 10DG pumps, powered by 200 HP Westinghouse electric motors. Pumps are located in a dry well set-up about 60' W of full length 5' high concrete weir at the diversion point located in the NW $\frac{1}{4}$ , NW $\frac{1}{4}$ , Section 20, T126N, R64W. By-pass of the weir is provided by 2-24" tubes through the concrete abutments. Pumping rate of the two pumps is 8,300 gpm or 18.5 cfs. Delivery of the water to the City is through the Willow Creek Dam.

Supplemental supplies are pumped from ground water from the Eyestone Gravel Pit located in the NE $\frac{1}{4}$ , Section 6, T124N, R63W. Diversion is presently through a barge mounted Berkeley 12" intake - 10" discharge pump model H-2389 CW, powered by Duetz Diesel 150 HP motor capable of diverting 4,500 gpm. Water is pumped through a 24" buried concrete pipe to the Elm River, and is picked up at the treatment plant. (Plans are to do further testing on sustained capability of the Eyestone Pit, and to install an 8' diameter dry well with 3-2250 gpm pumps. Also included in these plans are to install a 24" buried line directly to the treatment plant. Applications to develop the additional water from the City's future use Permits, will be submitted when yield tests are completed.)

Water Rights Division  
(605) 773-3352

No. 3009-3

March 19, 1981

Pete Carrels - Watershed Coordinator  
Oahe Conservancy Sub-District  
Box 1935  
Aberdeen, SD 57401

Dear Mr. Carrels:

Enclosed is a summary sheet concerning the City of Aberdeen's water rights.

If you have further questions, feel free to contact this office.

Sincerely,

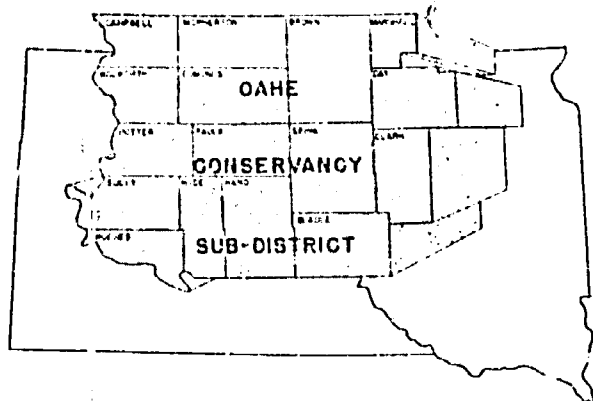
BURTON F. JONES  
Water Rights Specialist

BFJ/bat  
Enc: attached

**EXECUTIVE COMMITTEE**

**JORN SIEH** - Groton  
Chairman  
**LEONARD NAESSIG** - Webster  
Vice Chairman  
**ARNOLD SCHURR** - Roscoe  
Secretary  
**ROGER HANSON** - Pollock  
Treasurer  
**HAROLD HADRICK** - Faulkton  
**CURT HOHN**  
Manager

422 Fifth Avenue, S.E.  
P.O. Box 1985  
Aberdeen, SD 57101  
Telephone: (605) 226-1122



**DIRECTORS**

**RON FRANKENSTEIN** - Redfield  
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**STEVE THORSON** - Aberdeen  
Municipal Director  
**DR. JG WESSEL** - Huron  
Bendle and Clark Counties

March 4, 1981

John Hatch, Chief Engineer  
Dept. of Water & Natural Resources  
Water Rights, <sup>MMN</sup>  
Joe Foss Building  
Pierre, South Dakota 57501



Mr. Hatch:

I'm hoping you can provide me with information regarding the city of Aberdeen's surface water rights in the Elm-Maple-Willow Dry Branch area of northwestern Brown County. Just how extensive are Aberdeen's surface water rights above their filtration plant in Ordway, South Dakota?

Individuals in this area are forming a watershed and several farmers have expressed an interest in building small retention structures. I have been told that attempts to build such structures in the past were met with successful opposition from the city of Aberdeen.

Could you explain how such surface water rights work and how they are enforced?

I have mailed a similar letter and request for information to Mr. Brink, city engineer for Aberdeen.

Sincerely,  
*Pete Carrels*  
Pete Carrels, Watershed Coordinator  
Oahe Conservancy Sub-District

OFFICE OF CITY ENGINEER

ABERDEEN, SOUTH DAKOTA 57401

PHONE: 605/225-4900

March 23, 1981

001-3



Francis E. Brink  
City Engineer

Mr. Dennis Pelkofer  
615 N. Lincoln  
Aberdeen, SD 57401

Re: Elm Dam

Dear Mr. Pelkofer:

I am in receipt of correspondence from Burton Jones from the Water Rights Division of the South Dakota Department of Water and Natural Resources relative to measurements at the dam. We normally measure the lake level monthly on or around the first of the month when we are releasing water through the control house and less frequently when no water is being released. We normally measure the water surface also when releases are started and when the gates are closed.

Our datum base for all measurements is the upstream lip of the floor of the overflow channel under the bridge. We assume this to be the "full" level of the lake. Our permit for water from the Elm is limited to twelve feet (12') below this point. With the exception of about 30 days last fall, we have not released water from the Elm in three years. Present water level drawdown is almost totally a result of evaporation and seepage which is estimated to be approximately 36 inches annually.

Elm Dam has generally been the last source of water utilized for the City after emptying Willow Dam, the small channel dams and pumping from ground water sources. We don't like to use the Elm Dam any more than we absolutely have to but we do have a responsibility to provide water to the community and have a legal right to utilize the top twelve feet of the Elm. We would be glad to notify you when we will be making our next reading on the Elm in order for you to observe. At present, the lake is down approximately five feet (5'). If I can be of further assistance, feel free to contact me.

Very truly yours,

Francis E. Brink, P.E.  
City Engineer

FEB:ct

cc: Flisrand  
Driscoll  
Jones ✓



**Department of  
Water & Natural Resources**

Joe Foss Building      Division of Water Rights      (605) 773-3352  
Pierre, South Dakota 57501

March 13, 1981

Dennis Pelkofer  
615 N Lincoln  
Aberdeen, SD 57401

Dear Mr. Pelkofer:

With reference to your letter regarding water level measurements at Elm Lake, we are forwarding a copy of your letter to Francis Brink, City Engineer for Aberdeen. Hopefully he will be in contact with you in the near future.

Mr. Hatch has indicated that he will be in the Aberdeen area in early April, and will contact you at that time.

If this is not satisfactory, please contact this office.

Sincerely,

BURTON F JONES  
Water Rights Specialist

BFJ/gy

cc: Francis Brink

*Equal Opportunity Employer*

March 12, 1981

Dennis Pelkofer  
615 N. Lincoln  
Aberdeen, SD 57401



Mr. Burt Jones  
S. D. Division of Water Rights  
Foss Building  
Pierre, SD 57501

Dear Mr. Jones:

As of April 1, 1981 I will be taking ownership of the Elm Lake Resort in Brown County.

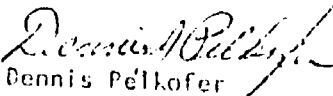
The purpose of this correspondence is to request an official measuring of the water level of Elm Lake. I understand that the City of Aberdeen has a 12 foot easement to the high water level. I would appreciate the measurement to be aware of the status of the current water level.

I would like to learn the method used to measure, and will be available to meet a representative from your office when the measuring is conducted. I can be contacted at work, 322-2301 or at home, 229-0654 here in Aberdeen.

Your prompt attention to this request will be greatly appreciated as the situation appears to be at a critical stage. This is coupled with the upcoming possibility of the gates being re-opened as the ice clears.

Thank you for your consideration, I will look forward to meeting you or a member of your office.

Sincerely,

  
Dennis Pelkofer



Department of  
**Water & Natural Resources**

Joe Foss Building  
Pierre, South Dakota 57501

Water Rights Division  
605 773-3352

3009-3

September 9, 198.

Walt Buntrock, Clerk  
Ordway Township Board  
RR 1  
Columbia, SD 57433

Dear Mr. Buntrock:

Enclosed are copies of several Water Rights and Permits which the City of Aberdeen presently holds. The City has no pending applications on file.

Excerpts from the "Report on Willard Kruse" dated May 18, 1976 and Attachment to 3009-3 provide summaries of Aberdeen's Rights and Permits.

The only water that Aberdeen has pumped into the Elm River Dams is water from the Eyestone gravel pit. We have told Aberdeen in the past that water from wells should be piped to the water treatment plant to avoid the losses experienced if the water is pumped into the Elm River for delivery to the water plant.

We have received several calls from people in your area concerning withdrawal of groundwater by the City of Aberdeen. The permits the City has were issued because groundwater studies showed large quantities of groundwater are available in Brown County including the areas along the Elm River where Aberdeen has rights.

Observations wells have been installed to monitor any withdrawals. The only ground water level changes are due to weather conditions. During wet years we expect to see higher ground water levels and during dry years lower water levels. During dry years an older domestic well which only penetrates the top 2 or 3 feet of water bearing sands and gravels (aquifer) may not produce the water the owner wants especially if the well has not been cleaned or maintained for several years. The pumping effects (cone of depression) on groundwater levels from large capacity wells drilled by Aberdeen would not be expected to extend more than a few hundred feet (if any effect could be noticed) from the production well.

If you have questions please feel free to contact us.

Very truly yours,

JOHN HATCH, Chief Engineer  
Water Rights Division

JH:kv

cc: Francis Brink, City Engineer

*Equal Opportunity Employer*

September 2, 1981



Mr. John Hatch, Chief Engineer  
Water Rights Division  
Joe Foss Building  
Pierre, South Dakota 57501

Dear Mr. Hatch,

I would like a copy of all permits, applications, or future use permits presently held or being requested by the City of Aberdeen, South Dakota. Does the City have any applications pending?

Specifically, I would like information on any permits the City has to pump ground water in Brown County.

Also, could you send me copies of any letters, reports, or minutes in which the City requested permission to pump ground water and release it into the Elm River. What is your position on this practice?

Sincerely,

*Walt Buntrock*

Walt Buntrock, Clerk  
Ordway Township Board  
R.R. 1  
Columbia, South Dakota 57433

**OFFICE OF CITY ENGINEER**

ABERDEEN, SOUTH DAKOTA 57401

PHONE 505/225-4200

September 9, 1982

Francis E. Brink  
City Engineer

Mr. Burton F. Jones  
Water Rights Specialist  
S.D. Department of Water & Natural Resources  
Water Rights, Water Management Division  
Joe Foss Building  
Pierre, South Dakota 57501

Re: Water Right Permit 2551-3

Dear Mr. Jones:

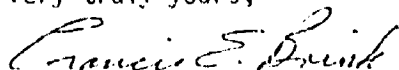
In March of 1976 the City of Aberdeen received a permit to pump 5 cfs from the Eyestone Pit (SE $\frac{1}{4}$ , NE $\frac{1}{4}$  Sec 6-124-63) in Brown County. The permit application stated that the Elm River was to be used for transporting the water to the water treatment plant near Ordway. This permit was later consolidated with several other older permits into Water Permit and License 3009-3 in October of 1979.

I have been advised by one of your Commission members that former Water Commissioner Alton Westby was notified by the Water Right Commission that pumping into the river for transporting water was only to be temporarily permitted and that within five (5) years, a permanent pipeline to transport the water to the water treatment plant had to be constructed. The purpose of this letter then is to inquire if such a time table was in fact imposed by the Commission and if so, is there a possibility of extending this time to study other potential sites in the area to more fully utilize the pipeline which could cost in excess of \$1.25 Million?

I do have a copy of a letter from John Hatch to Mr. Westby dated June 15, 1977 stating the Water Rights Commissions' policy on pumping ground water into flowing streams, but the letter did not infer that our current license on the Eyestone was in jeopardy. We are deeply concerned about any possible revocation of our permit at the Eyestone since it has proven to be a good supplement for us, and construction of any required pipelines will take additional time to plan, fund and construct.

We look forward to your reply and if you feel it necessary, can attend a Commission meeting to answer questions your Commission may have.

Very truly yours,



Francis E. Brink, P.E.  
City Engineer

FEB/sp

cc: City Commission  
Miller

Water Rights Division  
605 773-3352

September 15, 1982

Francis E Brink, City Engineer  
Office of City Engineer  
Aberdeen SD 57401

Dear Mr. Brink:

This letter is in reference to your letter dated September 9, 1982 in which you inquired as to the necessity of constructing a permanent pipeline for transporting water from Eyestone Pit to the Aberdeen Water Treatment plant.

Permit No. 2251-3 (now incorporated into Water Right No. 3009-3) issued in March, 1976, was approved with no qualifications. The permit did indicate that the Elm River would be used for transporting water from Eyestone Pit to the treatment plant at "present". According to the inspection report written upon Licensing of Water Right No. 3009-3, the City planned to do further testing on the sustained capability of Eyestone Pit, and to install an 8 foot diameter dry well with 3 - 2250 gpm pumps. Also indicated in those plans was the installation of a 24 inch buried line directly to the treatment plant.

The Eyestone Right is not subject to a pipeline construction qualification and therefore is not subject to revocation if a pipeline is not constructed. My discussions regarding the use of a pipeline were in regard to possible new development of wells several miles upstream with the water to be pumped into the Elm River and the expected instream water loss in a dry year when the wells would usually be used.

Please contact me, if I may be of further assistance.

Very truly yours,

JOHN HATCH, Chief Engineer  
Water Rights Division

GY:JH:ks

Water Rights Division - DVMR  
Conversation or File Documentation

File No. 3009-3

NAME OF PERSON OR FILE: City of Aberdeen

ADDRESS: PO Box 1299 Aberdeen, SD 57402 COUNTY Brown

DATE: 8-28-89 TELEPHONE (605) 622-1000

RE: Validation of Vested Right 3009-3

COMMENTS:

On 7-28-89 I spoke with Francis Brint & Jerry  
Ochness at the Aberdeen Engineers office concerning  
Vested Right Claim No. 3009-3. They stated that  
the dam is still being used for the city water  
supply as stated in the vested right. I also visited  
the site on 7-19-89 and confirmed the location of the works.  
There has been protests filed against the use  
of Elm Lake Dam as a water source for the  
city of Aberdeen. The main concern appears to  
be that the city is not making efficient use  
of the water, too much is being wasted, etc.

The Vested Right should be validated for  
9500 acre-foot in the top 12 feet of water  
stored in Elm Lake Dam as stated on the original  
license.

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.

4/32

NAME:

Thomas M. Barber



January 7, 1992

DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES  
JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE SOUTH DAKOTA 57501-3181

NOTICE

TO: Francis Brink, City Engineer  
City of Aberdeen  
PO Box 1420  
Aberdeen SD 57401  
and Parties of Record (see attachment)

FROM: John Hatch, Chief Engineer  
Water Rights Division  
605 773-3352

SUBJECT: Validation of Vested Water Right Claim No. 3009-3, City of Aberdeen

Vested Water Right Claim No. 3009-3 held by the City of Aberdeen is for the top 12 feet of water (9,500 acre feet) stored in Elm Lake Dam located in the SE1/4 section 31-T128N-R65W. The water is used for municipal purposes with a claimed priority date of January 1, 1937. On June 15 and 22, 1988, notice of intent to validate Claim No. 3009-3 was published in the Aberdeen American News pursuant to SDCL 46-2A-16. In response to the published notice, petitions were filed in opposition to validation of No. 3009-3. Attached is a list of petitioners.

Pursuant to SDCL 46-2A-17, the Water Management Board will conduct a hearing to consider validation of Claim No. 3009-3. The Board will consider this claim at 10:30 am, on March 4, 1992, Floyd Matthew Training Center in the Joe Foss Building, 523 E Capitol, Pierre SD. The agenda time is an estimate. The actual time of hearing may be later than 10:30 am due to prior agenda items. Following the hearing, the Board is authorized to 1) validate the claim as filed, 2) validate the claim in accordance with evidence presented at the hearing, 3) deny validation, or 4) defer action to a later date. Applicable provisions of the published notice of intent to validate Claim No. 3009-3 will still apply at this hearing. A copy of the June 15 and 22, 1988, publication is available upon request.

This hearing is an adversary proceeding. Any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

cc: Diane Best, Assistant Attorney General

PETITION TO OPPOSE VESTED WATER RIGHT CLAIMS OF  
 PERMIT NO. 3009-3 City of Aberdeen

We, the undersigned, wish to oppose validation of vested water rights for permit no. 3009-3 City of Aberdeen. The purpose of this petition is to request a hearing regarding the water rights of the City of Aberdeen to the top twelve feet of Elm Lake in Brown County.

The reasons for the request are as follows:

--The water must travel approximately seventy (70) miles in a winding creek from the Elm Dam to the Aberdeen filtration plant. Water that was released June 25, 1988 made only half of its journey in eight days.

--Approximately eight miles of the creek is heavily congested with log jams caused by falling trees as a result of Dutch elm disease. (Pictures enclosed.) This has occurred in the past three years. The city has been grossly negligent in inspecting or clearing these jams, which causes a vast amount of water loss because of back up seepage and results in excess evaporation. The amount of water released from the Elm that actually reaches Aberdeen is in question. However, visual inspection of the creek proves there is an inexcusable waste of water.

--The City of Aberdeen has done little to make efficient use of their water supply. Odd and even day water restrictions have been in effect most of the summer. However, citizen compliance has not been effective. In addition, city officials have admitted that odd-even restrictions are not that effective due to the fact that the citizens will water twice as much on their assigned day to water.

--The Elm Lake does not hold the same acre feet of water as it did forty-nine years ago when it was built and the City of Aberdeen was given the top twelve foot authority. This is due to a build-up of silt in the bottom of the lake caused by run-off.

Because of the aforementioned facts, we are requesting that the Department of Water and Natural Resources, Water Rights Division, hold a hearing to review Permit No. 3009-3 City of Aberdeen which gives Aberdeen rights to Elm Lake.

	Name	Address	Date
1.	<i>Fanny Huet</i>	<i>Westport SD</i>	<i>9-18-88</i>
2.	<i>Richard L. Barnard</i>	<i>Fredrick S.D</i>	<i>9-18-88</i>
3.	<i>Frances C. Miller</i>	<i>Fredrick SD</i>	<i>9-18-88</i>
4.	<i>Barbara J. Gale</i>	<i>Fredrick, S.D.</i>	<i>9-18-88</i>
5.	<i>John Smith</i>	<i>Westport SD</i>	<i>9-18-88</i>
6.	<i>Pat Schaffner</i>	<i>Ferla S.D.</i>	<i>9-18-88</i>
7.	<i>Richard Bahberg</i>	<i>Fredrick, SD</i>	<i>9-18-88</i>
8.	<i>John A. Gerarden</i>	<i>Fredrick, S.D.</i>	<i>9-19-88</i>
9.	<i>Keith Bluff</i>	<i>Barnard SD</i>	<i>9-19-88</i>
10.	<i>Lyle Rodoll</i>	<i>Westport SD</i>	<i>9-19-88</i>

PETITION TO OPPOSE VESTED WATER RIGHT CLAIMS OF  
 PERMIT NO. 3009-3 City of Aberdeen

(petition continued)

	Name	Address	Date
11.	Michael Bain	Fredrick S.D.	9/19/88
12.	John Peltor	2 residents S. St	9/19/88
13.	Eino Kroop	Fredrick S.D.	9/19/88
14.	Quintin Campbell	Fredrick S.D.	9/19/88
15.	Ernest Peterson	Fredrick S.D.	9-19-88
16.	Scott Campbell	Fredrick S.D.	9-19-88
17.	Olav Miksonen	Fredrick S.D.	9-19-88
18.	Lyle Wampler	Keala S.D.	9-19-88
*19.	Mr. [unclear]	Fredrick S.D.	9-19-88
20.	Paul J. [unclear]	Fredrick S.D.	9-19-88
21.	E. [unclear]	"	"
22.	Don J. Peltor	PO - 497 Fredrick S.D.	9/19/88
23.	Com. [unclear]	Fredrick S.D.	9/22/88
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\* - Couldn't read and didn't add to list.

PETITION TO OPPOSE VESTED WATER RIGHT CLAIMS OF  
PERMIT NO. 3009-3 City of Aberdeen

We, the undersigned, wish to oppose validation of vested water rights for permit no. 3009-3 City of Aberdeen. The purpose of this petition is to request a hearing regarding the water rights of the City of Aberdeen to the top twelve feet of Elm Lake in Brown County.

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- The City of Aberdeen has done little to make efficient use of their water supply. Odd and even day water restrictions have been in effect most of the summer. However, citizen compliance has not been effective. In addition, city officials have admitted that odd-even restrictions are not that effective due to the fact that the citizens will water twice as much on their assigned day to water.
- The Elm Lake does not hold the same acre feet of water as it did forty-nine years ago when it was built and the City of Aberdeen was given the top twelve foot authority. This is due to a build-up of silt in the bottom of the lake caused by run-off.

Because of the aforementioned facts, we are requesting that the Department of Water and Natural Resources, Water Rights Division, hold a hearing to review Permit No. 3009-3 City of Aberdeen which gives Aberdeen rights to Elm Lake.

Name	Address	Date
1. Dennis Holmgren	Ellendale ND	9-18-88
2. Jay Kousell	Ellendale ND	9-18-88
3. Jean Fuller	Ellendale ND	9-16-88
4. Kim Petersen	" "	9/16/88
5. <del>Tom</del> Betty Hall	Jordan N.D.	9/18/88
6. Curt Sahel	Ellendale ND	9/18/88
7. <del>James</del> Mahabadi	Ellendale ND	9/18/88
*8. Jerry Ostlette	Ellendale, ND	9-18-88
9. Rick Hira	Ellendale, ND	9-18-88
10. Marilyn Wall	Jordan N.D.	9-18-88

PETITION TO OPPOSE VESTED WATER RIGHT CLAIMS OF  
 PERMIT NO. 3009-3 City of Aberdeen

(petition continued)

Name	Address	Date
11. Emma Johnson	Forbes ND	9-18-88
12. Gerald Johnson	Forbes ND	9-18-88
13. Myra Miller	Ellendale ND	9-20-88
14. Ben Kord	Ellendale ND	9-20-88
15. Rudolf Kord	Ellendale ND	9-20-88
16. Lucy Kord	Ellendale ND	9-20-88
17. Dale J. Veland	Ellendale N. Dak	9/20/88
18. Albert E. Nitzsche	Cashier No. Dak	9/20/88
19. Dennis Whelan	Ellendale N. Dak	9/20-88
20. Mary R. Rasmussen	Ellendale N. Dak	9/20-88
21. Ernest School	Forbes N. Dak	9-20-88
22. Ida Freyer	Ellendale N. Dak	9-20-88
23. Peter Freyer	Ellendale N. Dak	9-20-88
24. Franz Freyer	Ellendale ND	9-20-88
25. Fritz Freyer	Ellendale ND	9-20-88
26. Millie Midlang	Ellendale ND	9-20-88
27. G. H. Dehhardt	Merricourt ND	9-20-88
28. Gustav Bollinger	Edgeton ND	9-20-88
29. Mattie Johnson	Ellendale ND	9-20-88
30. Loretta Sherman	Ellendale N. Dak	9-20-88
31. Dorothy Waddell	Ellendale N. Dak	9-20-88
32. E. G. Waddell	Ellendale ND	9-20-88
33. Leonard Waddell	Ellendale ND	9-20-88
34. Robert Waddell	Ellendale N. Dak	9-20-88
*35. Mary Waddell	Ellendale ND	9-20-88
36. Matronna Waddell	Ellendale ND	9-20-88
37. Oscar Waddell	Ellendale ND	9-20-88
*38. Lorne Waddell	Ellendale ND	9-20-88
39. Elmer School	Ellendale ND	9-20-88
40. Berne School	Ellendale ND	9-20-88
41. A. J. Gruenich	Ellendale ND	9-20-88
42. H. R. Rodlund	Ellendale ND	9-20-88
43. Victor Bollinger	Edgeton ND	9-20-88
44. John P. Wheeler	Ellendale ND	9-20-88

PETITION TO OPPOSE VESTED WATER RIGHT CLAIMS OF  
PERMIT NO. 3009-3 City of Aberdeen

We, the undersigned, wish to oppose validation of vested water rights for permit no. 3009-3 City of Aberdeen. The purpose of this petition is to request a hearing regarding the water rights of the City of Aberdeen to the top twelve feet of Elm Lake in Brown County.

The reasons for the request are as follows:

--The water must travel approximately seventy (70) miles in a winding creek from the Elm Dam to the Aberdeen filtration plant. Water that was released June 25, 1988 made only half of its journey in eight days.

--Approximately eight miles of the creek is heavily congested with log jams caused by falling trees as a result of Dutch elm disease. (Pictures enclosed.) This has occurred in the past three years. The city has been grossly negligent in inspecting or clearing these jams, which causes a vast amount of water loss because of back up seepage and results in excess evaporation. The amount of water released from the Elm that actually reaches Aberdeen is in question. However, visual inspection of the creek proves there is an inexcusable waste of water.

--The City of Aberdeen has done little to make efficient use of their water supply. Odd and even day water restrictions have been in effect most of the summer. However, citizen compliance has not been effective. In addition, city officials have admitted that odd-even restrictions are not that effective due to the fact that the citizens will water twice as much on their assigned day to water.

--The Elm Lake does not hold the same acre feet of water as it did forty-nine years ago when it was built and the City of Aberdeen was given the top twelve foot authority. This is due to a build-up of silt in the bottom of the lake caused by run-off.

Because of the aforementioned facts, we are requesting that the Department of Water and Natural Resources, Water Rights Division, hold a hearing to review Permit No. 3009-3 City of Aberdeen which gives Aberdeen rights to Elm Lake.

Name	Address	Date
1. Harold Schlosser	Box 594 Frederick S.D.	9-17-88
2. Glenn R. Shaw	Box 673 Frederick S.D.	9-17-88
3. Miles Bretsch	Box 73 Frederick S.D.	9-17-88
4. Dana Mann	Box 683 Frederick S.D.	9-17-88
5. Alan Smith	Box 20A RR1 Frederick SD	9-17-88
6. Dan Doack	Box 87 RR2 Frederick	9-17-88
7. Margie Doack	RR 2 Box 87 Frederick	9-17-88
8. Daryl Fuhrman	508 N. Lincoln Aberdeen S.D.	9-17-88
9. Sylvia Selwa	508 N. Lincoln Aberdeen SD	9-17-88
10. Luella Fuhrman	P.O. Box 532 Frederick A.D.	9-17-88

PETITION TO OPPOSE VESTED WATER RIGHT CLAIMS OF  
 PERMIT NO. 3009-3 City of Aberdeen

(petition continued)

	Name	Address	Date
11.	Joseph Gronage	Frederick S.D.	9-17-88
12.	Fred Gronage	Frederick S.D.	9-17-88
13.	John Kuehnel	Frederick SD	9-17-88
14.	Albert C. Jorch	Hecla SD	9-17-88
15.	David H. Jensen	Hecla SD	9-17-88
16.	Lauren Witt	Frederick S.D.	9-17-88
17.	Colvin Karsonen	Frederick SD.	9-17-88
18.	Norman Bender	Frederick SD	9-17-88
19.	Richard Kase	Frederick SD	9-17-88
20.	Adolf Johnson	Frederick S.D.	9-17-88
21.	Labonne Johnson	Frederick S.D.	9-17-88
22.	Jameson Lofe	Frederick S.D.	9-17-88
23.	Yang E. Sillescu	Frederick S.D.	9-17-88
24.	Tommy S. Mikkanen	Frederick S.D.	9-17-88
25.	Dubrot Wytie	Frederick, S.D.	9-17-88
26.	Sony Kopetsky	Frederick, S.D.	9-17-88
27.	Harvey Antikow	Horles N. D.	9-17-88
28.	Lawrence Millang	Brown County & Blundell N.D.	9-18-88
29.	Tom Kiehl	Brown County Forks N.D.	9-18-88
30.	Ed Kiehl	Brown County Forks N.D.	9-18-88
31.	Arnold Anderson	Brown County Frederick SD	9-18-88
32.	Fred Karpalinen	Brown County Frederick SD	9-18-88
33.	Clarence Bros	Frederick SD	9-18-88
34.	Alfred Larsen	Frederick, S.D.	9-18-88
35.	Raymond Ramsey	Frederick SD.	9-18-88
36.	Muelni Thott	Box 236 Westport SD	9-18-88
37.	Arne Brasa	Box 545 Frederick SD	9-18-88
38.	Arthur K. Anderson	Box 127A Frederick SD	9-18-88
39.	Harriet Pence	RR# 2 Box 8 Frederick, S.D.	9-18-88
40.	Ernest Pence	RR# 2 Box 8 Frederick S.D.	9-18-88
41.	Donald Larson	Frederick S.D.	9-18-88
42.	Adeline E. Karpalinen	Frederick, S.D.	9-18-88
43.	Leonard Jalvi	Frederick S.D.	9-18-88
44.	John Bratsch	Frederick S.D.	9-18-88
45.	Richard Hart	Westport SD.	9-18-88

PARTIES OF RECORD IN OPPOSITION TO VALIDATION OF  
VESTED WATER RIGHT CLAIM NO. 3009-3, CITY OF ABERDEEN

First Name	Last Name	Address	City	State	Zip
Delores K.	Anderson	RR 2, Box 127A	Frederick	SD	57441
Arnold	Anderson	RR 2, Box 97	Frederick	SD	57441
Harvey	Anliker		Forbes	ND	58439
Michael E.	Bain		Frederick	SD	57441
Richard	Bakeberg		Frederick	SD	57441
Norman	Bender		Frederick	SD	57441
Gertie	Bollinger		Edgeley	ND	58433
Victor	Bollinger		Edgeley	ND	58433
Clem	Braa		Frederick	SD	57441
Ione	Braa	Box 545	Frederick	SD	57441
Miles	Bretsch	Box 73	Frederick	SD	57441
Edwin	Bretsch	RR 2, Box 78	Frederick	SD	57441
Murphy	Brotherton		Ellendale	ND	58436
Robert W.	Campbell		Frederick	SD	57441
R. Scott	Campbell		Frederick	SD	57441
Ralph	Cranage	RR 2, Box 171	Frederick	SD	57441
Daniel L.	Cutler	RR 2, Box 32	Frederick	SD	57441
Diane	Cutler		Frederick	SD	57441
Albert	Dosch	RR 1	Hecla	SD	57446
Dan and Margie	Dosch	RR 2, Box 87	Frederick	SD	57441
Peter	Flynn		Ellendale	ND	58436
Ida	Fregien	101 N. 3	Ellendale	ND	58436
LuElla	Fuhrman	P.O. Box 532	Frederick	SD	57441
Daryl	Fuhrman	508 N. Lincoln	Aberdeen	SD	57401
Oscar	Fuller		Ellendale	ND	58436
Richard	Gage	RR 2, Box 38	Frederick	SD	57441
Frances M.	Gage		Frederick	SD	57441
G. G.	Gebhart		Merricourt	ND	58469
Lawrence	Genter	609 N. 1st St.	Ellendale	ND	58436
John A.	Geranen		Frederick	SD	57441
Harold	Gerdes		Hecla	SD	57446
Glenn R.	Graves	Box 673	Frederick	SD	57441
Connie	Groop	RR 2, Box 62	Frederick	SD	57441
Eino	Groop		Frederick	SD	57441
A. J.	Grueneich		Ellendale	ND	58436
Lucy	Hahne		Ellendale	ND	58436
Dennis	Holmgren	402 2 Ave. South	Ellendale	ND	58436
Gary	Huettl		Westport	SD	57481
Madaline	Huettl	Box 236	Westport	SD	57481
Richard	Huettl		Westport	SD	57481
Robert	Huettl	Box 182	Westport	SD	57481
Raymond	Hukari		Frederick	SD	57441
Lavonne	Johnson		Frederick	SD	57441
Robert	Johnson		Frederick	SD	57441
Adeline E.	Karjalainen		Frederick	SD	57441
Fred	Karjalainen	RR 2, Box 111	Frederick	SD	57441
Jay	Kendall	109 7 St. North	Ellendale	ND	58436
Deb	Klipfel		Forbes	ND	58439
Tom	Klipfel		Forbes	ND	58439
Gary	Kopetsky	RR 1, Box 45A	Frederick	SD	57441
Ken	Kosel	RR	Ellendale	ND	58436
Russell	Kosel		Ellendale	ND	58436
Dorothy	Lahr		Frederick	SD	57441
Leonard	Lahr	RR 2, Box 47	Frederick	SD	57441
Dorothy	Larsen		Frederick	SD	57441
Lloyd	Larsen		Frederick	SD	57441
Warren	Markuson	612 N. 2	Ellendale	ND	58436
Dana	Maunu	Box 683	Frederick	SD	57441

NOTE: SEVERAL NAMES ARE OMITTED DUE TO ILLEGIBLE HANDWRITING.

PARTIES OF RECORD IN OPPOSITION TO VALIDATION OF  
VESTED WATER RIGHT CLAIM NO. 3009-3, CITY OF ABERLEEN

First Name	Last Name	Address	City	State	Zip
Lawrence	Mellang		Ellendale	ND	58436
Leslie	Midland		Ellendale	ND	58436
Millie	Midlang		Ellendale	ND	58436
Lonny	Mikkonen		Frederick	SD	57441
Alvar	Mikkonen		Frederick	SD	57441
Alice and Terrance	Mullner	RR 1, Box 20A	Frederick	SD	57441
Delbart E.	Nitschke		Ashley	ND	58413
Rick	Niva	332 Main	Ellendale	ND	58436
Iver H.	Ochsner		Frederick	SD	57441
John	Peldo	RR 2, Box 44	Frederick	SD	57441
Derrin J.	Pelkofer	P.O. Box 497	Frederick	SD	57441
Eugene and Harriet	Pence	RR 2, Box 8	Frederick	SD	57441
Tim	Petersen	RR 1	Ellendale	ND	58436
Lyle	Podoll	RR 1, Box 6	Westport	SD	57481
Calvin	Raisaner		Frederick	SD	57441
betty	Rall		Forbes	ND	58439
E. E.	Raymond		Ellendale	ND	58436
Oscar	Retzlaff	109 N. 5	Ellendale	ND	58436
G. R.	Rodlund		Ellendale	ND	58436
Fritz	Rosebrock	RR 2, Box 65	Frederick	SD	57441
Jean	Rosebrock		Frederick	SD	57441
Sylvia	Salwei	508 N. Lincoln	Aberdeen	SD	57401
Rudolph	Sammuli	RR 1, Box 24	Frederick	SD	57441
Curt	Sand	RR 2	Ellendale	ND	58436
Pat	Sand		Ellendale	ND	58436
Pat	Schaffner	P.O. Box 245	Leola	SD	57456
Loretta	Scherman		Ellendale	ND	58436
Walter J.	Scherman	420 S. 3	Ellendale	ND	58436
Gary	Schlosser		Frederick	SD	57441
Harold	Schlosser	Box 694	Frederick	SD	57441
Ernest	Schock		Forbes	ND	58439
Darlene	Schock		Ellendale	ND	58436
Elmer	Schock	440 Main	Ellendale	ND	58436
Jacob	Schrum		Forbes	ND	58439
Ernue	Schrum		Forbes	ND	58439
Madonna	Thompson		Ellendale	ND	58436
Marvin	Ulmer	201 N 1	Ellendale	ND	58436
Dale	Veland		Ellendale	ND	58436
Leland	Waddell	305 1 Ave. N	Ellendale	ND	58436
Dorothy	Waddell		Ellendale	ND	58436
Marilyn	Wall		Forbes	ND	58439
Lyle	Wampler	RR 1	Hecla	SD	57446
John P.	Wneelihat.		Ellendale	ND	58436
Dennis	Whelan		Ellendale	ND	58436
Deborah.	Witte		Frederick	SD	57441
Lauren	Witte	RR 2, Box 70	Frederick	SD	57441
Keith	Wolff		Barnard	SD	57426

NOTE: SEVERAL NAMES ARE OMITTED DUE TO ILLEGIBLE HANDWRITING.



VALIDATION OF (PARTIAL) VESTED WATER RIGHT NO. 3009-3  
CITY OF ABERDEEN

March 3, 1992

Partial Vested Right No. 3009-3 authorizes storage of 15,200 acre-feet of water in Elm Lake Dam. The city is entitled annually to the top 17 feet below the spillway crest (9,500 acre-feet) with a claimed priority date of January 1, 1937. Elm Lake dam is located in northwestern Brown county in the SE1/4 Section 31-T128N-R65W. Water is released from the dam and flows down the Elm River to the City's intakes for the water treatment plant.

Notice of intent to validate No. 3009-3 was published on June 15 and 22, 1988, as directed by SDCL 46-2A-16. In response to the notice, petitions opposing validation No. 3009-3 were filed. Attached is a listing of the parties of record and a copy of one petition stating the concerns of the petitioners.

An inspection of No. 3009-3 was completed on July 19, 1989, by Tom Brandner, former staff engineer. The city confirmed that water continues to be used from the dam to supply the city and the dam is located as described on the published notice.

A notice dated January 7, 1992, informed the petitioners that a hearing for the Water Management Board to consider validation of No. 3009-3 was scheduled for March 4, 1992. No additional comments have been received from any of the petitioners in response to the notice.

Following the hearing, the Board is authorized to:

- 1) validate the claim as filed,
- 2) validate the claim in accordance with evidence presented at the hearing,
- 3) deny validation, or
- 4) defer action to a later date.

  
\_\_\_\_\_  
Ron Duvall, Natural Resources Engineer

STATEMENT AND SUPPORT EXHIBITS  
BY THE CITY OF ABERDEEN, SOUTH DAKOTA IN  
SUPPORT OF FUTURE USE WATER PERMIT NO. 3428.3 AND  
APPLICATION NO. 5571-2 TO APPROPRIATE WATER

This statement and supporting documents and exhibits are submitted by the City of Aberdeen, South Dakota to support Aberdeen's Application No. 5571-2 for the appropriation of water from the Elm River, Maple River and Willow Creek and to support the request for Future Use Permit No. 3428.2. The Water Management Board's Chief Engineer recommends approval of each application.

This statement and supporting documents and exhibits are also offered in support of the validation of Aberdeen's vested right to claim water from Elm Dam.

The City of Aberdeen is located in Brown County, South Dakota. Aberdeen has approximately 26,500 residents and 10,688 homes and apartments. Aberdeen has a trade area of about 100 miles east and west and about 60 miles north and south. There exists light manufacturing plants, active retail and service businesses and professional services providing an area that is an active area with future growth potential. Aberdeen has two four year colleges and universities; Northern State University and Presentation College. Because of the growth in business activity and the needs of its residents, Aberdeen has historically undertaken water projects to ensure a proper water supply and has also instituted conservation measures.

Aberdeen's Water Treatment plant is located near Ordway, South Dakota about seven miles Northeast of Aberdeen. The traditional sources for raw water has been Elm Reservoir, Elm River, Willow Creek and Reservoir, Maple River, and the pumping of underground

water supplies. Aberdeen relies upon a variety of sources because of the unpredictability of run-off water, rain and needs each year. The City has relied heavily on water impoundment to furnish water to the water uses and has relied upon the impoundment behind Elm Dam to provide a back-up source for water to the City when other supplies are not adequate. Because of the supply history (shortages) in our area, the City of Aberdeen, has had to depend upon large storage facilities to impound water for later use when needed.

Elm Reservoir was built in about 1937 and was at that time primarily intended to be a back-up water source for the City of Aberdeen. Although all past records of the use of Elm Reservoir water are not available, Ex. F is a chronological listing of the usage of impounded water by the City of Aberdeen. In the last twenty years, the City was required to use the Elm Reservoir impounded water six different times. Four of those were in the 1980's. In the last ten years, the Elm Reservoir has been utilized five times. Without this back-up source for water the City would simply run out of water even with mandatory conservation measures in place.

The City has expended a large amount of time and resources to protect and maintain all present water sources and in developing new sources.

The creation of a reservoir and resulting lake was for the purpose of creating a water supply for the City of Aberdeen and the secondary purpose was recreation. The City of Aberdeen

participated in the cost of the reservoir to secure a back-up water supply for the City of Aberdeen. The City of Aberdeen has continued to participate in the construction and maintenance of the dam, reservoir and spillway. The City of Aberdeen also participated in an Elm River clean-up project sponsored by the James River Conservancy Subdistrict to increase water flow, protect existing bridges and to decrease spring flooding. There can be little question that since construction the City of Aberdeen has financially contributed to the construction and maintenance of the reservoir, dam and spillway. City leaders were protecting a vital resource for the City and continued to provide a back-up source of water for a City with a limited water source.

The City of Aberdeen has worked with other State Departments and local groups and officials in trying to maximize the efficiency and usefulness of the dam, lake and river. It really cannot be argued that the use of Elm Lake water as a source for Aberdeen is somehow a surprise or a secondary consideration. The original construction was for that very purpose! Nor, has the exercise of the right of the City to utilize their water caused any long term negative impact on the lake. The objectors to this water use do not have history or any financial commitment to substantiate their claims. Exhibit I indicates the positive feedback the City has received from one State agency that has close ties to the area. The reservoir was not built to create opposing views as to the use of the water but rather to have the use of the water spelled out from the very beginning. The balance was fairly drawn then and it

is still true today.

Aberdeen has dedicated itself to reasonable conservation practices. Aberdeen has recently spent millions of dollars on new transmission line construction from the water treatment plant to the City and from the well field to the water treatment plant. The City has for the past three years hired a company to find leaking water lines in the City so they could be repaired. The clean-up of the Elm River allowed for a more efficient use of the existing resource. Water restrictions have been placed on City residents and conservation of water has been urged on a regular basis. Although, the City has not banned all watering of lawns and gardens or non-domestic uses of water, the City believes that its conservation efforts are reasonable and draw a practical line between the use of water and conservation of water. The City has also installed a pumping station so that when excess water is available to fill the Willow Reservoir, the pump is activated and the water is reclaimed. Most recently in 1991, the City because of unusual rain run-off was able to fill an empty Willow Reservoir which allowed the City to not utilize the water from the Elm Dam Reservoir.

The City of Aberdeen has been proactive for a number of years in providing a water source for its citizens during drought or low run off periods. The City has had to utilize the Elm Reservoir on a regular basis and if that water supply did not exist, the City would have had consequences catastrophic in nature. The use has been reasonable and consistent with the use of other sources of

water. On the supply side, the City primarily relies upon spring snow melt run off to contribute to the water supply into Elm Reservoir, River and the Willow Reservoir. The City also has developed well fields that they also utilize in conjunction with the run off water. The Elm Reservoir is the water supply of last resort and has been utilized on a regular basis in the past. The before mentioned conservation efforts also contribute to the water supply.

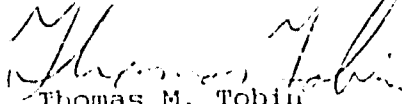
On the demand side, water has become a more sought after commodity. A stable and adequate water supply is necessary to meet the normal needs of the residents. Industrial development is dependent on a stable and adequate water supply. The irony regarding demand is that usually there is less demand when supply is great and greater demand when supply is short. This really is a natural phenomena and human engineering may have little impact on that fact of life. The City has recently expanded its boundaries relying upon all sources of water. However, where practical, the City allowed the WEB water system to serve some areas within the annexed boundaries that will lighten future demand in light of the increased area caused by annexation. The City has not been able to create a demand-supply scenario that does not involve the Elm Reservoir.

#### CONCLUSION

Therefore, the City of Aberdeen on behalf of its 26,500 area residents respectfully requests that the Water Management Board

grant the continuation of Vested Claim No. 3009-3, Future Use  
Permit No. 3428-3.

RESPECTFULLY SUBMITTED

  
Thomas M. Tobin



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES  
JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE SOUTH DAKOTA 57501-3181

March 10, 1992

NOTICE

TO: Francis Brink, City Engineer  
City of Aberdeen  
PO Box 1420  
Aberdeen, SD 57401

Harold Schlosser  
Box 694  
Frederick, SD 57441

Archie C Monroe  
HCR 1 Box 25A  
Forbes, ND 58439

FROM: John Hatch, Chief Engineer  
Water Rights Division  
(605)773-3352

SUBJ: Preparation of Findings of Fact, Conclusions of Law and  
Final Decision

The Water Management Board has directed John Guhin, The Board's attorney to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision on validation of Vested Right Claim No. 3009-3, City of Aberdeen. The Board will consider the proposed Findings, Conclusions and Final Decision at 1:00 pm, May 6, 1992, Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD. The agenda time is an estimate. The actual time of consideration may be delayed due to prior agenda items.

The Board has requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member, the parties listed above and their attorneys by April 16, 1992. Any comments pertaining to the proposed Findings, Conclusions and Decision are to be mailed to each Board member, the Board attorney, the parties listed above and their attorneys by April 27, 1992.

The public hearing was completed March 4, 1992. No additional testimony will be received on May 6, 1992.

cc: John Guhin, Deputy Attorney General  
Diane Best, Assistant Attorney General  
Thomas Tobin, Attorney, Box 1456, Aberdeen, SD 57401  
Al Werre, WC, City of Aberdeen, PO Box 1420, Aberdeen, SD 57401  
Pat Klabo, CM, City of Aberdeen, PO Box 1420, Aberdeen, SD 57401





DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES  
JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE SOUTH DAKOTA 57501-3181

May 27, 1992

NOTICE

TO: Francis Brink, City Engineer  
City of Aberdeen  
PO Box 1420  
Aberdeen, SD 57401

Harold Schlosser  
Box 694  
Frederick, SD 57441

Archie C Monroe  
HCR 1 Box 25A  
Forbes, ND 58439

FROM: *for* John Hatch, Chief Engineer  
Water Rights Division  
605 773-3352

*Delvin G. Brown*

SUBJECT: Adoption of Findings of Fact, Conclusions of Law and  
Final Decision

This is to notify you that a Final Decision, including Findings of Fact and Conclusions of Law were adopted by the Water Management Board for Vested Right Claim No. 3009-3 at the May 7, 1992, meeting.

A copy of the signed final Decision, Findings and Conclusions is enclosed for the applicant. Copies will be furnished to anyone else upon request. South Dakota Statutes provide that decisions of the Board may be appealed to the Courts.

cc: Diane Best, Assistant Attorney General  
Thomas Tobin, Attorney, Box 1456, Aberdeen, SD 57401  
Al Werre, WS, City of Aberdeen, PO Box 1420, Aberdeen, SD 57401  
Pat Klabo, CM, City of Aberdeen, PO Box 1420, Aberdeen, SD 57401





DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES  
JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE SOUTH DAKOTA 57501-3181

June 4, 1992

Dwayne A Rollag  
320 Lincoln Lane S  
Brookings, SD 57006

Dear Mr. Rollag:

Enclosed find the signature page for the Findings of Fact, Conclusions of Law and Final Decision for Vested Right Claim No. 3009-3, City of Aberdeen. If you will remember, Mr. Brink abstained from this portion of the meeting and you took over.

Would you please sign, date (the day you actually sign it) and return the signature page to this office in the stamped self-addressed envelope enclosed?

If you have any questions, please feel free to call.

Sincerely,

A handwritten signature in cursive script that reads "Jaci R Knop".

Jaci R Knop  
Senior Secretary  
Water Rights Division

/jrk

Enclosure

STATE OF SOUTH DAKOTA  
BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF THE ACTION )	FINDINGS OF FACT,
FOR VALIDATION OF VESTED )	CONCLUSIONS OF LAW
WATER RIGHT NUMBER 3009-3 )	AND FINAL DECISION
CITY OF ABERDEEN )	

FINDINGS OF FACT

1. This is an action to validate a vested right which constitutes a part of Water Right No. 3009-3.

2. The context of this action is that on October 27, 1979, the predecessor to the Water Management Board approved Permit No. 3009-3 which consolidated several older permits held by the City of Aberdeen. Among the permits consolidated into the new permit was a 1937 vested right. Pursuant to SDCL 46-2A-16, that 1937 right was therefore one which was "accepted for filing by the chief engineer of the board of water management prior to July 1, 1986" and was eligible for subsequent validation by this Board.

3. Now at issue, before the Board, is whether that portion of Water Permit No. 3009-3 which constitutes the 1937 vested right claim should be validated. For convenience, the claim at issue now before this Board will be referred to as the vested right claim. The present action does not affect in any manner the other water rights which were consolidated into Permit No. 3009-3.

4. The Board hears this claim for validation of a vested water right de novo pursuant to SDCL 46-2A-17.

5. The vested right claim as filed in 1979 authorized storage of fifteen thousand two hundred acre feet of water in Elm Lake Dam. Under the 1979 action, the City is entitled annually to the top twelve feet below the spillway crest (9,500 acre feet) with a priority date of January 1, 1937.

6. The Board finds that the City has utilized the water in question for municipal purposes from 1937 to the present. In particular, the City has actually put Elm Lake water to use six times in the last twenty years, and four of those times have been in the last ten years. The Board finds that, even in those periods when the water was not actually directed through the City of Aberdeen's municipal water system, it was an integral part of that system and was thus being used.

7. The Board finds that the use of the water in question has been developed without unlawful impairment of existing rights. The Board finds, in particular, that the City of Aberdeen has dealt adequately with the problem of log jams on the Elm River. The City's water supply does flow through the Elm River, and the City is in some sense therefore responsible for the River. However, the City does not have property rights on the banks of the river and therefore has not been able to enter private property without some difficulty. The City has now, through agreement with the James River Water Conservancy Subdistrict, entered on a concerted effort to clean up the area. That effort has been, for the most part, successful.

8. The Board finds, moreover, that the City to date has been able to utilize the Elm Lake resource without substantial impairment to recreational use of the Lake. The Board also finds that the City of Aberdeen is essentially responsible for the construction of the lake and that those who establish resorts or other concerns around the lake establish them subject to the City's water right. Even if the City were compelled to withdraw the entire amount of water available to it under this water right, there would therefore be no unlawful impairment to those owned resorts or other concerns around the lake for these resort owners have no right to inhibit the City's use of its water.

#### CONCLUSIONS OF LAW

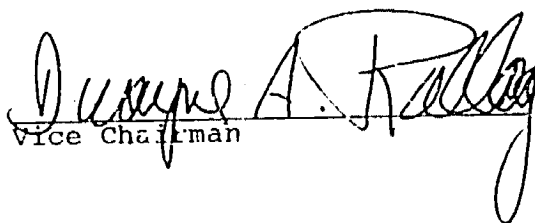
1. The Board has jurisdiction in this matter.
2. The water in question has been continuously used for the purpose for which the vested right is claimed.
3. The use of water for municipal purposes is a beneficial use.
4. The use of water under the vested right claim is in the public interest.
5. The use of water has been developed without unlawful impairment of existing rights.

FINAL DECISION

1. The application to validate the 1937 vested right claim included within Water Right Permit No. 3009-3 is granted. The parameters of the right at issue are set out in the October 24, 1979, decision of the Water Right Commission.

Dated this 25th day of June, 1992.

BY THE BOARD:

  
Vice Chairman

M-pld6.jpg



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES  
JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE SOUTH DAKOTA 57501-3181

July 1, 1992

NOTICE

TO: Francis Brink, City Engineer  
City of Aberdeen  
PO Box 1420  
Aberdeen, SD 57401

Harold Schlosser  
Box 694  
Frederick, SD 57441

Archie C Monroe  
HCR 1 Box 25A  
Forbes, ND 58439

FROM: John Hatch, Chief Engineer  
Water Rights Division  
605 773-3352

SUBJECT: Corrected Findings of Fact, Conclusions of Law and  
Final Decision for Vested Water Right No. 3009-3, City of  
Aberdeen

Since Mr. Brink did not participate in the hearing on No. 3009-3, he should not have signed the original Findings of Fact, Conclusions of Law and Final Decision that were sent out May 27, 1992. Dwayne Rollag, Vice Chairman, who presided over the hearing on No. 3009-3, has signed the original of the enclosed Final Decision, Findings and Conclusions. Copies will be furnished to anyone else upon request. South Dakota Statutes provide that decisions of the Board may be appealed to the Courts.

cc: Diane Best, Assistant Attorney General  
Thomas Tobin, Attorney, Box 1456, Aberdeen, SD 57401  
Al Werre, WS, City of Aberdeen, PO Box 1420, Aberdeen, SD 57401  
Pat Klamo, CM, City of Aberdeen, PO Box 1420, Aberdeen, SD 57401



## SOUTH DAKOTA

## VESTED WATER RIGHT NO. 3009-3

Date of Receipt of Claim August 30, 1976.

Date of Validation May 7, 1992.

The Water Management Board validated Vested Water Right Claim No. 3009-3 for the City of Aberdeen, PO Box 1299, Aberdeen SD 57402 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 3009-3 authorizes storage of 15,200 acre-feet of water in Elm Lake dam and allows diversion of the top twelve feet below the spillway crest (approximately 9,500 acre feet). Elm Lake Dam is located in the SE 1/4 Section 31-T12&N-R65W.

2. The appropriated water is used for supplying water to the City of Aberdeen and may not exceed the amount of water needed for beneficial use for municipal purposes.

The water is to be used during the following annual period:  
January 1 - December 31

3. The priority date of the Vested Water Right is: January 1, 1937.

4. The water use system has been constructed and water has been applied to beneficial use.

5. Water Rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

WATER MANAGEMENT BOARD

By: *John Hatch*

John Hatch, Chief Engineer  
Water Rights Division

Department of Environment and Natural Resources

OCT 27 1993

date

NOTE: Validation of Vested Water Right No. 3009-3 is for vested portions only of Water Right No. 3009-3.

3009-3



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

OCT 27 1993

Francis Brink, City Engineer  
City of Aberdeen  
PO Box 1299  
Aberdeen SD 57402

Dear Mr. Brink:

The Water Management Board validated the enclosed Vested Water Right No. 3009-3 on May 7, 1992. A review of the City's permits found that Findings of Fact, Conclusions of Law and a Final Decision were adopted but the validation had not been issued. This validation gives legal status to the claim and is the final document for your vested right.

As long as you use the water beneficially, as stated in the validation, State Water Laws provide that you have a continuing right to use the water.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John Hatch".

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

enclosure

L

# NOT TO SCALE

T-4588

T-4571

A-3

Transferred  
to  
McPherson

31

T-4588

T-4561

12-8-65

T-4588

Elm Lake Dam  
Pump House  
Outlet

**STATE OF SOUTH DAKOTA**  
**REISSUED**  
**WATER LICENSE NO. 3009-3**

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(1) The City of Aberdeen, 123 S Lincoln St, Aberdeen SD 57401 was issued Water License No. 3009-3, October 10, 1979 for a water right to divert 17.0 cubic feet of water per second from the Elm River, Maple River, Willow Creek and groundwater, Brown County, South Dakota for municipal use purposes. Water License No. 3009-3, with priority dates of December 23, 1933, 1937, October 7, 1957, September 11, 1974 and February 20, 1976 was issued to the city for diversion of water with construction of the described water supply system and application to beneficial use of said water completed.

License No. 3009-3 was issued consolidating several old permits held by the City of Aberdeen, and recognizing the storage in the Elm River Dam under the “vested right” portion of South Dakota statutes. Priorities and other pertinent portions of Permit Nos. 15-3, 500-3, 2102-3 and 2551-3 have been incorporated into Permit No. 3009-3, with the resultant cancellation of Permit Nos. 15-3, 500-3, 2102-3 and 2551-3.

*The license is being reissued to correct the legal description of the Elm River diversion point. The 1934 public notice for Permit No. 15-3 which authorizes the Elm River diversion point was correct.*

(2) It is certified that the City of Aberdeen has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 17.0 cubic feet of water per second for beneficial use. The location of the diversion points are as follows:

Elm River – SW 1/4 Section 15-T124N-R63W  
Willow Creek Dam – SE 1/4 Section 19-T126N-R64W  
Maple River – NW 1/4 NW 1/4 Section 20-T124N-R64W  
Elm River Dam – SE 1/4 Section 31-T128N-R65W  
Groundwater – NE 1/4 Section 6-T124N-R63W

(3) The City of Aberdeen has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use for municipal use through the City’s water distribution system.

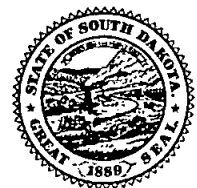
(4) Pursuant to South Dakota Water Law 46-5-30.1 the City of Aberdeen, 123 S Lincoln St, Aberdeen SD 57401 the holder and/or owner of Water Right No. 3009-3 is reissued a license to appropriate water, the right to use 17.0 cubic feet of water per second from Elm River, Maple River, Willow Creek and groundwater with priority dates of December 23, 1933, 1937, October 7, 1957, September 11, 1974 and February 20, 1976 from the location specified in (2) of this license. This license is subject to any limitations or qualifications listed in Water Right No. 3009-3 and subject to South Dakota State Law.



Jeanne Goodman, Chief Engineer  
Water Rights Program  
Department of Environment and Natural Resources

MAR 13 2014

date





DEPARTMENT OF ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
denr.sd.gov



MAR 13 2014

City of Aberdeen  
c/o Robin Bobzien, Public Works Director  
123 S Lincoln St  
Aberdeen SD 57401

Dear Mr. Bobzien:

Enclosed are Water Permit No. 7935-3 and Reissued Water License No. 3009-3. Water Permit No. 7935-3 authorizes construction of the City's water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after the city has finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

Water License No. 3009-3 is reissued to correct the legal description of the Elm River diversion point.

Sincerely,

Jeanne Goodman, Chief Engineer  
Water Rights Program  
(605) 773-3352

enclosures