

Considered: _____

WATER PERMIT NO. 5050-3

MAP No. Same

Name of Applicant S. D. Dept. Game, Fish & Parks

Post Office Address 445 E. Capitol Pierre, S.D.

Amount of Water Claimed 500 acre Feet/year Total Acres _____

Source of Water Supply Crow Creek

Water to be used for REC County Marshall

About _____ miles _____ of _____

PROOF OF PUBLICATION: Received ~~1/11~~ 1/25 7-11-85 Not Received _____

APPLICATION: Approved _____ Subject to _____

F.F. & C.L. Adopted _____ Not Approved _____ Deferred _____

PRIORITY _____ Date Received 12-17-85 Fee _____ Remarks _____

1-1-86

Corrected Application Received _____ Period of Annual Use _____

WATER QUALITY APPROVAL RECEIVED N/A APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as Application YES _____ NO _____ REMARKS _____

Diversion Point ~~sec. 3 & 4~~ sec. 3 & 4 T126N-R56W

Land to be Irrigated _____

Well Log: Driller _____ Licensed YES _____ NO _____

Depth of Well _____ REMARKS _____

Type of Map USGS Topo PREPARED BY Ron Koth Reviewed and the Number

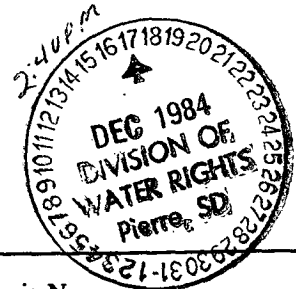
assigned on 2-22-85 By KC Larson

No. <u>5050-3</u>	Hydrologic Unit <u>10160010</u>
Map No. <u>same</u>	Basin <u>James River</u>
Newspaper <u>Britton Journal</u>	

Application For Permit To Appropriate Water Within The State Of South Dakota

Check use of water: Industrial ☐ Commercial ☐ Municipal ☐ Other Common Distribution System ☐
 Rural Water System ☐ Suburban Housing ☐ Geothermal Heat ☐ Institutional ☐ Recreational ☒
 Domestic ☐ (above 18gpm) Other ☐

Type of Application: Check one or more of the following

New ☐ Vested Right ☒ Future Use ☐ Change Use ☐☐ Amend Permit No. _____ with old priority date retainedChange diversion point(s) ☐ Add diversion point(s) ☐ Other ☐☐ Application to: Change diversion point(s) ☐ Add diversion point(s) ☐ on Permit No. _____☐ Construction to use water reserved by Future Use Permit No. _____

- Name of Applicant S. D. Department of Game, Fish and Parks Phone No. 773-3387
 Post Office Address 445 E. Capitol, Pierre, South Dakota State 57501
(Street, RR or Box) Zip Code
- Amount of water claimed (c.f.s.) 500 acre feet annually
- Source of water supply Crow Creek (upper)
- Location of point of diversion Black Slough, NW corner at Crow Creek outlet, T 126 N,
R56W, sections 3 & 4, Marshall County, South Dakota (see map) water control structure
to be built on Crow Creek outlet in NW corner County Marshall
- Counties where water will be used Marshall
- Annual period during which water is to be used 01-01 through 12-31 annually
- Give a brief description of proposed project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

~~A water control structure is to be constructed at the NW corner of Black Slough where it drains out into Crow Creek. This is a cooperative Ducks Unlimited project for enhancement of waterfowl production and recreation.~~ *gk*

Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach map (see instruction)

STATE OF SOUTH DAKOTA)
 County of Hughes)^{ss}

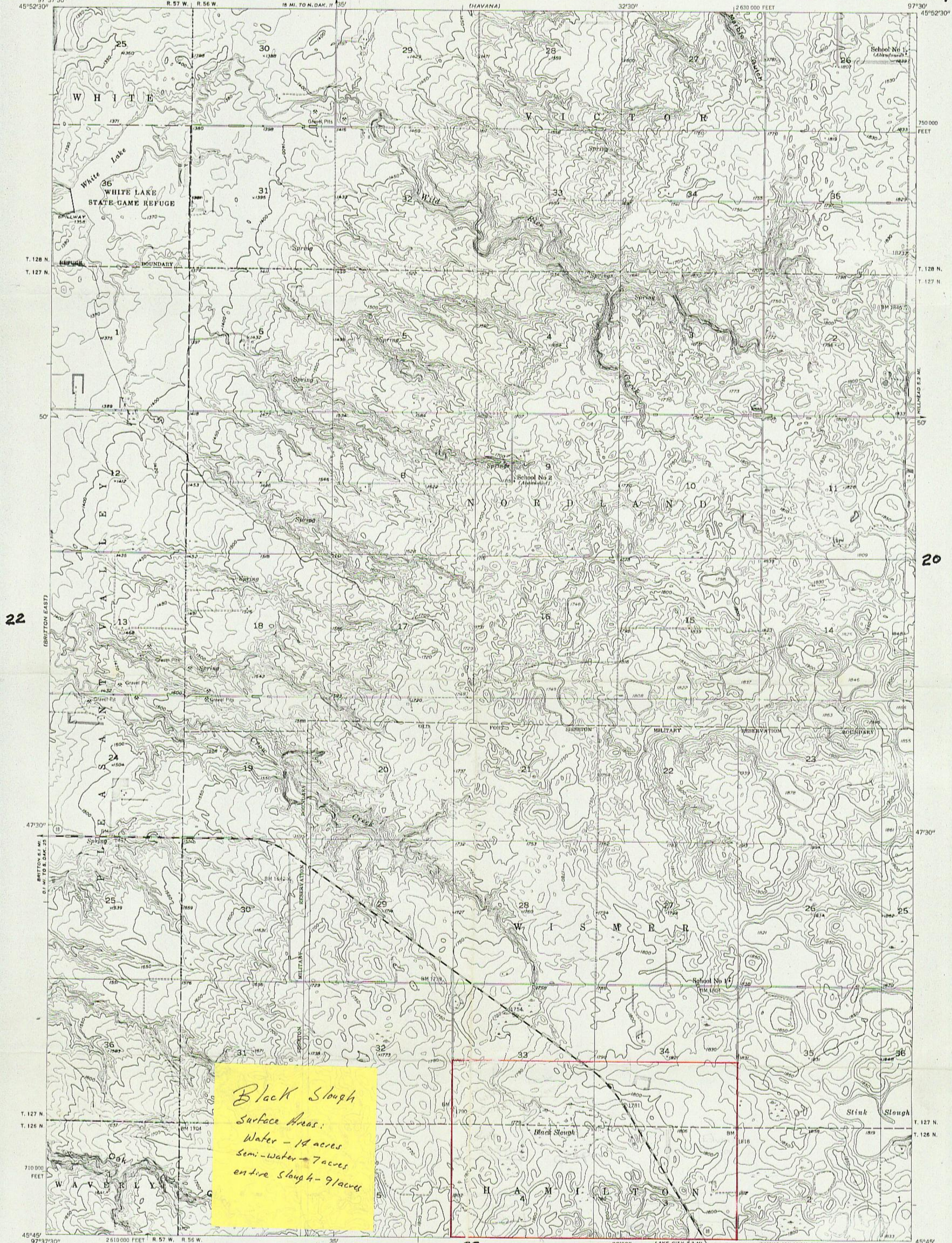
I, S. D. Department of Game, Fish and Parks the applicant, certify that I have read the foregoing application, have examined the attached map and that the matters therein stated are true and that I intend, and am able to complete the necessary construction.

Signed Donald M. Kelly Resource Staff Specialist

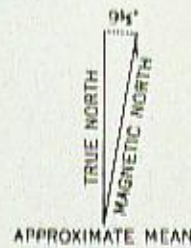
Subscribed and sworn to before me this 17th day of December 19 84

Charles E. Kaelin

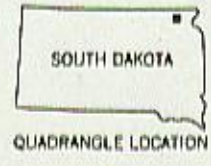
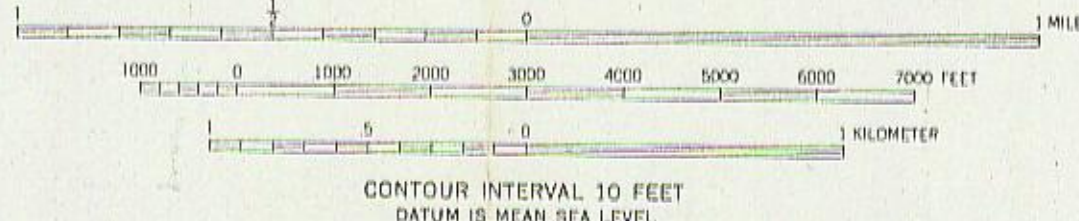
Notary Public (or other qualified officer)



Mapped, edited, and published by the Geological Survey as part of the Department of the Interior program for the development of the Missouri River Basin. Control by USGS and USC&GS. Culture and drainage in part compiled from aerial photographs taken 1951. Topography by plane-table surveys 1953-1954. Polyconic projection. 1927 North American datum. 10,000-foot grid based on South Dakota coordinate system, north zone.



THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U. S. GEOLOGICAL SURVEY, FEDERAL CENTER, DENVER, COLORADO OR WASHINGTON 25, D. C.
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST



ROAD CLASSIFICATION

Heavy-duty	Light-duty
Medium-duty	Unimproved dirt
U. S. Route	State Route

KIDDER SE, S. DAK.
N4545-W9730/7.5
1954

WR # 5050-3

Solid red line is general area locator

Map prepared by
Tom Koko GFA

WATER PERMIT

The Water Management Board hereby approves Water Permit Application No. 5050-3
SD Dept. of Game, Fish & Parks 445 E. Capitol, Pierre
(Applicant) (Post Office Address)
South Dakota 57501 With the following qualifications.
(State) (Zip Code)

See Form VR-2

Date of first receipt of application _____, 19____.

Date of return to applicant for correction, amendments or changes required _____, 19____.

Date of receipt of corrected application _____, 19____. Approved _____, 19____.

The Water Management Board hereby approves this Water Permit No. _____ authorizing the construction of the water use system and the placing of water to beneficial use as stated in the Application and as qualified in the Water Permit 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 specified work 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 _____, 19____.
5. The water appropriated shall be used for the purpose of _____

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 unlawfully impaired by this appropriation.
7. The amount of the appropriation herein granted shall not exceed _____ 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 to which water is actually and beneficially applied for _____ on or before _____, 19____; said water to be used during the following described annual period: _____

WATER MANAGEMENT BOARD

By: _____

Chief Engineer

Division of Water Rights
Dept. of Water and Natural Resources

19____



MAP OF HAMILTON



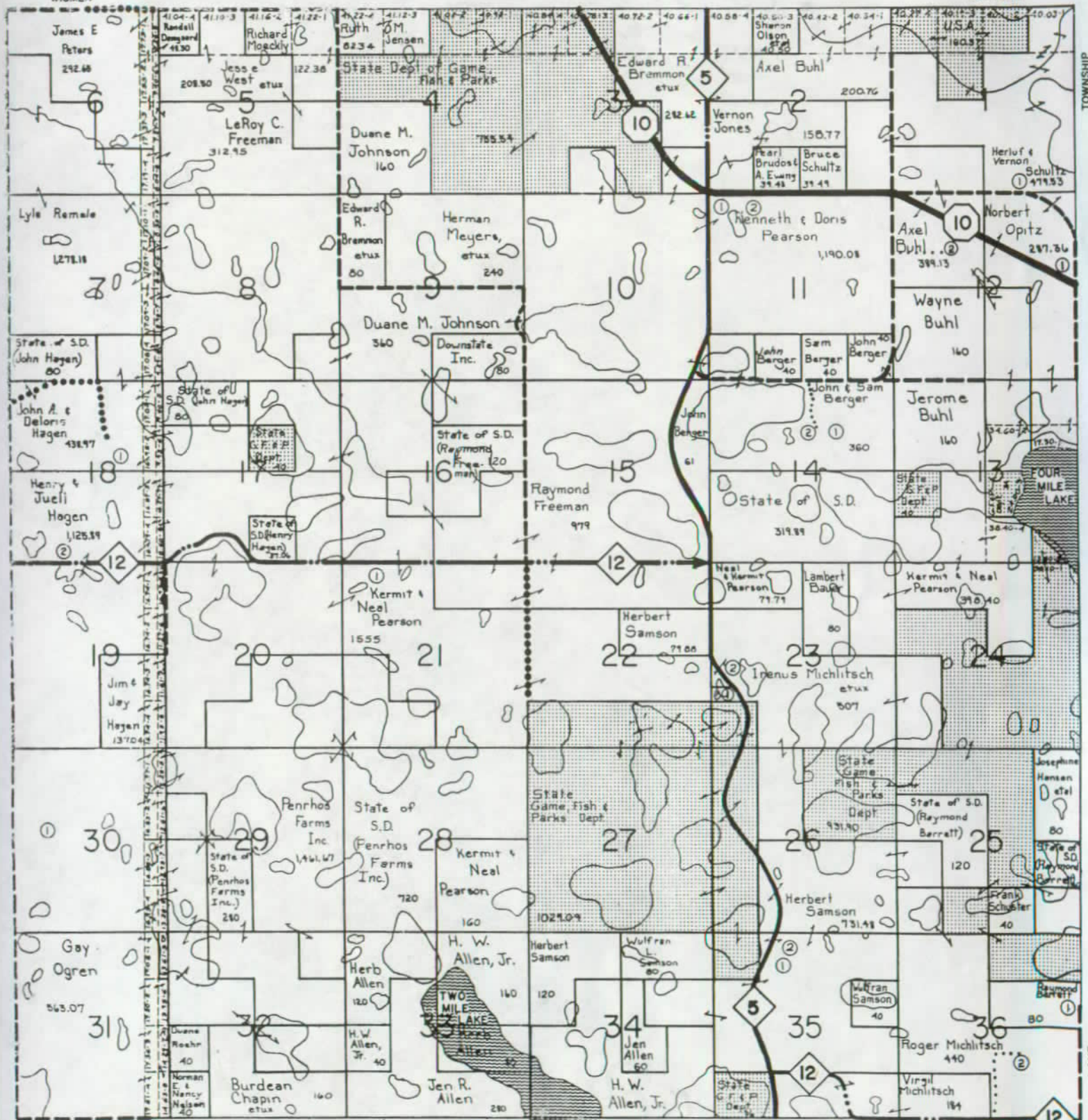
TOWNSHIP: 126 N

RANGE: 56 W

CODE: HA

WISMER

TOWNSHIP



SMALL TRACT OWNERS

TOWNSHIP

SEC.	LOT	NAME	ACRES
23	- A	- Mike Michlitsch et ux	10.00
31	- A	- Joyce Mann	28.92
31	- B	- State of S.D. (Penrhos Farms, Inc.)	13.61

Black Slough

Foot

LINE 5. Cont'd.

- 2.4 Britton, 1.0 mi S. and 13.0 mi E. from; near cor. secs. 25, 30, 31 and 36, T. 127 N., Rs. 55 and 56 W.; 936 ft N. and 143 ft W. from T-rd. N.; 66 ft E. of trail along ridge; 3 ft N. of telephone pole; in concrete post; standard tablet stamped "T T 17 JF 1951" 1880.252

LINE 6.

NEAR CENTER OF EAST BORDER (By J.P. McHugh, 1951; Book CV-464)

- 6.5 Britton, 3.0 mi N. and 13.0 mi E. from; near cor. secs. 1, 6, 7 and 12, T. 127 N., Rs. 55 and 56 W.; 33 ft S. and 356 ft W. from center of crossroads; 4 ft W. of telephone pole; in line with poles; in concrete post; standard tablet stamped "T T 15 JF 1951" 1865.016
- 6.9 UE 15 A; near quarter cor. secs. 1 and 12, T. 127 N., R. 56 W.; center of W. branch of Y-rd. N. 1860.6
- 7.4 UE 15 B; near cor. secs. 1, 2, 11 and 12, T. 127 N., R. 56 W.; center of crossroads 1833.2

[The above points in Sisseton No. 2 Quadrangle]

- 8.2 Britton, 4.0 mi N. and 12.0 mi E. from; near cor. secs. 1, 2, 35 and 36, Tps. 127 and 128 N., R. 56 W.; top of hill, 16 ft N. and 35 ft W. from field approach at center of trail; in concrete post; standard tablet stamped "T T 14 JF 1951" 1845.384
- 8.6 UE 14 A; near quarter cor. secs. 35 and 36, T. 128 N., R. 56 W.; 12 ft W. of center of N.-S. rd. across bridge; on center of steel railing on bridge, 3 ft above rd.; chiseled square 1823.02
- 8.9 UE 14 B; near quarter cor. secs. 35 and 36, T. 128 N., R. 56 W.; center of crossroads 1829.3
- 10.0 UE 14 C; near quarter cor. secs. 25 and 26, T. 128 N., R. 56 W.; center of T-rd. W. to schoolhouse 1843.9

LINE 7.

WEST ALONG EAST PORTION OF SOUTH BORDER THENCE NORTH TO NEAR CENTER OF QUADRANGLE (By J.P. McHugh, 1951; Book CV-464)

- 0.0 USC&GS standard disk stamped "G 62 1934" 1818.287
- 0.5 UE 62 AB; near quarter cor. secs. 3 and 34, Tps. 126 and 127 N., R. 56 W.; opposite fence corner joining fences S. and E.; center E.-W. rd. 1806.1
- 0.9 UE 62 AC; near quarter cor. secs. 33 and 34, T. 127 N., R. 56 W.; 32 ft N. of center of State Highway 10; at beginning of curve; on center of concrete culvert; chiseled square 1780.76
- 1.3 UE 62 AD; in NE $\frac{1}{4}$ sec. 33, T. 127 N., R. 56 W.; center of T-rd. N. 1807.7
- 2.1 UE 62 AE; in NW $\frac{1}{4}$ sec. 33, T. 127 N., R. 56 W.; 25 ft N. of center of State Highway 10; center of concrete culvert; chiseled square 1754.22
- 2.3 UE 62 AF; near cor. secs. 28, 29, 32 and 33, T. 127 N., R. 56 W.; center of crossroads 1756.7
- * 2.5 USC&GS standard disk stamped "E 62 1934" 9.9 miles E. of Britton, Highway 10 at a box culvert - NW wingwall. A standard disk stamped "E 62 1934" 1738.796
- 2.9 UE 62 BA; near quarter cor. secs. 32 and 33, T. 127 N., R. 56 W.; 20 ft W. of center of gate in N.-S. fence; center of N.-S. rd. 1765.1
- * 3.5 Britton, 2.0 mi S. and 9.0 mi E. from; near cor. secs. 4, 5, 32 and 33, Tps. 126 and 127 N., R. 56 W.; top of hill; 579 ft N. and 21 ft E. from center of rd., at fence E.; in concrete post; standard tablet stamped "T T 18 JF 1951" 1789.628
- 4.1 UE 18 A; near quarter cor. secs. 4 and 5, T. 126 N., R. 56 W., center of T-rd. W. 1803.5

NOT TO SCALE

56.0

127-56

40.2

34.0

90L

25.9

78.0

4.5

16.2

34

48.0

98.4

76.4

33.5

33.4

127-56

90L

NOT TO SCALE



44.0

~~47.0~~
60.0

✓

~~45.0~~ 40.0
~~45.0~~

✓

✓

4.8

4.6

7.0

3.7

5.2

+

~~1354~~

~~131.0~~

0

←

←

←

76.5

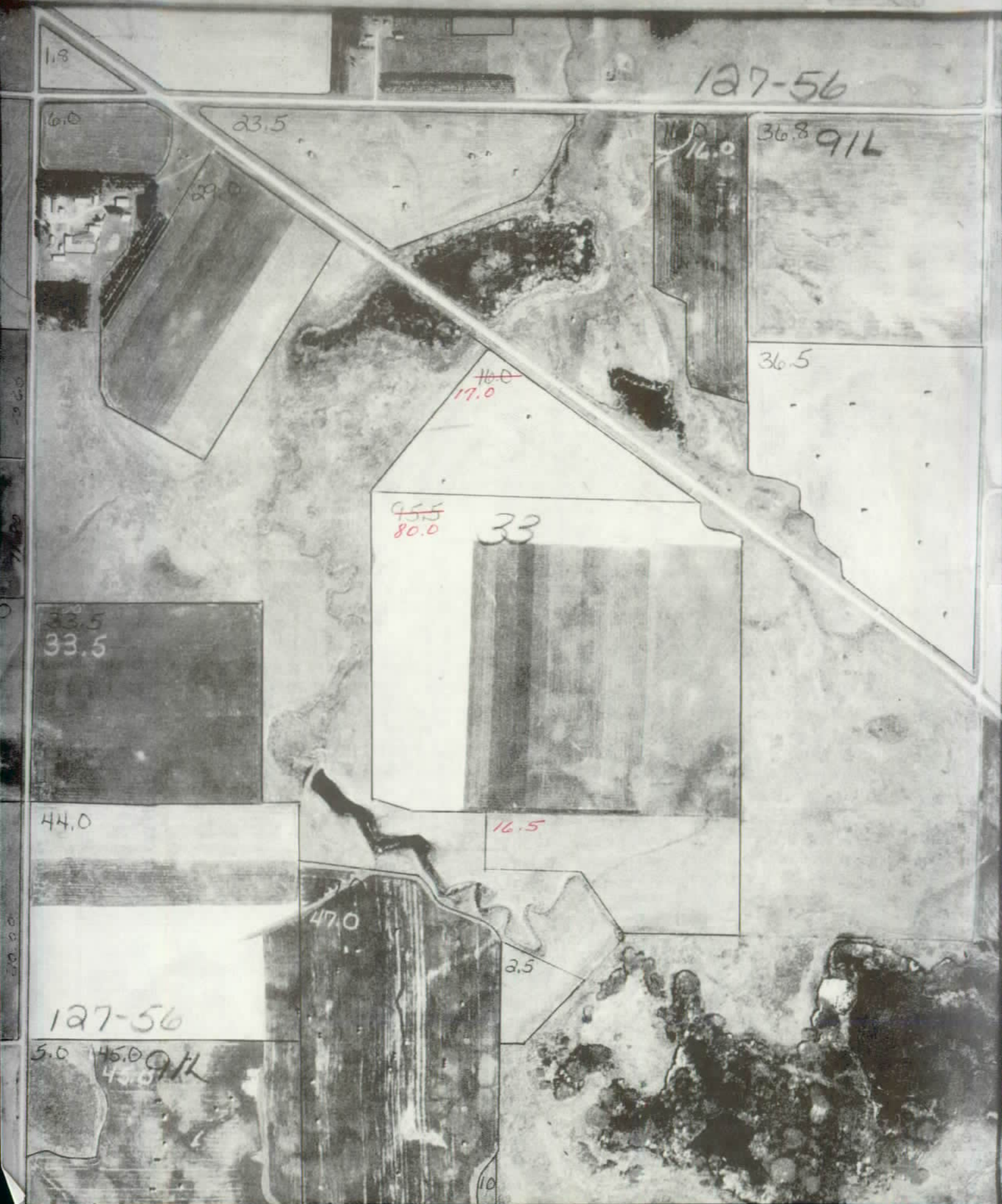
32.0
32.2

54.0

120-56

90R

NOT TO SCALE



Affidavit of Water Use

No. _____

(Type or Print in Ink)

Note: This Form is supplemental to Form 2 and is to be used when an affidavit pertaining to construction and water use already constructed is needed, primarily with vested right claims.

**Affidavit Of Construction Of Water Use System
And Application Of Water To Beneficial Use**

Name of Applicant (Same as Form 2) South Dakota Department of Game, Fish and Parks

Post Office Address 445 E. Capitol Pierre, SD 57501
(Street, RR or Box) (State) (Zip Code)

A. Notice of Appropriation _____ Date of Posting _____

Date of recording _____ Recording date _____
Where Book Page

B. Date of start of construction of water supply system _____

C. Date that water was first applied to beneficial use _____

D. Name of owner of original water supply system _____

E. Amount of water originally applied to beneficial use Black - 500 acre feetF. Present Use of Water - Amount of water now being used 500 acre feet

Date that this water was first used _____

G. Chronological History of Water Use

Black Slough was purchased by Game, Fish and Parks from the State of South Dakota at a school and public lands auction in 1959. The area has been in marshland and has only been used for wildlife and recreational purposes.

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)

ss

County of Hughes)

I, S. D. Department of Game, Fish and Parks the applicant, certify that I have read the foregoing
(print or type)
 and that the matters therein stated are true.

Signed Donna M. Koth Resource Staff SpecialistSubscribed and sworn to before me January 4, 1985Charles E. Kaler

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.

(Print name) 19_________
(Print name) 19____

Survey Field Notes

Black slough

3/27/85

Black Slough

Sta	BS	HI	FS	Elev
BM	4.63	1794.26	2.56 ⁶⁰	1789.63
TP ₁	8.36	1800.03	2.59	1791.67
TP ₂	1.76	1794.27	7.52	1792.51
TP ₃	5.18	1785.30	14.15	1780.12
TP ₄	3.70	1781.85	7.15	1778.15
			10.87	1770.98 -
			12.20	1769.65 -
			2.76	1779.09
TP ₅	7.06	1785.21	3.70	1778.15
TP ₆	14.71	1794.84	5.08	1780.13
TP ₇	5.93	1799.60	1.17	1793.67
TP ₈	3.35	1794.03	8.92	1790.68
			4.39	1789.69

Date 3/27/85

Weather

Party

Cloudy

D. Brosz - Rod

+
cool

G. Powell - In

BM TT 18 JF 1789.63 Brass Cap, 580 ft.

North of SW corner of Sec 9, T126N, R56W

Top of Post 1

Top of Post 2

Water Surface

Bottom of channel

Rebar - Bar B - near outlet - Ducks Unlimited BM

- Top of Post 2

- Top of Post 1

Memorandum

To : File

From : Gregory Powell

Re : Investigation of Black Slough for Vested Right application

On March 28, 1985 Del Brosz and I investigated Black Slough located in sections 33 & 34 of T127N R56W and sections 3 & 4 of T126N R56W of Marshall County. Game Fish & Parks has applied for a Vested Water Right on this slough for enhancement of waterfowl production and recreation.

The investigation of this application revealed the following information. The slough has a total surface area of 91 acres. The elevation of the outlet for the slough is 1769.65 ft M.S.L. The water surface elevation of the slough was 1770.98 ft. M.S.L. on March 28. The water was flowing through the outlet and had a depth of approximately 1.3 feet.

Investigation of land ownership indicates that Game Fish & Parks does not own the $W\frac{1}{2}SW\frac{1}{4}$ of ^{section 34 T127N R56W} that comprises the slough, but they are negotiating to acquire that portion of Black Slough.

~~XXXX/XXXX/XXXX~~

While the investigation was being conducted Del and I talked to the local Conservation Officer and some engineers employed by Ducks Unlimited. The local CO said the current condition of the slough isn't of much value for waterfowl. Ducks Unlimited is planning to put a control structure on the outlet of the slough to retain additional water in the slough. More water would make the slough much more appealing to waterfowl.

The application submitted by GF & P requests a vested right for 500 acre-feet. The slough has a surface area of 91 acres and with an average depth of $1\frac{1}{2}$ feet, GF & P would only have a vested right for 137 acre feet of water or to the outlet elevation of 1769.65 ft. M.S.L.

Since Ducks Unlimited plans to construct a control structure on the outlet of this slough, additional water will be retained. A new water right will be required for all additional water retained by the control structure.

My recommendation would be that GF & P apply for a new water right and defer the vested water right application until such a time as Ducks Unlimited has made a decision concerning the ^{construction of a} control structure on the outlet of this slough.

April 23, 1985

MEMO TO: Ron Koth
Department of Game, Fish & Parks

FROM: John Hatch, Chief Engineer
Division of Water Rights



SUBJECT: Vested Right Applications for Renziehausen Slough, Black Slough, Mud Lake and Blythe Slough

Del Brosz and Greg Powell, Water Rights Division Engineers, have reviewed and completed field investigations of the above four Vested Right applications. Before the applications are presented to the Water Management Board, I believe the following changes are necessary:

A. Renziehausen Slough:

1. The Board cannot recognize this application in its present form as a Vested Right. The completion of a waterfowl production enhancement project involving a system of control gates, pumps and dikes would exceed the original Vested Right. Approval of a new application would be necessary to complete these changes. Vested Rights are defined in SDCL 46-1-8.
2. If the enhancement project is eliminated, this application can be recognized as a Vested Right provided:
 - a. The Vested Right recognition is limited to water on land owned by the Department of Game, Fish & Parks. If private land is to be included, letters of agreement or easements from the landowner(s) must accompany the application.
 - b. Evidence is provided that the water has been used consistently for the beneficial use for which the vested right is being claimed.
 - c. A date that water was first applied to beneficial use must be included on the Affidavit of Water Use. This should be supported by the documentation in b.

- d. The annual amount of water claimed will be limited to the amount necessary to fill the slough to the elevation of the outlet. The outlet elevation of the slough will be set at 1283.0 ft msl.

B. Black Slough:

1. The Board can not recognize this application as a Vested Right. Mr. Brosz and Mr. Powell visited with Mr. Harvey Binger, Wildlife Conservation Officer, on March 26, 1985. Mr. Binger stated that Ducks Unlimited was planning to construct a control structure at the outlet of the slough. This control structure would raise the water level in the slough making the slough suitable for waterfowl production. Mr. Binger stated that the slough was useless at the present time. Engineers were at the site on March 26, 1985 conducting engineering surveys for Ducks Unlimited. The Department of Game, Fish & Parks should submit a Water Permit application for the Ducks Unlimited project.

C. Mud Lake:

1. This application can be recognized as a Vested Right provided:
 - a. Letters of agreement or easements are included with the application from private landowner(s) whose land will be covered by water claimed by the Vested Right.
 - b. Evidence is provided that the water has been used consistently for the beneficial use for which the vested right is being claimed.
 - c. A date that water was first applied to beneficial use must be included on the Affidavit of Water Use. This should be supported by the documentation in b.
 - d. The application indicates if the Vested Right is to be limited to Mud Lake or if the surrounding slough is to be included? The surface area of Mud Lake is 70 acres. The annual amount of Water claimed should be limited to the amount necessary to fill the lake and, if included, the slough area to the elevation of the outlet. The outlet elevation will be set at 1184.0 msl.

D. Blythe Slough

1. This application can be recognized as a Vested Right, provided:
 - a. Additional documentation is included showing that the slough was used for wildlife and recreational purposes prior to March 2, 1955.
 - b. A date that water was first applied to beneficial use must be included on the Affidavit of Water Use. This should be supported by the documentation in a.

- c. Since Blythe Slough is a closed basin without an outlet that is used, the annual amount of water will be limited to the normal water surface elevation of slough. The elevation is to be provided by GF&P on the application.

It will also be necessary to provide a map for each application that shows the area being applied for.

cc: Dan Doyle, Assistant Attorney General

C41601KS.WR

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF MARSHALL)

AFFIDAVIT

Harlan Damgaard, being first duly sworn
on oath, deposes and states as follows:

1. That he has resided in MARSHALL County,
South Dakota, for 50 years, and that he is thoroughly familiar
with the area commonly known as BLACK SLOUGH, and being
more particularly described as follows: in the ~~S $\frac{1}{4}$ SE $\frac{1}{4}$~~ Sec 33, in the ~~SW $\frac{1}{4}$ SW $\frac{1}{4}$~~
Sec 34 Twp 127 R56, in the ~~N $\frac{1}{2}$ NE $\frac{1}{4}$~~ Sec 4 ~~N $\frac{1}{2}$ NW $\frac{1}{4}$~~ Sec 3 Twp 126 R56

2. That his knowledge and familiarity with the area has
been acquired by virtue of the fact that he has, for the last 39
years, resided within 1 $\frac{1}{2}$ miles of said described land, and that
he has personal knowledge of the use to which the land was put, at
all times from January 1, 1955, to the present; he was further
acquainted with Godt Fred Damgaard who was owner of the
above-described property prior to 1946 - 1979.

3. The undersigned hereby states, from his personal
knowledge, that the above-described land area is now, and was, at
all times from before January 1, 1955, and continuing to the
present, a natural wetland area beneficial to wildlife and public
recreation, and the area has now, and always has had, from before

January 1, 1955, and continuing to the present, intrinsic use as a wildlife production area, and all of said uses have continued uninterrupted from before January 1, 1955, to the date of this Affidavit.

Dated this 8 day of May, 1985.

Harlan Damgaard
Affiant

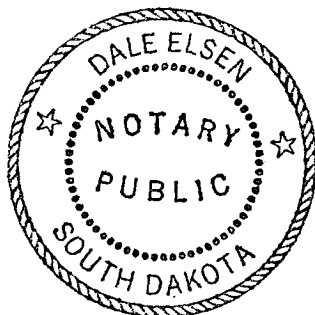
Subscribed and sworn to before me, a notary public, this 8
day of MAY, 1985.

Dale Elsen
Notary Public, South Dakota

My Commission expires:

Dale Elsen Notary Public S. Dak.
My commission expires 5-9-1991

SEAL





**South Dakota
Department of
Game, Fish and Parks**

**Division of Administration
Sigurd Anderson Building
445 East Capitol
Pierre, South Dakota 57501**

May 14, 1985

MEMO TO: John Hatch, Chief Engineer
Water Rights

FROM: Ron Koth, Water Permits Coordinator
Game, Fish and Parks

SUBJECT: Vested Water Right Applications

Ron Koth



Please find attached the documentation and/or changes needed for vested water right applications on Renziehausen Slough, Black Slough, Blythe Slough, and Mud Lake in addition to the previously requested amendment found in my May 7, 1985 memo to you.

Renziehausen Slough:

- (1) Water and wetland areas in Renziehausen Slough have probably been in that condition since at least 1935 when the Department of Game, Fish and Parks purchased the first wetland parcel. Water and wetland purchases were made from 1935-1947 from several private owners. The remainder of land owned by GF&P is upland and was purchased from other public and private owners from 1955-1963. Since water areas were purchased prior to 1955 and have been continually managed by GF&P for wildlife and recreational purposes, vested water rights should be applicable. Please use 1935 as the date that water was first applied to beneficial use.
- (2) The attached map supercedes the previously submitted map. The outlined lands reflect the outlet elevation of 1283.0 msl as set by your staff. All lands within the outlined area are owned by the Department of Game, Fish and Parks.

Black Slough:

- (1) The attached affidavit should fulfill the continuity of use requirement that water and wetland areas in Black Slough have been used since at least 1946 to the present for the same purposes. Please use 1946 as the date that water was first applied to beneficial use in lieu of other documentation.
- (2) The attached map supercedes the previously submitted map. The outlined lands on the attached map reflect the outlet elevation of

1769.65 msl as surveyed by your staff on 3-27-85. All lands within the outlined area are owned by the Department of Game, Fish and Parks.

- (3) As a result of using 1769.65 msl as the outlet elevation the amount of water claimed on the vested right application should be 315 acre feet annually, rather than 500 acre feet annually.

Mud Lake:

- (1) The attached affidavit should fulfill the continuity of use requirement that water and wetland areas in Mud Lake have been used since at least 1942 to the present for the same purposes. Please use 1942 as the date that water was first applied to beneficial use in lieu of other documentation.
- (2) The attached map supercedes the previously submitted map. The outlined maps on the attached map reflect the outlet elevation of 1184.0 msl as recommended in your 4-23-85 memo. All lands within the outlined area are owned by the Department of Game, Fish and Parks.
- (3) As a result of using the 1184.0 msl outlet elevation the amount of water claimed on the vested right application should be 310 acre feet annually rather than 380 acre feet annually.

Blythe Slough:

- (1) The attached affidavit should fulfill the continuity of use requirement that water and wetland areas in Blythe Slough have been used for the same purposes from 1944 to the present. Please use 1944 as the date that water was first applied to beneficial use in lieu of other documentation.
- (2) The attached map supercedes the previously submitted map. The lands outlined on the attached map reflect an outlet elevation of 1713.0 msl as recommended by Greg Powell of your staff. All lands within the outlined area are owned by the Department of Game, Fish and Parks.
- (3) As a result of using 1713.0 msl as the normal elevation of the slough, the amount of water claimed on the vested water right application should be 570 acre feet annually, rather than 600 acre feet annually.

Thank you for your assistance in quantifying these vested water rights.

RK/ld

Attch:

REPORT ON VESTED RIGHT APPLICATIONS
RENZIEHAUSEN SLOUGH, BLACK SLOUGH, MUD LAKE, BLYTHE SLOUGH
SUBMITTED BY GAME, FISH & PARKS

May 14, 1985

These applications are for vested water rights for wildlife and public recreational purposes.

Renziehausen Slough, Application No. 5051-3, requests a vested water right on approximately 398 surface acres located in portions of Sections 25, 26, 35 and 36 all of T127N, R60W. The application requests water to the outlet elevation of 1283.0 feet msl. as surveyed by Del Brosz and Greg Powell of the Division of Water Rights. The priority date for which this application may be approved is 1935, as evidenced by land purchases and an affidavit.

Black Slough, Application No. 5050-3, requests a vested water right on approximately 103 surface acres located in portions of Section 33 and 34 of T127N, R56W and Sections 3 and 4 of T126N, R56W. The application requests water to the outlet elevation of 1769.65 feet msl as surveyed by Del Brosz and Greg Powell. The priority date for which this application may be approved is 1946, as evidenced by an affidavit signed by Godtfred Damgaard.

Mud Lake, Application No. 5048-3, requests a vested water right on approximately 119 surface acres located in portions of Section 10, T123N, R50W. The application requests water to the elevation of 1184.0 feet msl. as surveyed by Del Brosz and Greg Powell. The priority date for which this application may be approved is 1942 as evidenced by an affidavit signed by Marlowe Vriem.

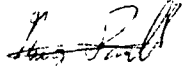
Blythe Slough, Application No. 5049-3, requests a vested water right on approximately 362 acres located in Sections 27 and 28 of T117N, R55W. The application requests water to the elevation of 1713.0 feet msl. as identified on a U.S.G.S. topographic map. The priority date for which this application may be approved is 1944 as evidenced by an affidavit signed by Bruce Florey.

These vested right applications are for a one-time-fill to the respective identified elevations. The applications are being submitted with the proposed modifications by Ducks Unlimited being deleted by Game, Fish and Parks.

Conclusions

1. The Water Rights Staff believes that a substantiated claim does exist for a vested water right.
2. The documentation for the applications shows that Slough Areas have been used for wildlife and public recreation purposes dating from 1935 for Renziehausen Slough, 1946 for Black Slough, 1942 for Mud Lake, and 1944 for Blythe Slough. The present conditions of the slough areas have existed since prior to 1955 and therefore will not alter, change, or adversely affect existing water rights.

3. Recommendation: The applications should be recognized as vested rights at the elevations and acreages surveyed by the Water Right Staff with a qualification that any alteration of present conditions proposed will require approval by the Water Management Board.

A handwritten signature in dark ink, appearing to read 'Greg Powell', with a stylized flourish at the end.

GREG POWELL
Natural Resources Engineer

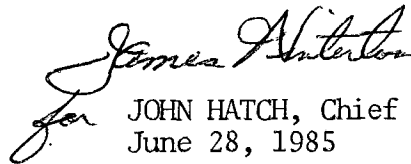
RECOMMENDATION OF CHIEF ENGINEER FOR APPLICATION No.

5050-3 for RECOGNITION OF A VESTED WATER RIGHT CLAIM

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Application No. 5050-3 for recognition of a Vested Water Right Claim.

The Chief Engineer is recommending Recognition of Application No. 5050-3 because 1) the water has been appropriated since January 1, 1955 for water-fowl production and recreation, 2) the diversion has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) in the public interest.

See the attached report for additional information.

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

JOHN HATCH, Chief Engineer
June 28, 1985

Instruction to Newspaper - Publish first publication of the following Notice on or before July 3, 1985 with 2nd publication 1 week later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 5050-3 to ~~Appropriate Water~~ recognize a ~~and/or to Amend Water Permit or Water Rights No.~~ Vested Water Right Claim

Notice is hereby given that SD Dept. of Game, Fish & Parks whose mailing address is 445 E Capitol, Pierre, South Dakota has made an application for a permit Vested Water Right claim on Black Slough located in Section 3 & 4, T126N, R56W and S 1/2 of Sections 33 & 34, T127N, R56W. The claim is for 500 acre feet per year.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends Recognition of Vested Right Application No. 5050-3 because 1) the water has been appropriated since January 1, 1955 for waterfowl production and recreation, 2) the diversion has been developed without unlawful impairment of existing rights, 3) is a beneficial use of water and 4) in the public interest.

Recognition of this application will be considered by the Water Management Board during a special Board Meeting conducted via telephone conference call in Room 425, Joe Foss Building, Pierre SD on August 12, 1985 at 9:00 am.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to make a determination on this application after it reaches a conclusion based upon facts presented at the ~~public~~ hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the Applicant and the Chief Engineer by August 2, 1985. The petition may be informal, but it must include a statement describing the petitioner's interest in the application, the reason for the petitioner's opposition to or support of the application, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The applicant need not file a petition. If there are any written petitions in opposition to this application the hearing will be continued until the next regular Board meeting October 9, 1985. This application is made pursuant to the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17, 46-5-1 thru 46-5-16, 46-5-24, 46-5-25, 46-5-30.2, 46-5-31; 46-2A-1 thru 46-2A-10, 46-2A-12; ~~(ground) 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14; (future use) 46-5-38 thru 46-5-40; (transfer lands) 46-5-30.4, 46-5-33 thru 46-5-35; (10,000 AFA) 46-5-20.1, 46-5-8.1; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; (future use) 74:02:01:24 thru 74:02:01:25; (10,000 AFA) 74:02:01:15.02 thru 74:02:01:15.05; 74:02:01:19 thru 74:02:01:22.~~

This hearing is an adversary proceeding. The applicant or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this application or to assure access to the hearing by the handicapped can contact the Water Rights Division, DWN R, Joe Foss Bldg, Pierre SD (605 773-3352) for assistance prior to the hearing date. The time of the hearing will be automatically extended for at least twenty days upon written request of the applicant or any person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by August 2, 1985.

No. 5050-3

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Marshall) ss.

I, C. L. Card hereby

certify that the annexed printed copy of Notice of Intent to Appropriate

Water was taken from the Britton Journal

A newspaper which during the whole time of publication of said notice
herein after stated, has been and is printed and published in the _____

City of Britton

County of Marshall and State of South Dakota;
that the said notice was published in said newspaper on the following
two dates:

July 3, 1985
July 10, 1985

C. L. Card
(Signature)

publisher
(Title)

July 10, 1985
(Date Signed)

Cost of Printing: \$39.93

2T (July 3, 10)

NOTICE OF HEARING
on Application
No. 5050-3
to recognize a
Vested Water Right Claim

NOTICE IS HEREBY GIVEN that
SD Dept. of Game, Fish & Parks
whose mailing address is 445 E.
Capitol, Pierre, South Dakota has
made an application for a permit
Vested Water Right claim on Black
Slough located in Section 3 & 4,
T126N, R56W and S½ of Sections 33 &
34, T127N, R56W. The claim is for 500
acre feet per year.

Pursuant to SDCL 46-2A-2 the Chief
Engineer of the Water Rights
Division recommends Recognition of
Vested Right Application No. 5050-3
because 1) the water has been ap-
propriated since January 1, 1943 for
waterfowl production and
recreation, 2) the diversion has been
developed without unlawful im-
pairment of existing rights, 3) is a
beneficial use of water and 4) in the
public interest.

Recognition of this application will
be considered by the Water
Management Board during a special
Board Meeting conducted via
telephone conference call in Room
425, Joe Foss Building, Pierre SD on
August 12, 1985 at 9:00 a.m.

The recommendation of the Chief
Engineer is not final or binding upon
the Board and the Board is
authorized to make a determination
on this application after it reaches a
conclusion based upon facts
presented at the hearing. Any in-
terested person who may be affected
by a Board decision and who intends
to participate in the hearing before
the Board and present evidence or
cross-examine witnesses according
to SDCL 1-26, must file a written
petition with BOTH the Applicant
and the Chief Engineer by August 2,
1985. The petition may be informal,
but it must include a statement
describing the petitioners interest in
the application, the reason for the
petitioner's opposition to or support
of the application, and the signature
and mailing address of the petitioner
or his legal counsel if legal counsel is
obtained. The applicant need not
file a petition. If there are any
written petitions in opposition to this
application the hearing will be
continued until the next regular
Board meeting October 9, 1985.



This application is made pursuant to the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17, 46-5-1 thru 46-5-16, 46-5-24, 46-5-25, 46-5-30.2, 46-5-31; 46-2A-1 thru 46-2A-10, 46-2A-12; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; 74:02:01:19 thru 74:02:01:22.

This hearing is an adversary proceeding. The applicant or any person, after filing a petition, has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this application or to assure access to the hearing by the handicapped can contract the Water Rights Division, DWNR, Joe Foss Bldg, Pierre SD (605 773-3352) for assistance prior to the hearing date. The time of the hearing will be automatically extended for at least twenty days upon written request of the applicant or any person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by August 2, 1985.



No. 5050-3

Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

WATER RIGHTS DIVISION
(605) 773-3352

SEP 11 1985

S.D. Dept. of Game, Fish & Parks
445 E. Capitol
Pierre, South Dakota

Dear Sir;

Enclosed herewith are your Vested Right Permit, Water License No. 5050-3.
This Water License is the final water right document completing your
process of obtaining a vested water right.

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

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:ms

enclosures

State of South Dakota

VESTED Water License No. 5050-3

(1) South Dakota Department of Game, Fish & Parks

of 445 E. Capitol, Pierre, South Dakota

made Application No. 5050-3, December 17, 1984 for recognition of a Vested Right for a water permit to appropriate

500 acre/feet annually cubic feet per second of water from Crow Creek

Marshall County, South Dakota for recreation and waterfowl production purposes.

Vested Right

Permit No. 5050-3, with a priority date of January 1, 1955

was recognized August 12, 1985 and issued to applicant(s) for diversion of water recognizing with construction of the described

water supply system to be completed on or before and for the application to beneficial use of said

water on or before

and

(2) It is certified that the application 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 500 acre feet annually cubic feet per second of water

for beneficial use. The location of the diversion point(s) is on Black Slough in Sections 3 and 4, T126N,

R 56W and S½ of Sections 33 and 34, T127N, R56W.

and

(3) The applicant has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to the following extent, water to be stored in place

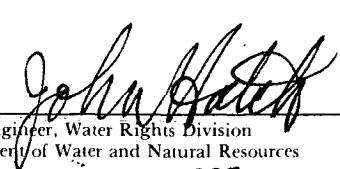
(4) Pursuant to §46-5-30.1 the South Dakota Department of Game, Fish & Parks

of 445 E. Capitol, Pierre, South Dakota 57501

the holder(s) and/or owner(s) of Vested Right ~~Water Permit~~ No. 5050-3 is issued a license to appropriate water, the right to use 500 acre/feet annually ~~cubic feet per second~~ of water from Crow Creek with a priority date

of January 1, 1955 from the location specified in (2) of this license. The water to be conducted to and upon lands specified in (3) of this license for the purpose of recreation and water fowl production

This license is subject to any limitations or qualifications listed in Vested Right ~~Water Permit~~ No. 5050-3 and subject to South Dakota State Law.


Chief Engineer, Water Rights Division
Department of Water and Natural Resources

JOHN HATCH

SEP 11 1985

This Water License No. 5050-3 is based on a Vested Right claim filed with the Water Management Board.

VESTED WATER RIGHT

The Water Management Board hereby recognizes Vested Water Right No. 5050-3

S.D. Dept. of Game, Fish & Parks
(applicant)

445 E. Capitol Pierre
(post office address)

South Dakota
(state)

57501
(zip code)

Date of receipt of Application December 17, 1984.

Recognized August 12, 1985.

The Water Management Board hereby recognizes the construction of the water use system and the placing of water to beneficial use as stated in the Application and as qualified in the Vested Water Right, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is January 1, 1955.
2. The whole of said work has been completed and water has been applied to beneficial use as described on Form 2B of this application.
3. The water appropriated is used for the purpose of Waterfowl production.
4. The prior rights 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 unlawfully impaired by this appropriation.

The amount of appropriation hereby recognized shall not exceed 500 acre
Feet per year ~~cubic feet per second of time~~; 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 to which water has been actually and beneficially applied for Waterfowl Production. The water to be used during the following described period January 1 to December 31.

WATER MANAGEMENT BOARD

By: John Hatch
(Chief Engineer)

Division of Water Rights
Dept. of Water and Natural Resources

SEP 11 1985

, 19__

**Department of
Water & Natural Resources**

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

September 21, 1988

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

Dear Mr. Beringson:

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

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

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

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

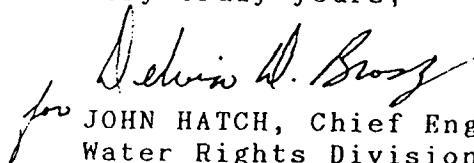


September 21, 1988
Richard Beringson, Secretary
Page 2

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

Please advise if you have any questions.

Very truly yours,


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

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