

WATER PERMIT NO. 5733-3

Phone: 773-3391

Name of Applicant: South Dakota Department of Game, Fish and Parks

Post Office Address: 523 E Capitol, Pierre SD 57501

Amount of Water Claimed: 54.5 acre-feet Total Acres: NA

Source of Water Supply: tributaries of Nigerhead Slough

Water to be used for: fish and wildlife enhancement County: Marshall

About 17 miles west of Sisseton

PRIORITY Date Received: 11-13-92 Fee: NA Remarks: _____

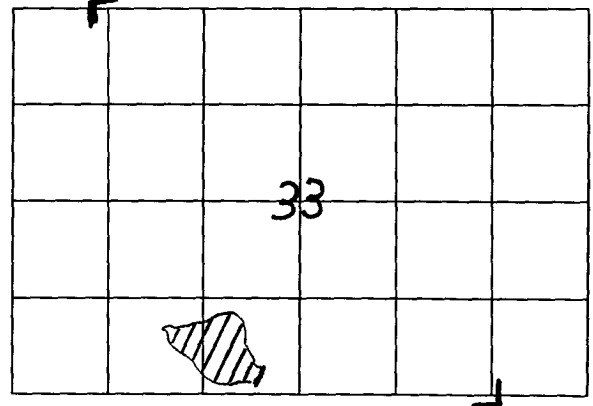
Corrected Application Received: 12-11-92 Period of Annual Use: Jan 1 - Dec 31

WATER QUALITY APPROVAL RECEIVED: NA APPROVED/CONDITIONAL (Circle one)

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

Diversion Point: SE 1/4 SW 1/4 Sec 33-T126N-R55W

Land to be Irrigated: _____



Well Log: Driller: _____ Licensed YES _____ NO _____

Depth of Well: _____ REMARKS: _____

Type of Map: topo PREPARED BY: Tim Olson Reviewed and the Number

Assigned on: 12-11-92 By: Karen Schlaak

Mail to: Water Rights Div.
DWNR, Foss Bldg.
Pierre, SD 57501
(605) 773-3352



No. 5733-3 Hydrologic Unit 10160010
Map No. _____ Basin James River
Newspaper The Britton Journal, Box 69, Britton

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

Use of water: Industrial ☐ Commercial ☐ Municipal ☐ Other Common Distribution System ☐
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 retained

Change 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. _____

1. Name of Applicant South Dakota Game, Fish and Parks Phone No. 622-2391

Post Office Address 5850 E. Hwy 12, Aberdeen State SD, 57401
(Street, RR or Box) (City) Zip Code

2. Amount of water claimed (c.f.s.) 54.5 acre feet to maintain water level at 1800 feet.

3. Source of water supply Unnamed tributaries of Nigerhead Slough

4. Location of point of diversion SE 1/4 SW 1/4 of Section 33, T. 126 N., R. 55 W.

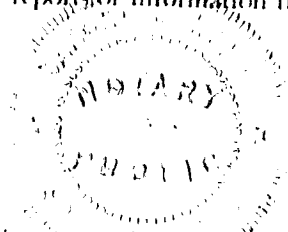
Water Impounded: S 1/2 SW 1/4 Sec 33-T126N-R55W

County Marshall

5. Counties where water will be used Marshall

6. Annual period during which water is to be used January 1 - December 31

7. 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)



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, Richard Beringson the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Signed Richard Beringson

Subscribed and sworn to before me this 13th day of November 1992

Sandra K. Kumm
Notary Public

**SOUTH DAKOTA
WATER PERMIT NO. 5733-3**

Date of first receipt of application November 13, 1992.

Date of return to applicant for corrections, amendments or changes November 16, 1992.

Date of receipt of corrected application December 11, 1992.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 5733-3 to South Dakota Department of Game, Fish and Parks, 523 E Capitol, Pierre SD 57501 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. to impound 54.5 acre-feet of water. The dam site is to be located in the SE 1/4 SW 1/4 Section 33 with water impounded in the S 1/2 SW 1/4 Section 33; all in T126N-R55W. Water is to be stored annually to an approximate elevation of 1800 feet mean sea level.
2. The water appropriated shall be used for the purpose of supplying water for fish and wildlife production and may not exceed the amount of water needed for beneficial use for fish and wildlife production purposes.
3. The water is to be used during the following described annual period: January 1 - December 31.
4. The date of approval of Permit No. 5733-3 is March 3, 1993.
5. The date from which applicant may claim right is November 13, 1992.
6. One-fifth of the construction is to be completed on or before September 3, 1995.
7. All construction is to be completed on or before March 3, 1998.
8. Water is to be put to beneficial use on or before March 3, 2002.
9. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATION

Approval of Water Permit No. 5733-3 authorizes storage of up to 54.5 acre-feet of water annually.

WATER MANAGEMENT BOARD

By: 
John Hatch, Chief Engineer, Water Rights Division
Department of Environment and Natural Resources

MAR 11 1993
date

Supplemental Information

(type or print in ink)



Well Information - Proposed construction

- Drill Hole Diameter _____ Depth _____
- Casing Type _____ Diameter _____ Thickness _____
- Screen Type _____ Diameter _____ Thickness _____
- Gravel Pack Thickness _____ Length of Gravel Pack _____
- Depth to Top of Water Bearing Material _____
- Depth to Water (ground surface to water level) _____
- Distance to nearest existing domestic well:

On applicants property _____ On property owned by others _____

2. Dugout Information Estimates

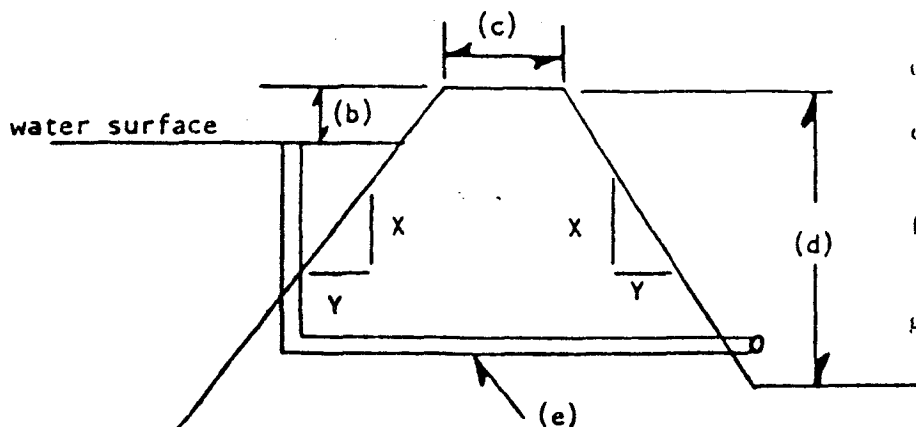
- Surface Dimensions _____ Depth _____
- Depth to water (ground surface to water level) _____

3. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below. The locations of each dam should be shown on the map submitted with the application.

- If a private engineering firm or government agency was involved in the design of this dam please give their name and address

US Fish and Wildlife Service, Waubay NWR
Rte 1, Box 79
Waubay, SD 57273



- Freeboard 2 ft.
- Crest Width 20 ft
Crest Length 20 ft
- Height 6 ft.
- Primary Outlet Capacity _____
If Pipe, diameter 4' stop log w/30" tube
- Secondary Spillway Capacity _____
Spillway width 30 ft.
- X & Y Slope
Upstream 1:1
Downstream 1:4

Surface Area of Impoundment 22.7 acres

Storage 54.5 acre feet

Drainage area above dam 100 acres

Richard J. Beringson

Signature of Applicant

Vol LDM 3-16-90

NOT TO SCALE



MAP PREPARED BY
TIMOTHY J. OLSON
DEP'T OF GAME, FISH AND PARKS
WATER PERMITS COORDINATOR

Timothy J. Olson



DUCKS
UNLIMITED
INC.

DUCKS UNLIMITED, INC.
GREAT PLAINS REGIONAL OFFICE

6115 East Main Avenue
Bismarck, North Dakota, 58501
(701) 258-5500

September 19, 1991

Brian Kietzman
Waubay NWR
RR 1, Box 79
Waubay, SD 57273

RE: Schultz-Ringer WPA Project

Dear Brian:

I've just completed a preliminary review of the Schultz-Ringer WPA project near Lake City. Enclosed is a copy of the topographic map plotted out by our survey crew. I had instructed them to completely topo the north marshes and get a centerline profile of the south marsh on private land, which is what they did. We enlarged the USGS quadrangular map and traced the 1840.0 contour onto the topo map as shown. That provides a pretty good indication of how the south marsh lays.

Upon reviewing the topo map and discussing it with Rick Warhurst, it appears the best option would be to construct one structure at the location indicated on the map. That structure, with a full service level (FSL) at elevation 1834.0, would back water up through all of the little marsh areas to the north which consists of about 20 surface acres and also put water into the 25 acre south marsh. Another reason I like this alternative is because we can provide a better water supply for the south marsh. The watershed for the south marsh is relatively small as compared to the basin size, and with the one structure in place, we can force inflows from the north back into the south marsh. As Rick indicated to me, the south marsh will not be as deep as we would like and will probably have a fair amount of cattail areas, however, there are a few deeper holes that should provide some open water. If we were to raise the FSL on the structure, we would be putting too much water in the north marshes so we determined the 1834.0 level is probably the best alternative.

The steel sheet pile weir structure would be located on State GPA land about 70-100' east of the dirt trail that crosses the outlet channel. We would not be affecting the crossing other than that it may be useable more often after the project than it is now. I suspect either your office or our office will need to contact Jerry Streckfuss in Aberdeen to work out the approvals, who's responsible for maintenance, etc.

Brian Kietzman
September 19, 1991
Page Two

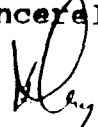
With the 20' weir in place, the following water surface elevations, inflows and outflows are predicted:

<u>EVENT</u>	<u>PEAK INFLOW</u>	<u>MAX. WATER SURFACE ELEVATION IN MARSH</u>	<u>PEAK DISCHARGE</u>
10-YR	397 CFS	1835.27	91 CFS
25-YR	555 CFS	1835.56	127 CFS
50-YR	737 CFS	1835.87	169 CFS
100-YR	907 CFS	1836.17	211 CFS

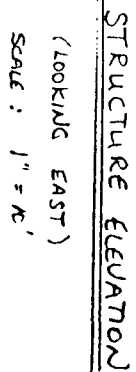
As you can see based on these predictions, the water in the farthest north marsh will bounce beyond the west WPA fence line for all of the events analyzed. It appears it could be 3-4 days from when the event starts until the water is back to elevation 1834.0. It would take about 30 hours to get back to elevation 1834.5. The affected area looks to be about 0.5 acre.

Give me a call if you wish to discuss any of this. I'll wait to hear from you before we proceed with the soils investigation or drawing up the plans. Also, I'll check with Rick on who our Site Specific Agreement (SSA) would be with. If you have any questions, please give Rick or me a call. Thanks for your help, Brian.

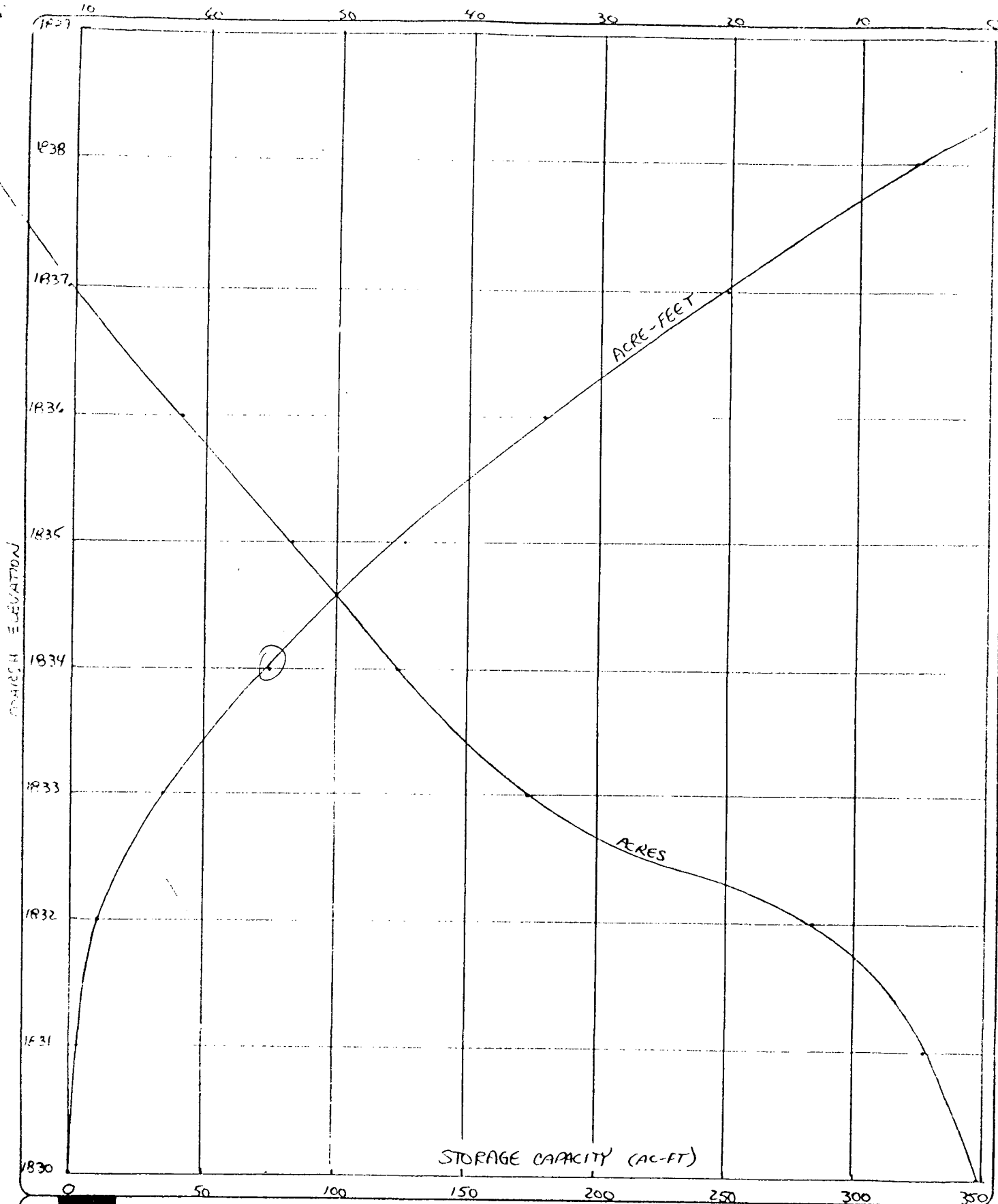
Sincerely,


Doug Lipetzky, P.E.
Regional Engineer

Enclosures

DUCKS
UNLIMITED
INC.

PROJECT: SCHULTZ - RINGER WPA
SUBJECT: PROPOSED STRUCTURE
FILE NO.: _____ DATE: 9-19-91
BY: DJL CHECKED: _____ SHEET: _____ OF: _____



DUCKS
UNLIMITED
INC.

DESIGN NOTES

PROJECT: _____
 SUBJECT: SCHULTZ-RINGER WPA "ENTIRE MARSH"
 FILE NO.: _____ DATE: 9-18-91
 BY: D/L CHECKED: _____ SHEET: _____ OF: _____



DEPARTMENT OF GAME, FISH AND PARKS

Foss Building
523 East Capitol
Pierre, South Dakota 57501-3182



November 13, 1992

Mr. John Hatch, Chief Engineer
Division of Water Rights
S.D. Department of Environment & Natural Resources
Foss Building, 523 E. Capitol
Pierre, SD 57501

Dear Mr. Hatch:

Attached is an application to appropriate water and supplemental materials for a project to restore a partially drained wetland in Marshall County. The project is a joint effort between a private landowner, the U.S. Fish and Wildlife Service and Game, Fish and Parks.

A copy of the Wildlife Extension Agreement between the Service and Mr. Opitz, the landowner is also attached.

Thank you for your assistance on this matter and if you have any questions please call me at 773-3718.

Sincerely,

Timothy J. Olson
Water Permits Coordinator

Melvin Opitz

UCN: 64590-2
WE AGREEMENT NO.

#SD-64590-92- 331

Charge To: 64120-1230-006B
#1,095.00

WILDLIFE EXTENSION AGREEMENT

THIS AGREEMENT DATED April 20, 1992 BETWEEN Melvin Opitz, WILDLIFE COOPERATOR(S) AND THE U.S. FISH AND WILDLIFE SERVICE (FWS) IS ENTERED INTO PURSUANT TO AUTHORITY CONTAINED IN SECTION 1 OF THE FISH AND WILDLIFE ACT OF 1956, U.S.C. 42f(a)(4).

Melvin Opitz, Rte 2, Eden, South Dakota 57232

HEREBY AGREE TO OR PARTICIPATE WITH THE FWS IN CONDUCTING CERTAIN WILDLIFE MANAGEMENT PRACTICES ON LANDS OWNED BY THEM IN Marshall COUNTY, STATE OF S. Dak. described as follows.
S1/2SW1/4 of Section 33, T. 126 N., R. 55 W.

THE WILDLIFE COOPERATORS IN SIGNING THIS AGREEMENT JOIN AS PARTICIPANTS IN A WILDLIFE MANAGEMENT PROGRAM AND GRANT TO THE FWS THE AUTHORITY TO COMPLETE WILDLIFE HABITAT DEVELOPMENT, OR TO PERSONALLY CARRY OUT WILDLIFE MANAGEMENT ACTIVITIES WITH FINANCIAL OR MATERIAL SUPPORT, AS DESCRIBED IN THE ATTACHED SPECIAL PROVISIONS (EXHIBIT A). ANY DONATION OF SUPPLIES, EQUIPMENT, OR DIRECT PAYMENT FROM THE FWS TO THE WILDLIFE COOPERATORS FOR CARRYING OUT THE WILDLIFE HABITAT DEVELOPMENTS, ARE ALSO INCLUDED IN THE ATTACHED SPECIAL PROVISIONS (EXHIBIT A).

THE TERMS OF THIS AGREEMENT WILL BE FOR 10 YEARS BEGINNING April 20, 1992, AND ENDING Sept. 30, 2001. PAYMENT AS APPROPRIATE WILL BE MADE AS DESCRIBED AND AGREED TO IN EXHIBIT A.

THIS AGREEMENT MAY BE MODIFIED AT ANY TIME BY MUTUAL WRITTEN CONSENT. IT MAY ALSO BE TERMINATED IN WRITING BY EITHER PARTY THIRTY (30) DAYS IN ADVANCE. IF TERMINATED BY THE COOPERATOR. COOPERATOR WILL REIMBURSE FWS FOR THE COST OF THE WILDLIFE HABITAT DEVELOPMENTS PLACED ON THE LAND.

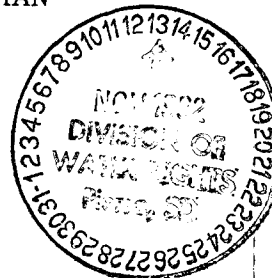
AT THE END OF THE TERM, THE WILDLIFE HABITAT DEVELOPMENT WILL BECOME THE PROPERTY OF THE WILDLIFE COOPERATOR.

THE FWS, DOES NOT ASSUME JURISDICTION OVER THE PREMISES BY THIS AGREEMENT. THE WILDLIFE COOPERATOR RETAINS ALL RIGHTS TO CONTROL TRESPASS AND RETAINS ALL RESPONSIBILITY FOR TAXES, ASSESSMENTS, AND DAMAGE CLAIMS.

IF A FWS EASEMENT IS GRANTED, THE EASEMENT WILL SUPERSEDE THE PROVISIONS AND TERMS OF THIS AGREEMENT.

THE FWS, ITS AGENTS, OR ASSIGNEES RESERVE THE RIGHT TO ENTER THE LAND AT REASONABLE TIMES FOR WILDLIFE HABITAT DEVELOPMENT AND MANAGEMENT PURPOSES AND TO INSPECT COMPLETED WORK.

THE SERVICE ASSUMES NO LIABILITY FOR DAMAGE OR INJURY OTHER THAN



CAUSED BY ... NEGLIGENCE, ON THE ABOVE ACREAGE.
SPECIFIC WORK COMPLETED WILL BE DOCUMENTED ON EXHIBIT A.

A CHANGE IN OWNERSHIP SHALL NOT CHANGE THE TERMS OF THIS AGREEMENT. THE AGREEMENT AND TERMS SHALL BE IN EFFECT ON THE DESCRIBED LAND FOR THE PERIOD OF THE AGREEMENT. THE WILDLIFE COOPERATOR WILL NOTIFY THE FWS OF PLANNED OR PENDING CHANGES IN OWNERSHIP.

AT THE END OF THIS AGREEMENT, THE COOPERATOR ASSUMES FULL AND COMPLETE RESPONSIBILITY FOR ALL WILDLIFE HABITAT DEVELOPMENTS MADE DURING THIS AGREEMENT ON THE PROJECT TRACT. THERE SHALL BE NO OBLIGATION TO ANY OF THE AGENCIES OF THE AGREEMENT AFTER THE TERM OF THE AGREEMENT HAS EXPIRED.

THE LANDOWNER WILL BE RESPONSIBLE FOR SECURING ANY NECESSARY PERMITS. TECHNICAL ADVICE AND SUPPORT WILL BE PROVIDED BY PARTICIPATING AGENCIES IN THE APPLICATION FOR THE PERMIT.

THE FWS IS PROHIBITED BY LAW FROM MAKING OBLIGATIONS THAT EXCEED AVAILABLE FUNDS AND, THEREFORE THE FWS CAN DO ONLY THAT WORK WHICH IS FUNDED. IN THE EVENT FUNDS ARE NOT AVAILABLE TO DO THE WILDLIFE HABITAT DEVELOPMENT WORK WITHIN THE PERIOD OF TIME OR IN THE MANNER PRESCRIBED IN THE SPECIAL PROVISIONS. THE FWS WILL ADVISE THE WILDLIFE COOPERATOR OF THE FACT.

WILDLIFE COOPERATOR GUARANTEES OWNERSHIP OF THE ABOVE DESCRIBED LAND AND WARRANTS THAT THERE ARE NO OUTSTANDING RIGHTS WHICH INTERFERE WITH THE WILDLIFE MANAGEMENT AGREEMENT.

X *[Signature]*
WILDLIFE COOPERATOR

X 470-28-2946
SOCIAL SECURITY NUMBER

[Signature] *MB*
FWS REFUGE MANAGER

[Signature]
FWS, ASSISTANT REGIONAL DIRECTOR,
REFUGES AND WILDLIFE

*PRIVACY ACT NOTICE: THE FWS IS REQUIRED TO OBTAIN THIS INFORMATION TO PROCESS ANY PAYMENT(S) TO THE WILDLIFE COOPERATOR AS A RESULT OF THIS AGREEMENT. THIS INFORMATION WILL BE FURNISHED TO THE INTERNAL REVENUE SERVICE AS REQUIRED BY THE TAX REFORM ACT OF 1986 AND MAY BE SHARED WITH THE DEPARTMENT OF JUSTICE FOR CRIMINAL OR CIVIL LITIGATION. FURNISHING A SOCIAL SECURITY NUMBER IS VOLUNTARY, BUT FAILURE TO DO SO MAY RESULT IN DISQUALIFICATION FROM THIS PROGRAM.

EXHIBIT A

SPECIAL PROVISIONS

The wildlife habitat developments described below are agreed to by Melvin Opitz and the FWS in a Wildlife Extension Agreement dated April 20, 1992.

Planned work: Mr. Opitz agrees to allow the U.S. Fish and Wildlife Service, or its designee, to place a water control structure in wetland drainage ditches on adjacent land (Game, Fish and Parks) to restore a shared wetland (see attached map for locations of wetland to be restored). Mr. Opitz agrees to allow the Service, or its designee, to access the property to inspect the condition of the plug(s) during the term of this agreement.

Only the boards of the structure may be removed after the agreement expires. Any additional work will require SCS prior review to insure FACTA compliance.

Itemized costs of payments, materials, supplies, completed work, and schedule of payments. (if applicable, however, any payments will be for only one fiscal year.) This is a one-time Fiscal Year payment only.

Wetland Restoration:

Total Land Use Management Payment \$1085.00

Total One-time Payment\$1085.00

After completion of the work and inspected by the FWS, Melvin Opitz agrees to submit a signed invoice provided by the FWS.

Completed work (as modified by mutual agreement)

Wetland #	Management Payment	Dirtwork Payment	Wetland Size(Acres)	Wetland Type
1	1085.00	0.00	22.7	IV



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

November 16, 1992

Timothy J Olson
Dept. of Game, Fish and Parks
523 E Capitol
Pierre SD 57501

Dear Mr. Olson:

In regard to the two water permit applications received on November 13, 1992, the following information needs to be submitted in order to process each application.

Enclosed are the maps submitted with each application. The maps must be signed by one of the following: Registered Land Surveyor, Registered Professional Engineer or by any other government employee who normally prepares maps as a part of his assigned duties.

Regarding the application to store additional water in a series of wetlands near North Red Iron Lake, the following information is required since the height of the proposed structure is over six feet. A written preliminary risk assessment of the downstream hazard potential needs to be provided to aid in determining the hazard classification for the proposed structure. Plans and specifications will also be needed for the proposed structure.

Upon receipt of the above, further processing of the two applications will continue. If you have any questions, please contact this office.

Sincerely,

Karen Schlaak

Karen Schlaak
Natural Resources Analyst
605 773-3352

enclosure

REPORT ON
WATER PERMIT APPLICATION NO. 5733-3
DEPARTMENT OF GAME, FISH & PARKS
JANUARY 6, 1993

The South Dakota Department of Game, Fish and Parks has filed Water Permit Application No. 5733-3 to impound 54.5 acre-feet of water in an existing wetland by constructing an embankment and stop log structure. The embankment is to be located in the SE 1/4 SW 1/4 of Section 33-T126N-R55W. The water is to be stored annually to an approximate elevation of 1800 feet msl and is to be used to provide habitat for fish and wildlife production.

Discussion:

The embankment will be 6 feet high with a normal storage capacity of 54.5 acre-feet with a reservoir level at the spillway elevation. Since the embankment is only 6 feet high it is not defined as a dam by Water Management Board Rule 74:02:08:01(7); therefore, review and approval of plans and specifications are not required.

The embankment has a drainage area of only 100 acres. The embankment is designed to have a 30 foot wide sheet pile stop log structure as the spillway with 2 feet of available head. The capacity of this structure is approximately 280 cfs.

The embankment will be located on an unnamed tributary of Nigerhead Slough approximately 200 feet upstream of Nigerhead Slough. There are no existing Water Permits/Rights on Nigerhead Slough; however, the Department of Game, Fish and Parks could probably file a Vested Right Claim on it.

Conclusion:

Water Permit Application No. 5733-3 should be approved since unappropriated water is probably available and approval should not have any adverse effects on existing Water Permits/Rights.



Timothy G. Schaal, P.E.
Natural Resources Engineer III

Approved by:



Gale N. Selken, P.E.
Natural Resources Engineer IV

RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 5733-3, South Dakota Department of
Game, Fish and Parks

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Environment and Natural Resources concerning Water Permit Application No. 5733-3, South Dakota Department of Game, Fish and Parks, c/o Richard Beringson, 523 East Capitol, Pierre, SD 57501.

The Chief Engineer is recommending APPROVAL of Application No. 5733-3 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use, and 4) it is in the public interest with the following qualification:

Approval of Water Permit No. 5733-3 authorizes storage of up to 54.5 acre-feet of water annually.

See report on application for additional information.

A handwritten signature in black ink, appearing to read "John Hatch", written in a cursive style.

JOHN HATCH, Chief Engineer
January 27, 1993



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT
THE NEWSPAPER RIGHT AWAY.

January 28, 1993

Richard Beringson, Secretary
SD Department of Game, Fish and Parks
523 E Capitol
Pierre, SD 57501

Dear Mr. Beringson:

Water Permit Application Nos. 5732-3 and 5733-3 for fish and wildlife enhancement use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of The Britton Journal printed at Britton, SD (Ph # 448-2281). For your information, a copy of the notice, the recommendations of the Chief Engineer and reports on the applications are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice of Hearing and to arrange for payment. Early contact with the paper can eliminate delays. The publisher has been instructed to publish your notice once each week for two consecutive weeks with the last publication to occur twenty days before the board meeting. The newspaper has been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the applications.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendations, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the applications.

cc: Tim Olson, SD Dept. of Game, Fish and Parks



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 28, 1993

The Britton Journal
Box 69
Britton, SD 57430-0069

ATTENTION: Legal Department

Enclosed is a Notice of Hearing on Application Nos. 5732-3 and 5733-3 to be published twice. Please publish the first notice on February 3, 1993, with the second publication 7 days later.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make the first publication. Please BILL the APPLICANT for the cost of publication. The APPLICANT is South Dakota Department of Game, Fish and Parks, 523 East Capitol, Pierre, SD 57501 (Ph # 773-3391).

A copy of BOTH publications must be SENT to the WATER RIGHTS DIVISION. IMMEDIATELY return the FIRST publication with the FIRST Transmittal form on the bottom of this page. The first copy is needed to check the publication for errors so any corrections can be made in the second publication. Publication errors can invalidate the public notice and cause the applicant costly delays.

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. No action may be taken on the permit applications until proof of publication has been received.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

FIRST TRANSMITTAL NOTICE

TO: Eric Gronlund
Water Rights Division
Joe Foss Building
Pierre SD 57501-3181

No. _____

Date _____

We are in receipt of your letter of _____ enclosing Notice of Hearing to Appropriate Water by Application No. _____ which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name _____

Newspaper _____

Instruction to Newspaper - Publish first Notice on February 3, 1993, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application Nos. 5732-3 and 5733-3 to Appropriate Water

Notice is given that the South Dakota Department of Game, Fish and Parks, 523 E Capitol, Pierre, SD 57501 has filed applications for water permits.

Water Permit Application No. 5732-3 is to impound 75 acre-feet of water in an existing wetland. The dam site is to be located in the SE 1/4 SE 1/4 Section 17 and water will be impounded in portions of the W 1/2 SW 1/4 Section 16; SE 1/4 SE 1/4 Section 17; NW 1/4 Section 21 and NE 1/4 NE 1/4 Section 20; all in T126N-R53W. Water is to be stored annually to an approximate elevation of 1834 feet mean sea level and is to be used to provide habitat for fish and wildlife production.

Water Permit Application No. 5733-3 is to impound 54.5 acre-feet of water. The dam site is to be located in the SE 1/4 SW 1/4 Section 33 with water impounded in the S 1/2 SW 1/4 Section 33; all in T126N-R55W. Water is to be stored annually to an approximate elevation of 1800 feet mean sea level and is to be used to provide habitat for fish and wildlife production.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 5732-3 and 5733-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. Unless a petition is filed opposing the applications or the applicant files a petition contesting the chief engineer's recommendations, the Water Management Board will NOT CONDUCT a HEARING to consider the applications and the chief engineer will issue the permit as recommended. Petitions filed in support of the applications will NOT require the Board to hear the applications.

Any person interested in opposing or supporting the applications must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 22, 1993. The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

If a petition is filed opposing the applications or the applicant files a petition contesting the chief engineer's recommendations, the Board will consider the applications at 10:00 a.m., March 3, 1993, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD. If a hearing is held, the Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the applications based on the facts presented at the public hearing. The March 3, 1993, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the applications. The request for an automatic delay must be filed by February 22, 1993.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. 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. Contact Eric Gronlund by February 22, 1993, at the above Water Rights Division address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

These applications are made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Robert E. Roberts, Secretary, Department of Environment and Natural Resources.

2T(Feb. 3-10)

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
 County of Marshall) ss

I, Charles L. Card

certify that the attached printed Notice was

taken from the Britton Journal

printed and published in City of Britton

County of Marshall and State of

South Dakota. The notice was published in
 the newspaper on the following two dates:

Feb. 3, 1993

Feb. 10, 1993

Cost of Printing: \$56.12

Charles L. Card
 (Signature)

published
 (Title)

Feb. 10, 1993
 (Date Signed)

NOTICE OF HEARING
 on Applications No. 5732-3
 and 5733-3 to Appropriate Water

Notice is given that the South Dakota Department of Game, Fish and Parks, 523 E. Capitol, Pierre, SD 57501 has filed applications for water permits.

Water Permit Application No. 5732-3 is to impound 75 acre-feet of water in an existing wetland. The dam site is to be located in the SE1/4SE1/4, Section 17 and water will be impounded in portions of the W1/2SW1/4, Section 16; SE1/4SE1/4, Section 17; NW1/4, Section 21 and NE1/4NE1/4, Section 20; all in T126N-R53W. Water is to be stored annually to an approximate elevation of 1834 feet mean sea level and is to be used to provide habitat for fish and wildlife production.

Water Permit Application No. 5733-3 is to impound 54.5 acre-feet of water. The dam site is to be located in the SE1/4SW1/4, Section 33 with water impounded in the S1/2SW1/4, Section 33; all in T126N-R55W. Water is to be stored annually to an approximate elevation of 1800 feet mean sea level and is to be used to provide habitat for fish and wildlife production.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 5732-3 and 5733-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. Unless a petition is filed opposing the applications or the applicant files a petition contesting the chief engineer's recommendations, the Water Management Board will NOT CONDUCT a HEARING to consider the applications and the chief engineer will issue the permit as recommended. Petitions filed in support of the applications will NOT require the Board to hear the applications.

Any person interested in opposing or supporting the applications must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E. Capitol, Pierre, SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 22, 1993. The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

If a petition is filed opposing the applications or the applicant files a petition contesting the chief engineer's recommendations, the Board will consider this application at 10:00 a.m., March 3, 1993, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD. If a hearing is held, the Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the applications based on the facts presented at the public hearing. The March 3, 1993, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the applications. The request for an automatic delay must be filed by February 22, 1993.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. 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. Contact Eric Grönlund by February 22, 1993, at the above Water Rights Division address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

These applications are made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15; 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Robert E. Roberts, Secretary, Department of Environment and Natural Resources.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

MAR 11 1993

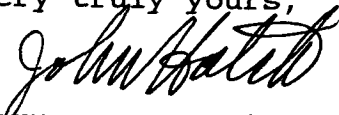
Richard Beringson, Secretary
South Dakota Department of Game, Fish & Parks
523 East Capitol
Pierre, SD 57501

Dear Mr. Beringson:

Enclosed are Water Permit Nos. 5732-3 and 5733-3 authorizing construction of your water diversion systems and beneficial use of the water, not exceeding the limits as specified in the Water Permits.

Also enclosed are two Form 10's, Notice of Completion of Works and Application of Water to Beneficial Use, which you are to complete and submit to the Chief Engineer when you have completed the systems and/or have put the water to beneficial use. An inspection can then be scheduled so that the Water Licenses may be issued, thus completing your acquisition of a Water Right.

Very truly yours,


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

enclosures

PLEASE NOTE: Certain changes can be made in your permits within the five year construction period, usually without affecting the priority dates provided an application to amend your permits is made within the five year period - i.e. changes in location or number of diversion points (wells) or location of land to be irrigated. Well locations for wells into the same aquifer can be moved up to 660 feet without application.

Applications to amend a permit after the five year construction period will be assigned a new priority date. Applications to change water sources, to add lands or increase original diversion rates, if approved will usually receive the date of the new application as a priority date regardless of the five year construction period.

**NOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USE**Date May 10, 1993

TO: Water Rights Division, DENR
523 E. Capitol
Pierre, SD 57501-3181

FROM: Waubay NWR Rte 1 Box 79
(name) (address)
Waubay, SD 57273 605-947-4521
(city) (state) (zip) (phone)

I have completed the construction of the water diversion system and I have put the water to beneficial use to the maximum extent it is going to be used. I have not exceeded the amounts specified in Water Permit No. 5733-3.

Water Permit No. 5733-3 states that the diversion system is to be constructed by March 3, 1998, and that the water is put to beneficial use by March 3, 2002.
(date) (date)

The diversion system was completed on May 5, 1993.
(date)

Applying the water to beneficial use was completed on November 13, 1992.
(date)

You may schedule an inspection so that the Water License may be issued.

[Signature] Biol. Tech.
(signature)

REPORT ON INSPECTION OF PERMIT NO. 5733-3

DATE OF INSPECTION: **August 25, 2004**

NAME & ADDRESS OF PERMIT HOLDER: **SD Department of Game, Fish & Parks, 523 E. Capitol,
Pierre, SD, 57501**

DIVERSION POINT LEGAL LOCATION: **200 ft. north and 1800 ft. east of the SW corner of
Sec. 33-T126N-R55W (SE ¼ SW ¼) (Lat. 45.67486, Long. -97.43595)**

DAM INFORMATION: (sheet pile weir)

- 1) Height to crest 6 feet
- 2) Height to primary spillway 4 feet
- 3) Approx. storage (Normal) 54.5 acre-feet
- 4) Date constructed: **May 5, 1993**

PERMIT QUALIFICATIONS AND REGULATIONS:

- 1) Soil and water permit lands agree with lands being irrigated and lands listed on permit **N/A**
- 2) Special qualifications to permit being abided by **yes**
- 3) All structures, wells and lands on map **yes**
- 4) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period **N/A**

Permit No. 5733-3
James River - Water District

Report Of Examination Of Works And/Or Application of Water To Beneficial Use

TO: Chief Engineer, Water Rights Program, DENR, Foss Bldg., Pierre, SD 57501

I have this day, August 25, 2004, made a thorough examination of the water use system constructed by SD Department of Game, Fish & Parks of 523 E. Capitol, Pierre SD 57501 holder of Permit No. 5733-3, bearing the priority of November 13, 1992 authorizing the storage of 54.5 acre-feet of the waters of runoff for fish & wildlife production purposes, in Marshall County.

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

A. Works used to divert the water:

A steel sheet pile weir structure with stop logs

B. Works used to transport water to place of use:

N/A

C. Works used to apply water to beneficial use:

A steel sheet pile weir structure with stop logs

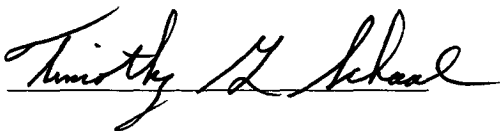
The system is in the following condition good (due to high water levels the structure was under water). The point of diversion is located 200 ft. north & 1800 ft. east of the SW corner of Sec. 33-T126N-R55W (SE 1/4 SW 1/4) (Lat. 45.67486, Long. -97.43595). The works are capable of storing 54.5 acre-feet of water which is to be used for fish & wildlife production. Water has been put to beneficial use to the maximum extent as follows:

A steel sheet pile weir structure with stop logs

and the license should be issued for 54.5 acre-feet of storage.

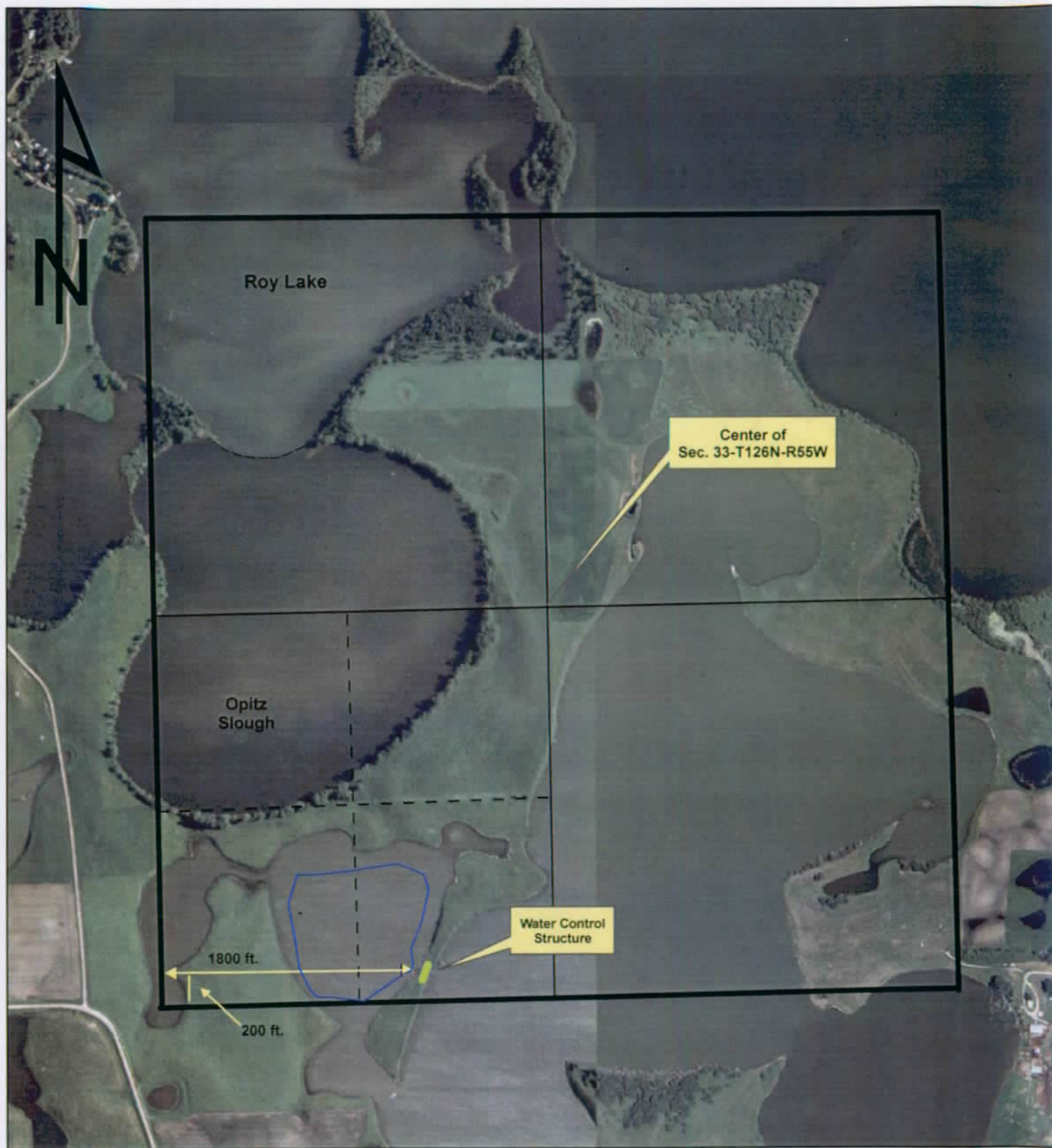
Applicable permit qualifications have been complied with: Yes X

Exceptions to compliance are: none Date Report Completed: February 7, 2005



Timothy G. Schaal, P.E.
Natural Resources Engineer Specialist
DENR, Water Rights Program

Water Permit Application No. 5733-3



0 0.25 0.5 1 Miles



Timothy G. Schaal

Timothy G. Schaal, P.E.
Natural Resources Engineer Specialist
DENR, Water Rights Program

2/07/05

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 5733-3

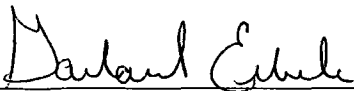
(1) The South Dakota Department of Game, Fish and Parks, 523 E Capitol, Pierre SD 57501 made Application No. 5733-3, November 13, 1992 for a water permit to impound 54.5 acre feet of water from runoff, Marshall County, South Dakota for fish and wildlife propagation purposes. Permit No. 5733-3, with a priority date of November 13, 1992 was approved March 3, 1993 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before March 3, 1998 and for the application to beneficial use of water on or before March 3, 2002.

(2) The water supply system has been completed and water applied to beneficial use in accordance with South Dakota State Law. Pursuant to South Dakota Codified Law 46-5-30.1, the holder and/or owner of Water Right No. 5733-3 is issued a license, bearing a priority date of November 13, 1992, to impound 54.5 acre feet of water with water stored annually to an approximate elevation of 1800 feet mean sea level for fish and wildlife propagation purposes.

The location of the storage dam (sheet pile weir) is 200 feet north and 1,800 feet east of the southwest corner of Section 33-T126N-R55W (SE ¼ SW ¼).

(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Permit No. 5733-3, including the following now applicable qualification:

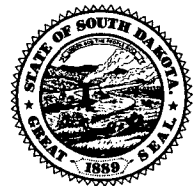
- Approval of Water Permit No. 5733-3 authorizes storage of up to 54.5 acre-feet of water annually.



Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

FEB 23 2005

date





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

FEB 23 2005

5733-3

SD Dept of Game Fish & Parks
% Leslie Petersen
523 E Capitol
Pierre SD 57501

Dear Ms. Petersen:

Enclosed is Water License No. 5733-3. This is the final water right document completing your process of obtaining a Water Right.

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

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures