

WATER PERMIT NO. VR 5759-3

Phone: 432-9575

Name of Applicant: City of Milbank

Post Office Address: 203 S Main St, Milbank SD 57252

Amount of Water Claimed: 340 AF Total Acres: _____

Source of Water Supply: Lake Farley Dam

Water to be used for: municipal recreation County: Grant

About NE _____ miles _____ of Milbank

PRIORITY Date Received: 3-22-93 Fee: \$15 Remarks: Claimed

priority date of January 1, 1910

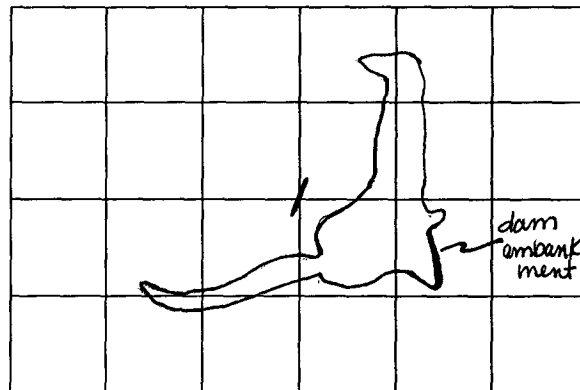
Corrected Application Received: _____ Period of Annual Use: Jan 1 -Dec 31

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

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

Diversion Point: NE 1/4 SE 1/4 Sec 1-T120N-R49W

Land to be Irrigated: _____



Well Log: Driller: _____ Licensed YES _____ NO _____

Depth of Well: _____ REMARKS: _____

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

Assigned on: 3-22-93 By: Karen Schlaak

FORM 2: Application for uses other than irrigation

(type or print)

Mail to:
Water Rights Division
Joe Foss Building
523 E Capitol
Pierre SD 57501-3181
605 773-3352

No. 5759-3 Hydrologic Unit 0702001
Basin Minnesota-Whetstone
Newspaper Grant Co Review, Box 390 432-4516
(office use only)



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

Check use of water:

☐ Municipal ☐ Suburban Housing ☒ Recreational ☐ Institutional
☐ Rural Water System ☐ Commercial ☐ Fish & Wildlife ☐ Geothermal Heat
☐ Domestic ☐ Industrial ☐ Other _____
(over 18 gpm)

Type of Application: ☐ New ☒ Vested Right (Use predates Mar 2, 1955) ☐ Future Use Reservation
(check one) ☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____
☐ Amendment/Correction to Permit No. _____

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.) _____

- Name of Applicant City of Milbank Phone 432-9575
(check one) ☐ Owner ☐ Tenant/lessee
Mailing Address 203 South Main Street, Milbank State SD 57252
(Street, RR, or Box) (City) (Zip Code)
- Amount of water claimed _____ *CFS or _____ **GPM 340 ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (***Acre Feet -- storage capacity of dam/dugout or annual use if applicable)
- Source of water supply Lake Farley Dam - Runoff
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) 1800 ft. North &
800 ft. West of the SE corner of Sec. 1-T120N-R49W (NE 1/4 SE 1/4)
County Grant
- County or counties where water will be used Grant
- Annual period during which water is to be used January 1 - December 31
- Give a description of the 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)

See Affidavit of Water Use

Original Vested Right No. 1770-3 for 255 AF

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Attach map and any other technical information. (see instructions)

STATE OF SOUTH DAKOTA)

County of Grant)^{ss}

I, Rudolph Nef, 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 Rudolph Nef
Subscribed and sworn to before me this 18 day of March 19 93

C. B. Welby
Notary Public
My Commission Expires Mar, 25, 2000

SOUTH DAKOTA

VESTED WATER RIGHT NO. 5759-3

Date of Receipt of Claim March 22, 1993.

Date of Validation May 5, 1993.

The Chief Engineer, on behalf of the Water Management Board validated Vested Water Right Claim No. 5759-3 for City of Milbank, 203 South Main Street, Milbank SD 57252 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 5759-3 impounds 340 acre feet of water by reconstructing Lake Farley Dam. The dam site is located in the NE 1/4 SE 1/4 Section 1-T120N-R49W. Water will be impounded in portions of the NE 1/4, N 1/2 SE 1/4, SW 1/4 Section 1-T120N-R49W. Water will be stored annually to an approximate elevation of 1137.5 feet mean sea level. Lake Farley Dam was breached on February 6, 1980 because it was structurally and hydrologically unsafe. The City has completed the repair work to the dam embankment and will repair the spillway structure.
2. The appropriated water is used for supplying water in Lake Farley Dam and may not exceed the amount of water needed for beneficial use for recreational purposes.
3. The water is to be used during the following annual period: January 1 - December 31.
4. The priority date of the Vested Water Right is January 1, 1910.
5. The water use system has been constructed and water has been applied to beneficial use.
6. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
2. Validation of Vested Water Right No. 5759-3 authorizes storage of 340 acre-feet annually to an outlet elevation of 1137.5 feet mean sea level.

WATER MANAGEMENT BOARD

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

JUN 10 1993
date

STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 5759-3 FOR IRRIGATION

(1) The City of Milbank, 203 S Main St, Milbank, SD 57252 made Application No. 5759-3, for validation of a vested right claim to appropriate 340 acre-feet of runoff water by reconstructing Lake Farley Dam, Grant County, South Dakota, for recreational purposes. Vested Water Right No. 5759-3 was validated May 5, 1993 with a priority date of January 1, 1910.

Vested Water Right Claim No. 1770-3, filed by the City in 1970 recognized impoundment of 255 acre-feet of water in Lake Farley Dam. On February 6, 1980, the dam was breached based on an inspection which determined it was both structurally and hydrologically unsafe. The City completed the repair work on the dam embankment and the spillway structure. The silt removal restored the lake to its original capacity of 340 acre-feet.

The applicable portions of No. 1770-3 has been incorporated into this Vested Water Right License No. 5759-3.

(2) The vested right owner is entitled to impound 340 acre feet of water for beneficial use with sufficient water annually to maintain the water level to the outlet elevation of 1137.5 feet mean sea level (fmsl). The location of the spillway is in the: NE ¼ SE ¼ of Section 1, T120N, R49W. Lake Farley Dam impounds water in portions of the NE ¼, N ½ SE ¼, and SW ¼ Section 1, T120N, R49W.

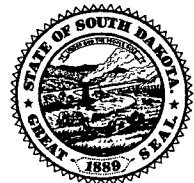
(3) Pursuant to Section 46-5-30.1 the City of Milbank, 203 S Main St., Milbank, SD 57252 the holder and/or owner of Incorporated Vested Water Right No. 5759-3 is issued a license to impound 340 acre-feet of water from runoff in Lake Farley Dam with sufficient water annually to maintain the water level to the outlet elevation of 1137.5 fmsl. The water is impounded for recreational purposes. This license, with a priority date of January 1, 1910, is subject to any limitations, conditions or qualifications listed in Incorporated Vested Water Right No. 5759-3 and subject to South Dakota State Law.



JOHN HATCH, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

SEP 23 1998

date



Supplemental Information

(type or print in ink)



1. Well Information - Proposed Construction

- a) Drill Hole Diameter _____ Depth _____
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack Thickness _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth to Water (ground surface to water level) _____
- g) Distance to nearest existing domestic well:
On applicants property _____ On property owned by others _____

2. Dugout Information

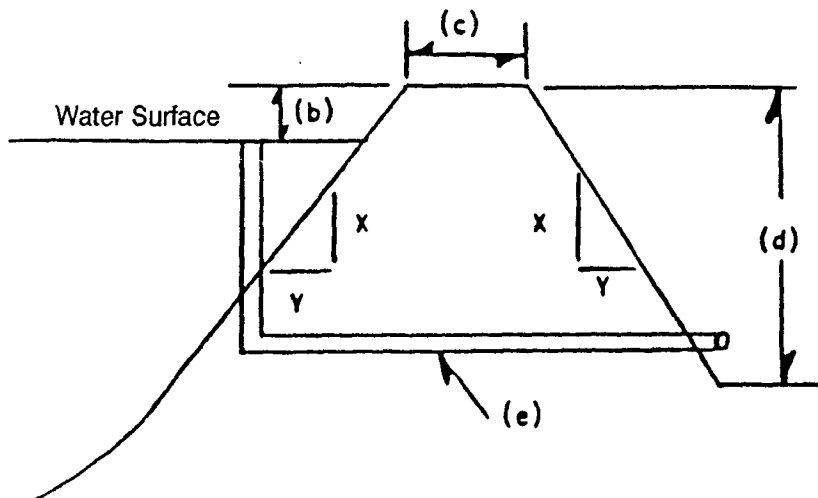
- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

3. Water Storage Dams

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

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

Banner Engineering
409 - 22nd Ave S
Brookings, SD 57006-0298



- b) Freeboard 5 ft.
- c) Crest Width 10 ft.
Crest Length Approx. 1000 ft.
- d) Height 15 ft.
- e) Primary Outlet Capacity 5400 cfs
Width of pipe, diameter 150 ft.
- f) Secondary Spillway Capacity _____
Spillway Width _____
- g) X & Y Slope
Upstream Approx. 3:1
Downstream Approx. 6:1
- h) Surface Area of Impoundment 69 acres
- i) Storage 340 Acre Feet
- j) Drainage Area above Dam 74 Sq. M. Acres

Affidavit of Water Use

No. _____

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) City of Milbank

Mailing Address 203 South Main Street, Milbank, SD 57252
(Street, RR or Box) (City) (State) (Zip Code)

A. Notice of Appropriation _____ Date of Posting _____

Date of Recording _____ Recording Date _____

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

C. Date that water was first applied to beneficial use 1910

D. Name of owner of original water supply system Chicago, Milwaukee & Pacific Railroad

E. Amount of water originally applied to beneficial use 340 Ac-Ft

F. Present use of water - amount of water now being used 340 Ac-Ft

Date that this water was first used 1910

G. Chronological History of Water Use Lake Farley Dam was originally constructed in 1910 by the Chicago, Milwaukee and Pacific Railroad, and later transferred to the City of Milbank. A Vested Right Claim was filed by the City in 1970 for 255 acre-feet. Original calculations indicate that the dam could store 340 acre-feet, however, some consideration for silt must have been made on the Vested Right Claim. Lake Farley Dam was breached on Feb. 6, 1980 due to it being both structurally and hydrologically unsafe. The City has completed repair work to the dam embankment and is preparing to repair the spillway structure. They have also restored the lake bed to accommodate the original storage of 340 acre-feet.

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 Grant)
SS

I, Rudolph NeF the applicant, certify that I have read the foregoing and that
(print or type)
the matters therein are true.

Signed Rudolph A NeF

Subscribed and sworn to before me March 18, 19 93

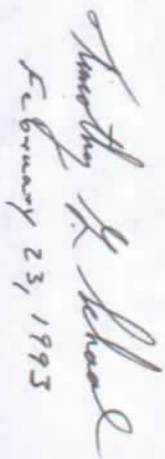
Craig B. Wellnitz
My Commission Expires March 25, 2000 Notary Public

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.

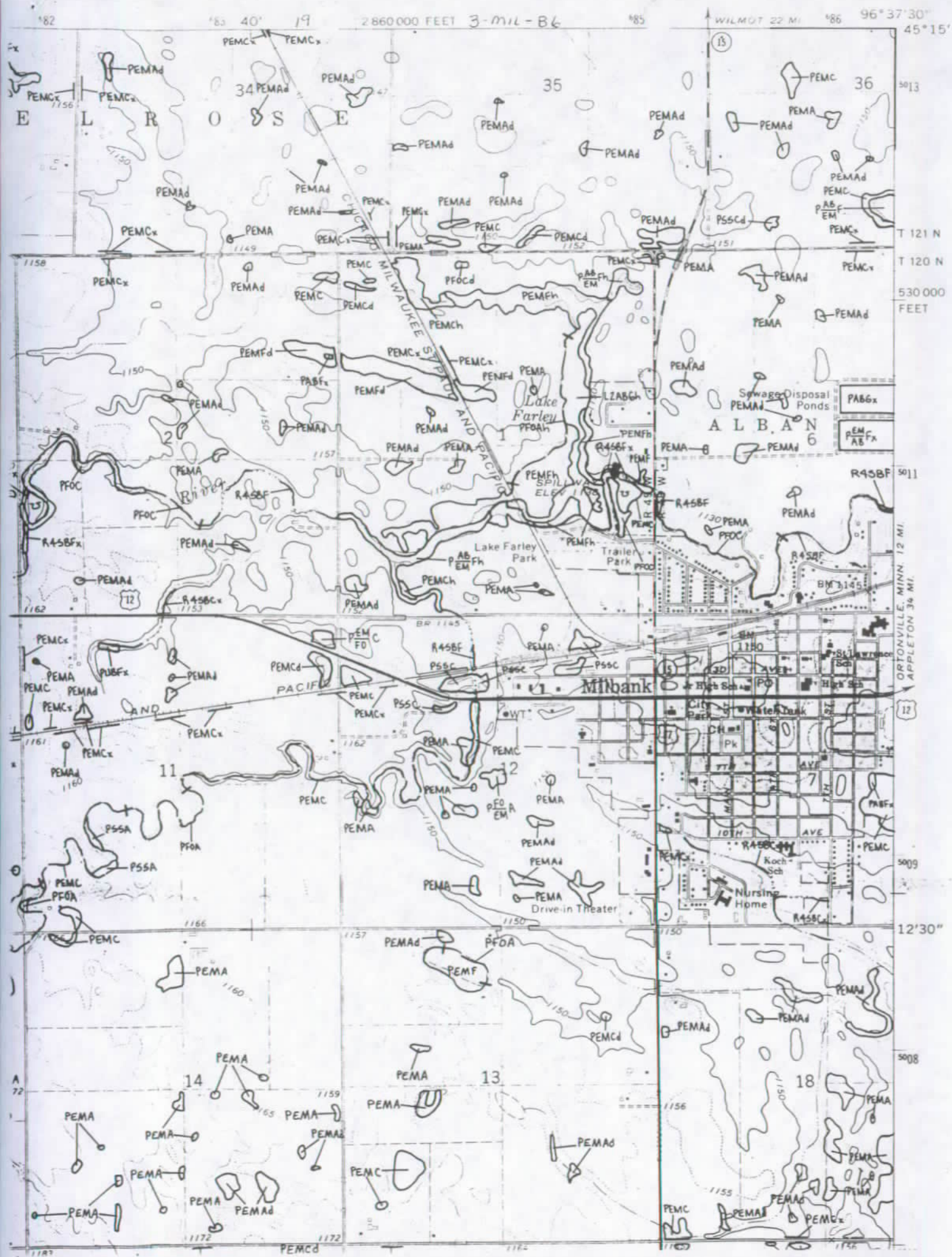
Craig B. Wellnitz March 19, 19 93
(Print name)

_____, 19_____
(Print name)

6674 / SE
(BIG STONE LAKE S



Appal Nb. 5759-3



RECEIPT

413686

Division of Water Rights

South Dakota Department of Environment and Natural Resources

Pierre, _____, March 22, 19⁹³

RECEIVED OF Office of the City Council, City of Milbank, Milbank, SD 57252

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

Fee for Application for Permit No. <u>5759-3</u> to Appropriate Water, to construct and to put water to beneficial use _____	15	00
Fee for Application for Permit No. _____ to Appropriate Water, for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	15 00

By John Hatch
Chief Engineer

JAN 5 1993

BANNER

CONSULTING ENGINEERS & ARCHITECTS

BANNER ASSOCIATES, INC.
409 22nd Avenue South • P.O. Box 298
Brookings, South Dakota 57006-0298
(605) 692-8342
FAX: (605) 692-5714

RECEIVED

JAN 08 1993

January 4, 1993

BANNER ASSOCIATES, INC.

John Kirk, Interagency Coordinator
S.D. Dept. of Game Fish and Parks
Division of Wildlife
Sigurd Anderson Building
455 East Capitol
Pierre, South Dakota 57501

RE: Lake Farley Dam
Spillway Replacement
Clearing House Review
Milbank, South Dakota
BAI No. 7431-01

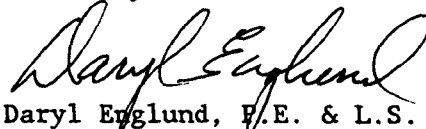
Dear Mr. Kirk:

The City of Milbank is in the process of replacing the spillway for Lake Farley. The final construction plans and specifications will be completed within the next 3 to 4 weeks. The City is planning to advertise for bids later this winter and begin construction during Spring, 1993.

The purpose of this letter is to determine if the Game, Fish and Parks have any special permits or comments regarding this project. Attached hereto is a copy of the USGS map for the Lake Farley area.

We request that your review and comments be completed prior to January 20, 1993. Thank-you for your prompt attention to this matter. If you have further questions, please do not hesitate to contact either Richard Salonen or myself.

Sincerely,


Daryl Englund, P.E. & L.S.

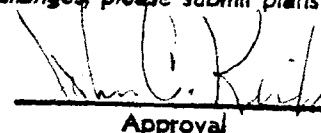
Enclosures

CC: City of Milbank, Attn. Dave Zinter, Public Works Director

**S.D. DEPARTMENT OF
GAME, FISH AND PARKS**

Project as described will have no significant impact on fish and wildlife resources. If project design changes, please submit plans for review.

1/7/93
Date


Approval



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Fish and Wildlife Enhancement
420 S. Garfield Avenue, Suite 400
Pierre, South Dakota 57501-5408



JAN 14 1993

January 13, 1993

BANNER ASSOCIATES, INC.

Mr. Daryl Englund, P.E./L.S.
Banner Associates, Inc.
409 22nd Avenue South
P.O. Box 298
Brookings, South Dakota 57006-0298

Dear Mr. Englund:

This is in response to your January 4, 1993, letter requesting an environmental review of the proposed spillway replacement for Lake Farley by the City of Milbank, South Dakota.

National Wetlands Inventory (NWI) maps indicate several wetlands both upstream and downstream of the proposed spillway replacement. The project site is highlighted in blue on the enclosed NWI map. A map key is included for your use. If the spillway replacement will return Lake Farley to its original size or smaller, there will probably be minimal adverse impacts to upstream wetlands. However, if the reconstruction causes Lake Farley to be increased in size, adverse impacts to upstream wetlands may result. Also, downstream wetlands may be impacted if downstream water levels are altered. In addition, the construction activities may have adverse impacts on wetlands in the immediate vicinity of the spillway.

Generally, if a project may impact wetlands, the U.S. Fish and Wildlife Service (Service) recommends complete avoidance of wetlands, if possible, then minimization of any adverse impacts to wetlands, and finally, compensation for any lost wetland acres, in that order. If wetlands will be affected, a mitigation plan to replace wetland impacts/losses may be required. We are available to assist you in developing a mitigation plan, if necessary.

Work involving the alteration or disturbance of wetlands or streams may require a Section 10/404 permit from the U.S. Army Corps of Engineers (Corps). Accordingly, contact the Corps' Regulatory Office, Federal Building, Room 317, Pierre, South Dakota 57501, Telephone (605) 224-8531.

In accordance with Section 7(c) of the Endangered Species Act, we have determined that the following federally listed species may occur in the project area. This list is considered valid for 90 days.

Listed SpeciesExpected Occurrence

American burying beetle
(Nicrophorus americanus)

Anywhere in South Dakota with significant humus and topsoil suitable for the burying of carrion.

The American burying beetle (beetle) is a carrion feeder that buries its prey, on which it is dependent, below the ground's surface. Although virgin or primary forest has been suggested habitat, recent captures (post 1960) in the Midwest were in mixed agricultural lands, including pastures and mowed fields, and ordinary second growth woods. Current distribution, as outlined by captures, suggests the beetle can occur in grassland habitat. Until more information is known, any habitat where the availability of humus and topsoil suitable for the burying of carrion exists is considered potential beetle habitat.

If changes are made in the project plans or operating criteria, or if additional information (i.e., the final construction plans and specifications) becomes available, the Service must be informed so that the above determinations can be reconsidered.

Because of our varied work load, it is our policy to allow a response time of 30 days from receipt of project proposals. These comments are provided as technical assistance by the Service. Thank you for the opportunity to review the work plans.

Please note that our address has changed. Future requests for environmental reviews and/or endangered species reviews or consultations concerning projects in South Dakota should be addressed to Mr. M.S. Zschomler, State Supervisor, at 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501-5408.

Sincerely,



M.S. Zschomler
State Supervisor
South Dakota State Office

Enclosures

cc: Steve Naylor, COE; Pierre, SD
John Kirk, SDDGFP; Pierre, SD
SE File



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
215 NORTH 17TH STREET
OMAHA, NEBRASKA 68102-4978

RECEIVED

JAN 14 1993



REPLY TO
ATTENTION OF

January 14, 1993

BANNER ASSOCIATES, INC.

Pierre Regulatory Office
Federal Building, Room 317
Pierre, South Dakota 57501

Mr. Daryl Englund
Banner Associates Incorporated
409 22nd Avenue South
PO Box 298
Brookings, South Dakota 57006-0298

Dear Mr. Englund:

Reference is made to a conversation with Mr. James Oehlerking, of my staff, January 11, 1993, concerning Department of the Army authorization requirements for the replacement of the spillway at Lake Farley Dam for the City of Milbank.

The Corps' jurisdiction stems from Section 404 of the Clean Water Act passed by Congress in 1972. Section 404 calls for Federal regulation of the discharge of dredged or fill material in our Nation's waterways, lakes and/or wetlands. Since the proposed project may affect navigation and/or involve either the discharge of dredged or fill material, it is requested that you submit an application for a Department of the Army permit. Enclosed is the necessary application form (ENG Form 4345) and US Army Corps of Engineers Regulatory Applicant Information pamphlet (EP 1145-2-1 of May 1985). When completing the application form, we would request from the applicant (a) a detailed description of the work activity (i.e., explain precisely what you are going to do and how you are going to accomplish it; include fill and/or excavation quantities and dimensions to be performed below the ordinary high water elevation, along with the source/type of fill and the type of equipment to be used during construction); (b) the purpose and/or benefits of the proposed project; and (c) any alternative project designs considered.

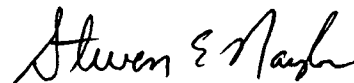
Along with the completed application form, we would request from the applicant (1) drawings (plan and cross-sectional views; the drawings may be submitted on 8-1/2x11 inch paper), (2) a location map showing the project site, (3) if available, colored polaroid pictures showing at least two views of the proposed project site and (4) any ecological or environmental information available that you feel may be pertinent to your project (i.e., area wildlife activity, area vegetation, area land use, quality of fishery, etc.).

Adherence to the above information requests will speed up the application evaluation and permit processing time. The requested information is used to help the Corps determine the type of permit to process if a permit is required and is used in the public review.

If we do not hear from you within sixty (60) days from the date of this letter, we will assume that you have decided not to complete your proposed project and determine that this proposal requires no further action. You may however, at any time in the future, submit an application for this project or any other proposal to conduct work in waters of the United States.

If you have any questions or need any assistance, please feel free to contact this office at the above Regulatory Office address or telephone Mr. James Oehlerking, of my staff, or myself at (605) 224-8531 and reference to action ID 199330003.

Sincerely,



Steven E. Naylor
Regulatory Branch,
Operations Division

Enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 24, 1993

David J. Zinter
Public Works Director
City of Milbank
P.O. Box 472
Milbank, SD 57252

Dear Mr. Zinter:

Enclosed is a partially completed application for a new Vested Right Claim on Lake Farley Dam. As I explained over the phone yesterday, this claim needs to be filed to reflect the change in storage at Lake Farley Dam.

Please review these forms and make any corrections or additions you feel are necessary. The forms need to be signed and notarized and returned to our office along with the \$15.00 filing fee. I already have an application map, so you will not need to include one.

If you have any questions, please feel free to contact me.

Sincerely,

Timothy G. Schaal, P.E.
Natural Resources Engineer III
Water Rights Division
(605) 773-3352

enclosure

March 8, 1993

Pierre Regulatory Office
Federal Building, Room 317
Pierre, South Dakota 57501

Mr. David Zinter
City of Milbank
203 South Main
PO Box 472
Milbank, South Dakota 57252

Dear Mr. Zinter:

We have reviewed your request for Department of the Army authorization for the replacement of the spillway and associated riprap for bank stabilization at Lake Farley Dam located in Section 1, Township 120 North, Range 49 West, Grant County, South Dakota.

Based on the information you provided, this office has determined that your work within South Dakota is authorized by the Department of the Army Nationwide Permit found at 33 CFR 330, Appendix A, (B)(3). Enclosed is a fact sheet which fully describes this Nationwide Permit and lists the General and Section 404 Only Conditions which must be adhered to for this authorization to remain valid.

Although an Individual Department of the Army permit will not be required for the project, this does not eliminate the requirement that you obtain any other applicable Federal, state or local permits as required. Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.

You are advised that this verification of the nationwide permit authorization is valid until March 9, 1995.

RECEIVED

MAR 10 1993

-2-

BANNER ASSOCIATE

If you have any questions concerning this determination, please feel free to contact this office at the above Regulatory Office address, or telephone Mr. James Oehlerking, of my staff, or myself at (605) 224-8531 and reference Nationwide Permit No. 199330003.

Sincerely,

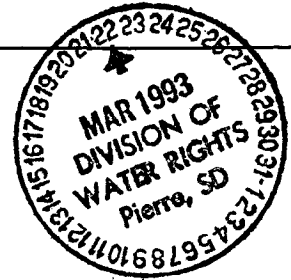
Steven E. Naylor
Regulatory Branch,
Operations Division

Enclosures

cf: EPA; Mairley
FWS; Zschomler
ENR; Bortnem
Banner Assoc.; Englund

CITY OF MILBANK

P.O. BOX 472
MILBANK, SOUTH DAKOTA 57252



March 16, 1993

Tim Schaal
Dept. of Environment and Natural Resources
Water Rights Division
523 E. Capitol
Pierre, SD 57501-3181

Dear Mr. Schaal,

Enclosed is a copy of the Lake Farley Dam Emergency Preparedness Plan. This copy is the first draft so please advise on necessary corrections or updates.

Also enclosed is the Vested Rights Claim application. Per your letter of 2-24-93, you will supply the required application map. The \$15.00 filing fee is attached.

I will be waiting for any input concerning the Preparedness Plan & Claims Application.

Thank You,

David Zinter
Public Works Director

CC: w/ attachments, Gale Selken
RN
CW
file

BANNER

CONSULTING ENGINEERS & ARCHITECTS

BANNER ASSOCIATES, INC.
409 22nd Avenue South • P.O. Box 298
Brookings, South Dakota 57006-0298
(605) 692-6342
FAX: (605) 692-5714

March 18, 1993

Mr. John Hatch, Chief Engineer
Attn. Mr. Gale N. Selken, P.E.
Water Rights Division
S.D. Depart. of Environ. and Natl. Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

RE: Lake Farley Spillway
Replacement
City of Milbank, SD
BAI No. 7431-01

Dear Mr. Hatch:

Attached hereto are three (3) copies of final construction plans and specifications for the Lake Farley Spillway Replacement project for your review and comments. The preliminary construction plans and specifications were submitted to your office on February 12, 1993 and we received your review letter dated February 23, 1993. The review letter indicated that approval is contingent upon submitting a final set of plans and specifications and receipt of comments from other agencies.

The following comments have been received from the various agencies:

<u>Agency</u>	<u>Date</u>	<u>Comments</u>
SD Game Fish & Parks	1/7/93	No Significant Impact
US Corps of Engineers	1/14/93	Require 404 Permit
US Fish & Wildlife	1/13/93	Minimal Impact if constructed to original grade
US Corps of Engineers	3/8/93	Approved Nationwide 404

Attached hereto are the comments received from the above referenced Agencies.

Your review letter dated February 23, 1993 also indicated that SDDENR is working with the City on an Emergency Preparedness Plan (EPP) and also establishing a new Vested Right Claim for the storage in Lake Farley Dam. The Vested Right Claim will be heard at the May 5 & 6, 1993 Water Management Board meeting and construction cannot begin until the Vested Right Claim has been approved.

The preliminary construction plans and specification transmittal dated February 10, 1993 indicated a preliminary project schedule. The City of Milbank has since adopted the project schedule as follows:

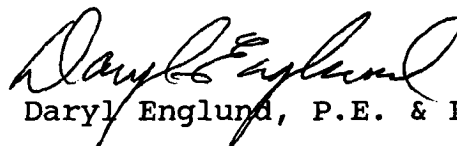
Preliminary Plans and Specifications Submitted to SDDENR, SDDGF&P, USF&WLS & USCOE for review	February 12, 1993
Complete Agency Review	February 26, 1993
Begin Advertising	March 17, 1993
Prebid Meeting	March 29, 1993 @ 2:00 P.M.
Issue Addendum (if required)	April 2, 1993
Open Bids	April 12, 1993 @ 2:00 P.M.
Award Contract	April 12, 1993 @ 7:00 P.M. Council Meeting
Vested Right Hearing	May 5 & 6, 1993
Preconstruction Meeting and Issue Notice to Proceed	May 10, 1993
Complete Construction	November 1, 1993

The major changes on the final plans and specifications included the following items:

1. Lowered the spillway floor 2'-6". Recommended by Banner Associates Hydraulic Engineer to ensure that the hydraulic jump is contained within the concrete basin.
2. Added riprap on up-stream face of dam and upstream of spillway. Riprap up-stream of spillway was required to control erosion during high flows.

If you have any questions regarding the construction plans and specifications or project schedule, please do not hesitate to contact our office.

Sincerely,



Daryl Englund, P.E. & L.S.

Enclosure

CC: City of Milbank, Attn. Mr. Rudy Nef, Mayor (w/ 3 copies P&S)
Mr. David Zinter, Public Works Director



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 24, 1993

Daryl Englund, P.E.
Banner Associates, Inc.
P.O. Box 298
Brookings, SD 57006-0298

Dear Mr. Englund:

We have reviewed the plans and specifications for the Lake Farley Dam Spillway Replacement Project for the City of Milbank. The plans and specification as submitted are approved. However, construction of the project can not begin until the Vested Right Claim filed by the City of Milbank is approved by the Water Management Board.

The review was to determine compliance with the Water Management Board Safety of Dams Rules, Chapter 74:02:08. Approval of the plans and specifications recognizes a Variance from the Safety of Dams Rules, Section 74:02:08:07, authorized by SDCL 46-7-5.3. Approval of these plans and specifications does not release the City of Milbank, as owner of the dam, from the responsibility for operating and maintaining the dam in good repair to assure the safety of the dam.

If you have any questions, please feel free to contact Tim Schaal at (605) 773-3352.

Sincerely,

Gale N. Selken, P.E.
Natural Resources Engineer IV
for John Hatch, Chief Engineer
Water Rights Division
(605) 773-3352

cc: Rudy Nef, Mayor, City of Milbank
David Zinter, Public Works Director, City of Milbank

REPORT ON
VESTED RIGHT CLAIM NO. 5759-3
CITY OF MILBANK
March 24, 1993

Vested Water Right Claim No. 5759-3 has been filed by the City of Milbank to impound 340 acre-feet of water by reconstructing Lake Farley Dam. The dam is located in the NE 1/4 SE 1/4 of Section 1-T120N-R49W in Grant County. The Vested Right Claim has a priority date of January 1, 1910, and the water is used for recreational purposes.

DISCUSSION:

Lake Farley Dam was originally constructed in 1910 by the Chicago, Milwaukee, and Pacific Railroad. It was later transferred to the City of Milbank.

Vested Right Claim No. 1710-3 was filed by the City of Milbank in 1970 for 255 acre-feet of water. Original calculations indicate that the dam could store 340 acre-feet, however, some considerations for silt must have been made on this Vested Right Claim.

Lake Farley Dam was inspected on July 27, 1979 as part of the National Dam Safety Program. As a result of this inspection, the dam was determined to be both structurally and hydrologically unsafe. The dam was breached on February 6, 1980.

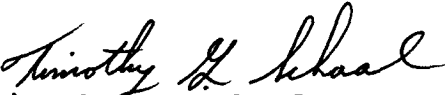
During the 1980's, the City of Milbank restored the dam embankment. Heavy tree growth and stumps were removed from the dam embankment, the embankment crest was leveled and fill material was added to the downstream slope. The dam embankment is now in excellent condition. Silt was removed from the lake bed, restoring the original storage capacity of 340 acre-feet.

On December 6, 1989, the Water Management Board granted the City of Milbank a Variance from the Safety of Dams Rules, Section 74:02:08:07. The Board found that failure of Lake Farley Dam due to inadequate spillway capacity would not increase the potential for damage from flooding to downstream residents or property. The variance allows the City to maintain the current spillway capacity of 15% PMF (5400 cfs) at Lake Farley Dam.

Banner Associates, Inc. has prepared the plans and specifications for the spillway replacement project. The plans and specifications have been reviewed and approved. The new spillway structure will be a free overflow drop structure, 150 feet wide, 44 feet long, with side walls varying in height from 20.5 feet to 9.5 feet.

CONCLUSIONS:

1. Vested Right Claim No. 5759-3 should be validated for 340 acre-feet of water with a priority date of January 1, 1910. Applicable portions of Vested Right Claim No. 1710-3 should be incorporated into Vested Right Claim No. 5759-3.
2. The low flow bypass requirement for downstream domestic use should be a qualification on Vested Right Claim No. 5759-3.


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

Reviewed by:


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

RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER
RIGHT APPLICATION NO. 5759-3, City of Milbank

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 Validation of Vested Water Right Application No. 5759-3, City of Milbank, c/o Mayor Rudolph Nef, 203 South Main Street, Milbank, SD 57252.

The Chief Engineer is recommending VALIDATION of Application No. 5759-3 for 340 acre-feet of water because 1) water has been appropriated as described for recreational use with a priority date of January 1, 1910, 2) the use has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
2. Validation of Vested Water Right No. 5759-3 authorizes storage of 340 acre-feet annually to an outlet elevation of 1137.5 feet mean sea level.

See report on application for additional information.



JOHN HATCH, Chief Engineer
March 25, 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.**

March 26, 1993

Rudolph Nef, Mayor
City of Milbank
203 South Main Street
Milbank, SD 57252

Dear Mr. Nef:

Your Application No. 5759-3 for a vested water right claim has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of your claim has been sent to the Publisher of the Grant Co. Review printed at Milbank, SD (Ph # 432-4516). For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice 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 to validate a vested right 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. We must receive Proof of Publication before the application can be considered.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, 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 application.

cc: Larry Tietjen, WS, City of Milbank, 203 S Main St, Milbank, SD 57252
Daryl Englund, P.E., Banner Associates, Box 298, Brookings, SD 57006-0298



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 26, 1993

Grant County Review
Box 390
Milbank, SD 57252

ATTN: Legal Publications:

Enclosed is a Notice of Hearing to Validate Vested Right Application No. 5759-3 to be published twice. Please publish the notice on April 7, 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 the City of Milbank, 203 South Main Street, Milbank, SD 57252 (Ph # 432-9575).

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. The permit application cannot be considered until proof of publication has been received.

Sincerely,

Eric Gronlund
Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

FIRST TRANSMITTAL NOTICE

TO: Eric Gronlund
Water Rights Division
523 E Capitol
Pierre SD 57501-3181

Date _____
We are in receipt of your letter of _____ enclosing Notice of Hearing to Validate A Vested Right Application 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 April 7, 1993, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING To Validate
Vested Water Right Application No. 5759-3 to Appropriate Water

Notice is given that the City of Milbank, 203 South Main Street, Milbank, SD 57252 has filed an application to validate a vested water right claim to impound 340 acre-feet of water by reconstructing Lake Farley Dam. The dam site is located in the NE 1/4 SE 1/4 Section 1-T120N-R49W. Water will be impounded in portions of the NE 1/4, N 1/2 SE 1/4, SW 1/4 Section 1-T120N-R49W. Water is to be stored annually to an approximate elevation of 1137.5 feet mean sea level. Lake Farley Dam was breached on February 6, 1980, because it was structurally and hydrologically unsafe. The City has completed repair work to the dam embankment and will repair the spillway structure. The water use has a claimed priority date of January 1, 1910, and is for recreational use.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 5759-3 because 1) water has been appropriated as described for recreational use with a claimed priority date of January 1, 1910, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, and 4) it is in the public interest. Unless a petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation, the Water Management Board will NOT CONDUCT a HEARING to consider this application and the chief engineer will issue the vested water right application as recommended. Petitions filed in support of the application will NOT require the Board to hear the application.

Any person interested in opposing or supporting this application 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 recommendation. 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 April 26, 1993. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, 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 application or the applicant files a petition contesting the chief engineer's recommendation, the Board will consider this application at 10:00 a.m., May 5, 1993, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD. If a hearing is held, the Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve the validation, 2) approve the validation with qualifications, 3) defer, or 4) deny validation of this application based on the facts presented at the public hearing. The May 5, 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 application. The request for an automatic delay must be filed by April 26, 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 April 26, 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.

This application is 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-18, 46-2A-22; 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, 46-5-49; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; 74:02:01:19 thru 74:02:01:22. Robert E. Roberts, Secretary, Department of Environment and Natural Resources.

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
 County of Grant) ss

I, Clarence Justice

certify that the attached printed Notice was
 taken from the Grant County Review

printed and published in Milbank

County of Grant and State of

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

April 7, 1993

April 14, 1993

Cost of Printing: 67.43

Clarence Justice
 (Signature)

Foreman

(Title)

April 14, 1993

(Date Signed)

NOTICE OF HEARING
To Validate Vested Water Right
Application No. 5759-3 to
Appropriate Water

Notice is given that the City of Milbank, 203 South Main Street, Milbank, SD 57252 has filed an application to validate a vested water right claim to impound 340 acre-feet of water by reconstructing Lake Farley Dam. The dam site is located in the NE ¼ SE ¼ Section 1-T120N-R49W. Water will be impounded in portions of the NE ¼, N ½ SE ¼, SW ¼ Section 1-T120N-R49W. Water is to be stored annually to an approximate elevation of 1137.5 feet mean sea level. Lake Farley Dam was breached on February 6, 1980, because it was structurally and hydrologically unsafe. The City has completed repair work to the dam embankment and will repair the spillway structure. The water use has a claimed priority date of January 1, 1910, and is for recreational use.

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(over)

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April 7 April 14



JUN 1 0 1993

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

5759-3

Rudolph Nef, Mayor
City of Milbank
203 South Main Street
Milbank, SD 57252

Dear Mr. Nef:

Enclosed is your Validated Vested Water Right No. 5759-3. Upon completion of the repair work on the dam embankment and spillway structure, please submit the enclosed "Notice of Completion of Works and Application of Water to Beneficial Use." An inspection of work will then be scheduled by a Water Rights Division Engineer.

As long as you use the water beneficially, as State Water Laws provides, you have a continuing right to use the water.

Very truly yours,

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

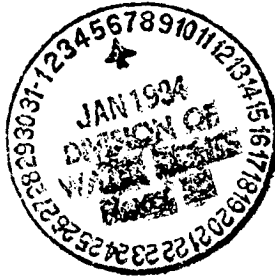
enclosure

c: Daryl Englund, Banner & Associates
David Zinter, Public Works Director, City of Milbank

BANNER

CONSULTING ENGINEERS & ARCHITECTS

BANNER ASSOCIATES, INC.
409 22nd Avenue South • P.O. Box 298
Brookings, South Dakota 57006-0298
(605) 692-6342
FAX: (605) 692-5714



January 5, 1994

Mr. David Zinter, Public Works Director
203 South Main
P. O. Box 472
Milbank, South Dakota 57252

RE: Lake Farley Dam
Spillway Replacement
and Rip Rap
Milbank, South Dakota
BAI No. 7431-03

Dear Dave:

Attached hereto is one (1) copy of the Certificate of Substantial Completion for Bid Schedule No. 1 (Dallas I. Hanson Construction, Inc.) and one (1) copy of the Certificate of Substantial Completion for Bid Schedule No. 2 (Vanderpol Construction, Inc.).

The date on these Certificates (December 1, 1993 for Hanson and November 24, 1993 for Vanderpol) establishes the beginning of the one (1) year warranty.

These Certificates are fully executed by the Contractor and the Engineer and do not require any further action by the City. These Certificates are for your files. By execution of these Certificates, Banner Associates, Inc. hereby recommends acceptance of the project.

If you have any questions regarding the Certificates, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Daryl Englund".

Daryl Englund, P.E. & L.S.

Enclosures

CC: SDDENR - Water Rights Division - Attn. Tim Schaal w/enclosures

CERTIFICATE OF SUBSTANTIAL COMPLETION

OWNER's Project No. _____

ENGINEER's Project No. 7431-03

Project Lake Farley Dam Spillway Replacement

I
CONTRACTOR Dallas J. Hanson Construction, Inc.

Contract For Lump Sum Bid Schedule No. 1
Spillway Removal and Replacement

Contract Date April 12, 1993

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

To City of Milbank, S.D.

OWNER

I
And To Dallas J. Hanson Construction, Inc.

CONTRACTOR

The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

December 1, 1993

Date of Substantial Completion

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. When this Certificate applies to a specified part of the Work the items in the tentative list shall be completed or corrected by CONTRACTOR within 180 days of the above date of Substantial Completion.

The date of Substantial Completion is the date upon which all guarantees and warranties begin, except as follows:

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities and insurance shall be as follows:

RESPONSIBILITIES:

OWNER: Operation, maintenance and insurance

CONTRACTOR: As required by performance and payment bonds

The following documents are attached to and made a part of this Certificate:

Items Requiring Correction:

- (1) Grout Handrail Posts (Spring, 1994)
- (2) ~~Topsoil and Seed (Review with City to determine if this will be deleted)~~ Delete by C.O.
- (3) Clean Up Spoil Piles
- (4) Complete Change Order Work associated with FEMA reimbursement.

Executed by ENGINEER on December 15, 19 93

Banner Associates, Inc.

ENGINEER

By *Daryl England, P.E.*

The CONTRACTOR accepts this Certificate of Substantial Completion on _____, 19 _____

I

Dallas I. Hanson Construction, Inc.

CONTRACTOR

By *[Signature]*

DALLAS I. HANSON, PRESIDENT

CERTIFICATE OF SUBSTANTIAL COMPLETION

OWNER's Project No. _____

ENGINEER's Project No. 7431-03

Project Lake Farley Dam Spillway Replacement

CONTRACTOR Vanderpol Construction, Inc.

Contract For Lump Sum Bid Schedule No. 2
Dike Shaping and Rip Rap

Contract Date April 12, 1993

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

To City of Milbank, S.D.

OWNER

And To Vanderpol Construction, Inc.

CONTRACTOR

The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

November 24, 1993

Date of Substantial Completion

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. When this Certificate applies to a specified part of the Work the items in the tentative list shall be completed or corrected by CONTRACTOR within — days of the above date of Substantial Completion.

The date of Substantial Completion is the date upon which all guarantees and warranties begin, except as follows:

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities and insurance shall be as follows:

RESPONSIBILITIES:

OWNER: Operation, maintenance and insurance

CONTRACTOR: As required by performance and payment bonds

The following documents are attached to and made a part of this Certificate:

Executed by ENGINEER on December 16, 19 93

Banner Associates, Inc.
ENGINEER

By *David England, P.E.*

The CONTRACTOR accepts this Certificate of Substantial Completion on _____, 19____

Vanderpol Construction, Inc.
CONTRACTOR

By *Gary Vanderpol*

Water Rights Division -DENR
Conversation or File Documentation

NAME OF PERSON OR FILE: Lake Farley Dam

ADDRESS: XXXXXXXXXXXXXX

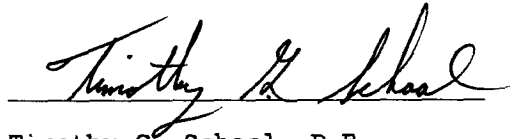
COUNTY: Grant

DATE: September 14, 1998

TELEPHONE: XXXXXXX

RE: Completion of the spillway project at Lake Farley Dam

Banner Associates, Inc. filed Certificates of Completion for the project on January 5, 1994. Our first scheduled inspection of Lake Farley Dam was not until July 5, 1995. Everything looked OK and the project appeared to be completed as described on Vested Right Claim No. 5759-3.

A handwritten signature in cursive script, reading "Timothy G. Schaal", is written over a horizontal line.

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

SEP 23 1998

5759-3

City of Milbank
%Denise Peschong
203 S. Main Street
Milbank, SD 57252

Dear Ms. Peschong:

Enclosed is Vested Right Water License No. 5759-3. Vested Right Water License No. 5759-3 is the final document which completes the process of obtaining a water right.

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

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Program
(605) 773-3352

gm
enclosures