

WATER PERMIT NO. 5910-3

Name of Applicant: **LaVern Bierman**

Address: **37150 145th St, Mansfield SD 57460**

Phone: **605 887-3362**

Amount of Water Claimed: **447.8 AF**

Total Acres: **NA**

Source of Water Supply: **Stony Run**

Water to be used for: **domestic use**

County: **Edmunds**

Type of Waste Disposal System: **NA**

Location: **10 miles south and 13 miles east of Ipswich**

PRIORITY

Date Received: **2-26-96**

Fee: **\$15.00**

Corrected Application Received: **3/4/96**

Period of Annual Use: **January 1 - December 31**

Remarks: **Claimed priority date of 1939**

Diversion Point: **SW 1/4 NW 1/4 Sec 14-T121N-R66W**

Water Impounded: **W 1/2 Sec 14; E 1/2 Sec 15, NW 1/4 NW 1/4 Sec 23; all in T121N-R66W**

Depth of Well: **NA**

Well Driller: **NA**

Remarks:

Type of Map: **aerial**

Prepared by:

Reviewed and the Number Assigned on: **2-27-96**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

(type or print)

No. 5910-3 Hydrologic Unit 10160008
Basin James River
Newspaper _____
(office use only)



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

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.) none

- Notary Public

My Commission Expires May 15th 2000

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. Wastewater Disposal System Information

- a) Type of System (i.e. septic tank, drain field) _____
- b) System Capacity (gallons) _____ c) Year Constructed _____
- d) Connected to the City of _____ Sanitary System.

3. Dugout Information

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

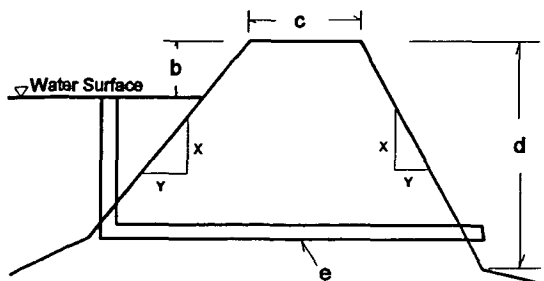


4. Water Storage Dams

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:

US Fish and Wildlife Service
Sand Lake Refuge
RR 1 Box 25
Columbia, SD 57433



- b) Freeboard 7.0 feet
- c) Crest Width 12.0 feet
Crest Length 322.0 feet
- d) Height 10.1 feet
- e) Primary Outlet Capacity 108 cfs
If pipe, diameter two 4 foot dia. culverts
- f) Secondary Spillway Capacity 2738 cfs
Spillway Width 88.0 feet
- g) X & Y Slope
Upstream 3:1
Downstream 3:1
- h) Surface Area of Impoundment 154.4 acres
- i) Storage 447.8 Acre Feet
- j) Drainage Area Above Dam 21,440 Acres

SOUTH DAKOTA
VESTED WATER RIGHT NO. 5910-3

Date of Receipt of Claim February 26, 1996.

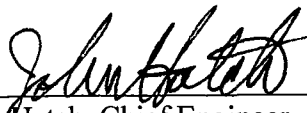
Date of Validation December 4, 1996.

Date of Validation after Readvertisement October 1, 1997.

The Water Management Board validated Vested Water Right Claim No. 5910-3 for LaVern Bierman, 37150 145th St, Mansfield SD 57460 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 5910-3 authorizes impoundment of 447.8 acre-feet of water by a dam in Grass Lake. The dam is located in the SW 1/4 NW 1/4 Section 14-T121N-R66W. The lake is a non-meandered lake located in the W 1/2 of Section 14, E 1/2 Section 15 and the NW 1/4 NW 1/4 Section 23; all in T121N-R66W. The dam was constructed with a crest height of 7.0 feet on Stony Run Creek at the natural outlet to Grass Lake. The dam was originally constructed to raise the water level in Grass Lake to an elevation which water will flow down a man-made ditch to North Scatterwood Lake (see related Flood Control Permit No. FC-18).
2. The appropriated water is used for domestic uses and may not exceed the amount of water needed for beneficial use.
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 November 16, 1937.
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.

WATER MANAGEMENT BOARD

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

NOV 12 1997

date



STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 5910-3

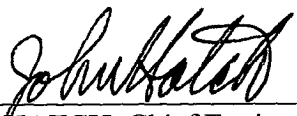
(1) LaVern Bierman, 37150 145th St, Mansfield SD 57460 made Application No. 5910-3, for validation of a vested right claim to impound 447.8 acre-feet of water from Stoney Run Creek by a dam in Grass Lake, Edmunds County, South Dakota, for domestic use purposes. Vested Water Right No. 5910-3 was validated December 4, 1996 with a priority date of November 16, 1937. Construction of the described water supply system and application of water to beneficial use has been completed and complies with applicable provisions of South Dakota State Law.

The dam was constructed with a crest height of 7.0 feet on Stony Run Creek at the natural outlet to Grass Lake. The dam was originally constructed to raise the water level in Grass Lake to an elevation which water will flow down a man-made ditch to North Scatterwood Lake.

This permit was readvertised on July 30 and August 6, 1997 to correct an error on the original notice of hearing in the legal description of the lake location. The lake location was described as being in "T123N" and should have been "T121N".

(2) The vested right owner is entitled to impound 447.8 acre-feet of water for beneficial use in Grass Lake. The location of the dam is the SW 1/4 NW 1/4 Section 14-T121N-R66W. Grass Lake is a non-meandered lake located in the W 1/2 of Section 14, E 1/2 Section 15 and the NW 1/4 NW 1/4 Section 23; all in T121N-R66W.

(3) Pursuant to Section 46-5-30.1 LaVern Bierman, 37150 145th St, Mansfield SD 57460 the holder and/or owner of Vested Water Right No. 5910-3 is issued a license to impound 447.8 acre-feet of water from Stoney Run Creek in Grass Lake with a priority date of November 16, 1937 from the location specified in (2) of this license for domestic purposes. This license is subject to any limitations, conditions or qualifications listed in Vested Water Right No. 5910-3 and subject to South Dakota State Law.



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

NOV 12 1997

date



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) LaVern Bierman

Mailing Address 37150 145 St Mansfield SD 57460
(Street, RR or Box) (City) (State) (Zip Code)

A. Notice of Appropriation 1939 Date of Posting 1939
Date of Recording 1939 Recording Date 1939

B. Date of start of construction of water supply system 1937

C. Date that water was first applied to beneficial use 1939

D. Name of owner of original water supply system Edward C. and A. Ruth Ryman

E. Amount of water originally applied to beneficial use 447.8 acre feet

F. Present use of water - amount of water now being used 447.8 acre feet
Date that this water was first used 1939

G. Chronological History of Water Use

see attached sheet



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 Edmunds) ss

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

Signed LaVern Bierman

Subscribed and sworn to before me February 22, 19 96

Ray S. J.
Notary Public

My Commission Expires May 15th 2000

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.

LaVern Bierman, 19 96
(Print name)

_____, 19____
(Print name)

*** **

A G R E E M E N T

THIS AGREEMENT made this 16 day of November, 1937, by and between Edward C. Ryman and A. Ruth Ryman of Mina, County of Edmunds, State of So. Dakota parties of the first part, and the State of South Dakota, through its Game and Fish Commission, party of the second part,

WITNESSETH:

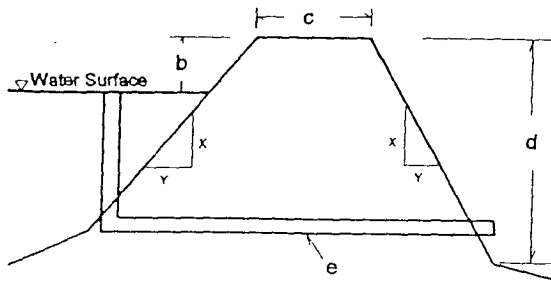
Whereas, the party of the second part is contemplating the construction and maintenance of a low dam or dike on a portion of the

NW $\frac{1}{4}$ of Sec. 14, Twp. 121 N., Rge. 66, Edmunds County, South Dakota, for the purpose of diverting flood waters into Grass Lake and thence into Scatterwood Lake through diversion ditches that have been previously constructed. This dam to be constructed in such a manner as to be used by the owner of the land for the purpose of a roadway.

Whereas, on account of the construction of said dam in NW $\frac{1}{4}$ of Sec. 14, Twp. 121 N., Rge. 66, Edmunds County, South Dakota, the party of the first part hereby grants to the party of the second part for and in consideration of \$1.00 paid upon the execution of this contract, and the receipt whereof is hereby acknowledged, full permission, license and easement to maintain and improve said dam and roadway, and to enter upon the above described property for the purpose of maintaining, and making repairs and improvements, and by this



Pre-Reconstruction Specifications



- b) Freeboard 4.0 feet
- c) Crest Width 10.0 feet
Crest Length 190.0 feet
- d) Height 7.0 feet
- e) Primary Outlet Capacity 54 cfs
pipe diameter 4.0 feet
- f) Secondary spillway Cap. *
spillway width
- g) X & Y Slope
Upstream 1:1
Downstream 1:1
- h) Surface area 154.4 acres
- i) Storage 447.8 acre feet
- j) Drainage area 21,440 acres

* There was no secondary or emergency spillway.

Pre-Reconstruction Elevations

Top of township road	<u>106.0</u>
Top of culvert(Primary Spillway)	<u>104.1</u>
Bottom of culvert	<u>100.0</u>
Top of dam	<u>104.0</u>
Bottom of dam	<u>97.0</u>

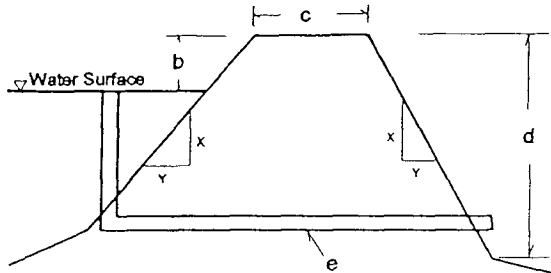


Pre-Reconstruction Hydraulic Capabilities

Primary Spillway (culvert in township road)	<u>54 cfs</u>
Emergency Spillway	<u>*</u>

* top of dam acted as an emergency spillway. Once water reached 104.1 dam would fail and water would flow east.

Post-Reconstruction Specifications



- b) Freeboard 7.1 feet
- c) Crest Width 12.0 feet
Crest Length 322.0 feet
- d) Height 10.1 feet
- e) Primary Outlet Capacity 108 cfs
pipe diameter two at 4 foot
- f) Secondary spillway Cap. 824 cfs
spillway width 88.0 feet
- g) X & Y Slope
Upstream 3:1
Downstream 3:1
- h) Surface area 154.4 acres
- i) Storage 447.8 acre feet
- j) Drainage area 21,440 acres

Post-Reconstruction Elevations

Top of township road	<u>106.1</u>
Top of original culvert	<u>104.1</u>
Bottom of original culvert	<u>100.0</u>
Top of additional culvert	<u>104.7</u>
Bottom of additional culvert	<u>100.0</u>
Top of dam	<u>107.1</u>
Bottom of dam	<u>97.0</u>
Emergency spillway	<u>102.9</u>



Post-Construction Hydraulic Capabilities

Primary Spillway (2 culvert in township road)	<u>108 cfs</u>
Emergency Spillway..... 0.5 foot water depth	<u>80 cfs</u>
1.0 foot water depth	<u>254 cfs</u>
2.0 foot water depth	<u>824 cfs</u>
2.1 foot water depth	<u>*</u>

* at point where 2.1 foot of water is running through Emergency Spillway, water will overtop township road causing failure of road

RECEIPT

414818

Division of Water Rights

South Dakota Department of Environment and Natural Resources

Pierre, _____ February 27 _____, 19 96

RECEIVED OF USFWS Sand Lake Refuge, R 1, Box 25, Columbia, SD 57433
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. _____ 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* (CF)
Chief Engineer

Noted right application

Edmunds 4/82 242
T.121 R.66 Sec. 14, 15, 22, 23

14, 15, 22, 23

N

Dam

Emergency
Spillway

High
water
mark

township
road

culverts

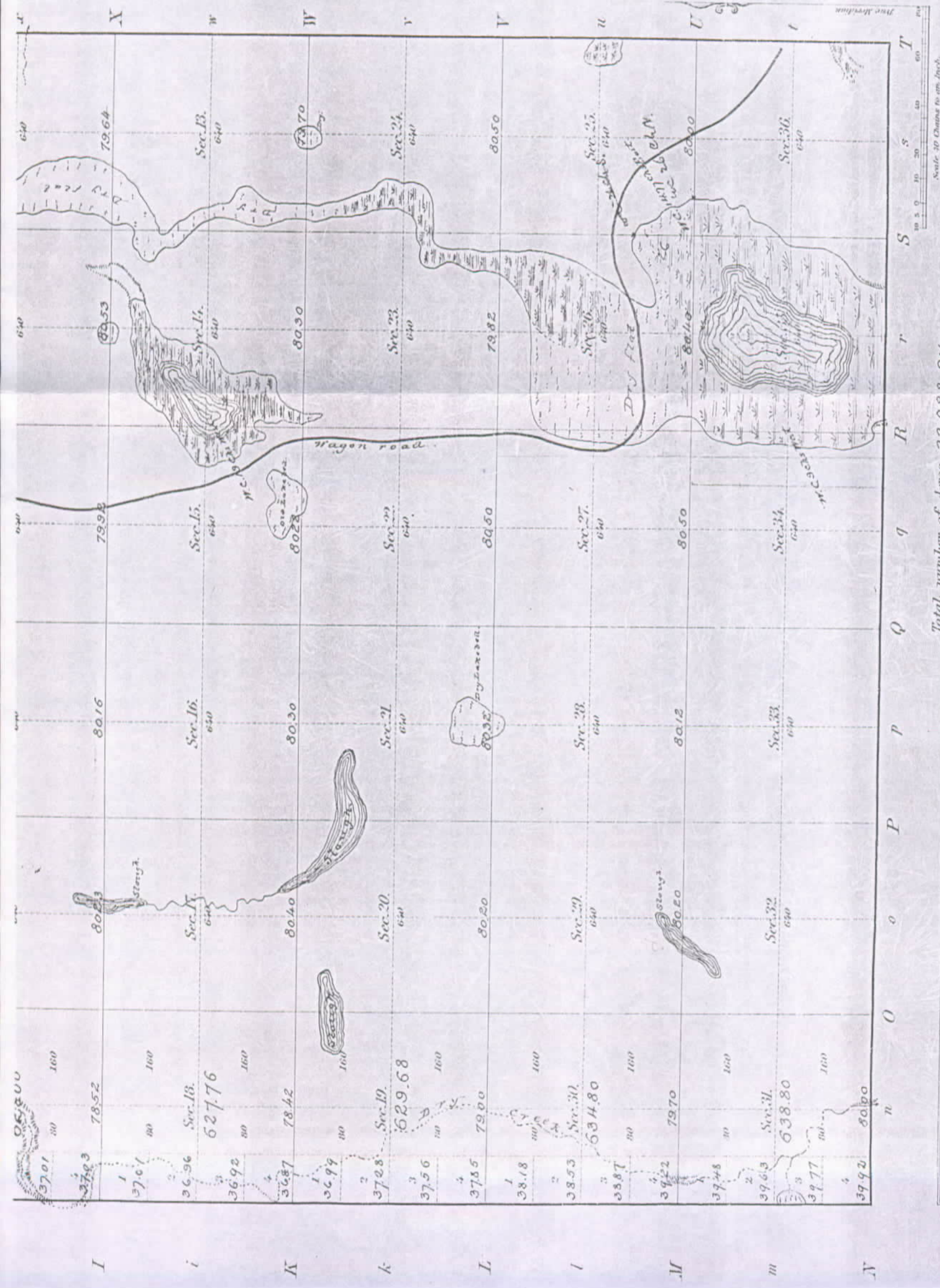
Bay Self

Edmunds 4/82 242
T.121 R.66 Sec. 15,16,21,22

K.O.
Lee
Inc.

La Vern
Bierman





Surveys Designated	By Whom Surveyed	Date of Contract	Amount of Survey		When Surveyed	Mean Deviation East	
			M.	Ch.		14"	07' 30"
Subdivisions.	Palmer & Miller	Aug 22d 1882	59	78	44	Sept 9-15-1882	14" 07' 30"
N.E. 1/4 lines	W. H. Marshall	July 15th 1880	11	78	80	August 1880	14" 06' 00"
S.W. boundaries	E. D. Palmer	July 1st 1874	12	00	00	August 1874	14" 15' 00"

Total number of Acres 22,988.94

The above Map of Township N. 22 North of Range N. 50 West of the 5th Principal Meridian Dakota is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

Surveyor General's Office
Vancouver, B.C. Jan. 14, 1883

W. H. Marshall
Jan. 26, 1883

Report on Vested Water Right Claim No. 5910-3
And Flood Control Permit Application No. FC-18
LaVern Bierman
April 6, 1996

Vested Water Right Claim No. 5910-3 claims, with a priority date of November 16, 1937, a dam capable of impounding 447.8 acre-feet of water in Grass Lake. The lake is a non-meandered lake located in the W1/2 of Section 14, the E1/2 of Section 15, and the NW1/4 NW1/4 of Section 23 ; all in T123N-R66W in SE Edmunds County. The dam was constructed with a crest height of 7.0 feet on Stony Run Creek at the natural outlet to Grass Lake. The dam was constructed for the purpose of raising the water level in Grass Lake to force water down a man-made ditch to North Scatterwood Lake, approximately two miles to the south.

Flood Control Permit Application FC-18 requests authorization for the reconstruction and modification of this dam on Stony Run Creek. The crest of the dam was raised to a height of 10.1 feet. A secondary spillway was added at a height of 5.9 feet or 1.1 feet lower than the height of the original dam. The reconstruction of the dam occurred in the Fall of 1994.

History of the Project

The natural condition (prior to 1928) for water drainage in the southeastern portion of Edmunds County was for water to drain to Stony Run Creek through Grass Lake and then on to Snake Creek in southwestern Brown County. In about 1928, the South Dakota Department of Game, Fish and Parks (GF&P) constructed a ditch from Grass Lake to North Scatterwood Lake for the purpose of providing additional water for North Scatterwood Lake. It was found that the natural outlet of Grass Lake was at an elevation lower than the ditch. In 1937, a project was initiated to construct a dam across the natural outlet of Grass Lake such that flood flows would be diverted down the ditch to North Scatterwood Lake. The dam was constructed without an emergency spillway. The dam has failed and been rebuilt several times in the past 59 years. GF&P holds Vested Water Right Claim No. 812-3, for the diversion of Stony Run Creek water to North Scatterwood Lake, and No. 813-3, to maintain water levels in Grass Lake. Neither claim addressed the dam on Stony Run Creek at the natural outlet of Grass Lake.

In the Spring of 1994 the dam failed. Mr. LaVern Bierman approached US Fish and Wildlife Service (USFWS) for help in reconstructing the dam. The dam was reconstructed in the Fall of 1994. The structure was altered from what had previously been in place. The crest was raised by 3.1 feet from a height of 7.0 feet to a height of 10.1 feet. An emergency spillway was added at a height of 5.9 feet or 1.1 feet lower than the previous crest height.

On May 2, 1995, staff from the Water Rights Program and GF&P met with several landowners from around the town of Chelsea concerning flooding in and around the town. At this meeting the dam was identified as being a possible cause of the flooding. Mr. Bierman was contacted that evening and he indicated that the dam had been reconstructed the previous fall with help from USFWS. USFWS staff verified this the next day. A review of the Water Rights Program files found that a water permit for the dam had never been issued nor had a flood control permit been issued for the reconstruction and modification of the dam.

During the weekend of May 13 and 14, 1995, this area received a large amount of precipitation and additional flooding occurred near Chelsea. On May 17, 1995, staff from the Water Rights Program and USFWS visited the dam site. It was determined that the precipitation from the previous weekend caused excessively high water levels in Grass Lake such that the two culverts and the ditch to North Scatterwood Lake had been unable to handle the additional water. Water levels in Grass Lake increased such that water ran through the emergency

spillway at a depth of about 2 feet, discharging into the old channel of Stony Run Creek to Snake Creek and eventually to the James River.

Review of the Vested Water Right Claim

Vested Water Right Claim No. 5910-3 is for an existing dam that was constructed during the period of 1937 to 1939. The dam was constructed at a point on Stony Run Creek at the natural outlet of Grass Lake at a point located in the SW1/4 NW1/4 of Section 14 T121N-R66W. Documentation submitted by the applicant included an affidavit stating the start of construction date was 1937. Also included in the documentation was a copy of a November, 16, 1937, agreement between previous landowners, Edward C. Ryman and A. Ruth Ryman, and the South Dakota Game and Fish Commission for an easement to construct a dam in the NW1/4 of Section 14-T121N-R66W.

Review of the Flood Control Permit Application

Flood Control Permit Application No. FC-18 is for the completed reconstruction and modification of the dam. This construction work occurred during the Fall of 1994. Modifications to the existing dam included raising the crest height by 3.1 feet. The crest length was extended from 190 feet to 322 feet. Following the reconstruction of the structure, Clear Lake Township increased the primary spillway from a single 4 foot diameter culvert to a 4 foot diameter and a squashed 5 foot diameter culvert under a township road to a ditch constructed by GF&P between Grass Lake and North Scatterwood Lake. The capacity of the primary spillway was increased from 54 cfs to 108 cfs. An 88 foot wide emergency spillway with an 824 cfs capacity was also added to the structure. The height of this emergency spillway is 2.9 feet above the bottom of the primary spillway and 1.1 feet below the old crest height of the dam.

The structure as modified will discharge, under extreme flood conditions, water through the emergency spillway down Stony Run Creek to Snake Creek. The modification of the dam by adding an emergency spillway and raising the crest height would be expected to decrease the likelihood or severity of flooding to downstream areas along Snake Creek during times when extreme water levels are occurring in Grass Lake. Prior to the dam modification extreme flood flows would have build up behind the structure to a height of 7.0 feet or 1.1 feet higher than the new emergency spillway elevation. The water would then have overtopped the crest of the dam causing potentially dangerous conditions particularly if the structure were to wash out. Adding an emergency spillway 1.1 feet below the old crest height has the effect of releasing water earlier to Snake Creek. The maximum release rate at a depth of 1.1 feet would be approximately 130 cfs. In the spring of 1995 water flowed out the outlet channel to a depth of approximately 2 feet or 0.9 feet above the old crest height. The approximate release rate through the spillway at that time was approximately 440 cfs. If the dam had not been modified and the flood water had overtopped the structure by 0.4 feet, the release rate to Snake Creek would have been approximately 900 cfs with the potential of major damage occurring to the structure.

Conclusions

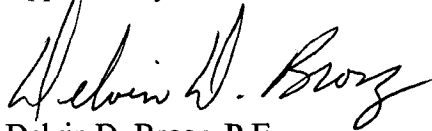
1. Vested Water Right Claim No. 5910-3 claims with a priority date of November 16, 1937, a dam capable of impounding 447.8 acre-feet of water in Grass Lake in southeastern Edmunds County.
2. Flood Control Permit Application FC-18 is for the completed reconstruction and modification of the dam on Stony Run Creek.
3. The construction work on the dam occurred during the Fall of 1994. Modifications included raising the crest height and adding an emergency spillway.

4. The structure as modified will discharge, under extreme flood conditions, water through the emergency spillway down Stony Run Creek to Snake Creek. Prior to the dam modification, extreme flood flows would have build up behind the structure and overtopped the crest of the dam causing potentially dangerous conditions.
5. Modification of the dam by adding an emergency spillway is expected to decrease the likelihood or severity of flooding to downstream areas along Snake Creek during times when extreme water levels are occurring in Grass Lake.
6. South Dakota Department of Game Fish and Parks hold two Vested Water Right Claims, No. 812-3 for the diversion of Stony Run Creek water to North Scatterwood Lake and No. 813-3 for maintaining water levels in Grass Lake. Neither claim addressed the dam on Stony Run Creek at the natural outlet of Grass Lake.



Mark D. Rath
Natural Resources Engineer III

Approved by



Delvin D. Brosz, P.E.
Natural Resources Engineer IV

References

1. SD Department of Environment and Natural Resources. 1996. Water Rights Program files.
2. SD Department of Game, Fish and Parks. Listing of Meandered Lakes. Prepared by Land Management Section, Edward M. Cassel, Chief.

**RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER
RIGHT APPLICATION NO. 5910-3, LaVern Bierman**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Validation of Vested Water Right Application No. 5910-3, LaVern Bierman, 37150 145th Street, Mansfield, SD 57460.

The Chief Engineer is recommending VALIDATION of Application No. 5910-3 for 447.8 acre feet of water because 1) water has been appropriated as described with a priority date of November 16, 1937, 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.

See report on application for additional information.

A handwritten signature in black ink, appearing to read "John Hatch", with a stylized flourish at the end.

JOHN HATCH, Chief Engineer
April 29, 1996



**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.

May 20, 1996

LaVern Bierman
37150 145th St.
Mansfield, SD 57460

Dear Mr. Bierman:

Flood Control Application No. FC-18 for flood control use and Vested Water Right Application No. 5910-3 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 Ipswich Tribune printed at Ipswich, SD (Ph # (605) 426-6471) and the Publisher of the Faulk Co. Record printed at Faulkton, SD (Ph # (605) 598-6525). For your information, a copy of the notice, the recommendation of the Chief Engineer and a report 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 these applications.

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.

c: David Azure, Sand Lake NWR, RR 1, Box 25, Columbia, SD 57433-9761



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 20, 1996

Faulk County Record
Box 68
Faulkton, SD 57438-0068

ATTENTION: Legal Department

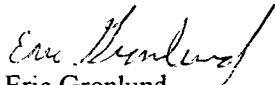
Enclosed is a Notice of Hearing on Application No. FC-18 and Vested Water Right Application No. 5910-3 to be published twice. Please publish the first notice on May 29, 1996, with the second publication 7 days later.

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 LaVern Bierman, 37150 145th St., Mansfield, SD 57460 (Ph # (605) 598-6525).

A copy of BOTH publications must be SENT to the WATER RIGHTS PROGRAM. 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 application 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 Program
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 May 29, 1996, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING to Validate Vested Water Right Application No. 5910-3 to Appropriate Water
and Flood Control Application No. FC-18

Notice is given that LaVern Bierman, 37150 145th Street, Mansfield, SD 57460 has filed an application to validate a vested water right claim and obtain a flood control permit for a dam on Stony Run Creek in Edmunds County.

Vested Water Right Application No. 5910-3 claims the impoundment of 447.8 acre feet of water by a dam in Grass Lake. The dam is located in the SW 1/4 NW 1/4 Section 14, T121N, R66W. The lake is a non-meandered lake located in the W 1/2 of Section 14, E 1/2 Section 15 and the NW 1/4 NW 1/4 Section 23; all in T123N, R66W. The dam was constructed with a crest height of 7.0 feet on Stony Run Creek at the natural outlet to Grass Lake. The dam was originally constructed to raise the water level in Grass Lake to an elevation which water will flow down a man-made ditch to North Scatterwood Lake. The application claims a priority date of November 16, 1937.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 5910-3 because 1) water has been appropriated as described for the impoundment with a priority date of November 16, 1937, 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.

Flood Control Application No. FC-18 requests authorization for the reconstruction and modification of the dam on Stony Run Creek listed above. The crest of the dam was raised to a height of 10.1 feet in the fall of 1994. A secondary spillway was also added at a height of 5.9 feet which is 1.1 feet lower than the height of the original dam.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. FC-18 because 1) the project will not increase the likelihood or severity of flood damages downstream, 2) will not endanger human life or property, 3) will not impair existing water rights, and 4) is in the public interest.

Any person interested in opposing or supporting these 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 recommendation. The Chief Engineer's address is "Water Rights Program, 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 June 28, 1996. 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.

The Water Management Board will consider these applications at 9:00 a.m., July 10, 1996, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny either application based on the facts presented at the public hearing. The July 10, 1996, 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 June 28, 1996.

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 June 28, 1996, at the above Water Rights Program address to request copies of information pertaining to these applications, 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-11, 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, 46-5-31, 46-5-47, 46-5-48; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Nettie H. Myers, Secretary, Department of Environment and Natural Resources.



Notice of Hearing

No. 164, May 29, June 5, 1996

Notice of Hearing to Validate Vested Water Right Application No. 5910-3 to Appropriate Water and Flood Control Application No. FC-18

Notice is given that LaVern Bierman, 37150 145th Street, Mansfield, SD 57460 has filed an application to validate a vested water right claim and obtain a flood control permit for a dam on Stony Run Creek in Edmunds County.

Vested Water Right Application No. 5910-3 claims the impoundment of 447.8 acre feet of water by a dam in Grass Lake. The dam is located in the SW 1/4 NW 1/4 Section 14, T121N, R66W. The lake is a non-meandered lake located in the W 1/2 of Section 14, E 1/2 Section 15 and the NW 1/4 NW 1/4 Section 23; all in T123N, R66W. The dam was constructed with a crest height of 7.0 feet on Stony Run Creek at the natural outlet to Grass Lake. The dam was originally constructed to raise the water level in Grass Lake to an elevation which water will flow down a man-made ditch to North Scatterwood Lake. The application claims a priority date of November 16, 1937.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 5910-3 because 1) water has been appropriated as described for the impoundment with a priority date of November 16, 1937, 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.

Flood Control Application No. FC-18 requests authorization for the reconstruction and modification of the dam on Stony Run Creek listed above. The crest of the dam was raised to a height of 10.1 feet in the fall of 1994. A secondary spillway was also added at a height of 5.9 feet which is 1.1 feet lower than the height of the original dam.

Pursuant to SDCL 46-2A-2, the

Chief Engineer recommends APPROVAL of Application No. FC-18 because 1) the project will not increase the likelihood or severity of flood damages downstream, 2) will not endanger human life or property, 3) will not impair existing water rights, and 4) is in the public interest.

Any person interested in opposing or supporting these 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 recommendation. The Chief Engineer's address is "Water Rights Program, 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 June 28, 1996. 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.

The Water Management Board will consider these applications at 9:00 a.m., July 10, 1996, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny either application based on the facts presented at the public public. The July 10, 1996, 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 June 28, 1996.

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-

Affidavit of Publication

State of South Dakota

§

County of Faulk

James B. Moritz of said county, being first duly sworn, on oath says that he is the publisher of the **Faulk County Record**, a weekly newspaper printed and published in Faulkton in said County of Faulk and has a full and personal knowledge of all the facts therein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of a least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the

Notice of Hearing Water Rights LaVern Bierman No. 5910-3

a printed copy of which, taken from the paper in which same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once in each week for

Two (2)

successive weeks, on the day of each week on which said newspaper was regularly published, to-wit:

Wednesday, May 29, 1996
Wednesday, June 5, 1996

that the full amount of the fees for the publication of the annexed notice is \$ 70.02

James B. Moritz

Subscribed and sworn to before me this

13th day of June, 1996

Peggy Sprenger
Notary Public
Faulk County, South Dakota
My Commission Expires
January 25, 2001

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 June 28, 1996 at the above Water Rights Program address to request copies of information pertaining to these applications, 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-11, 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, 46-5-31, 46-5-47, 46-5-48; and Board Rules ARSD 74-02:01:01 thru 74-02:01:15. Nettie H. Myers, Secretary, Department of Environment and Natural Resources.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 20, 1996

Ipswich Tribune
Box 7
Ipswich, SD 57451-0007

ATTENTION: Legal Department

Enclosed is a Notice of Hearing on Application No. FC-18 and Vested Water Right Application No. 5910-3 to be published twice. Please publish the first notice on May 29, 1996, 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 LaVern Bierman, 37150 145th St., Mansfield, SD 57460 (Ph # (605) 887-3362).

A copy of BOTH publications must be SENT to the WATER RIGHTS PROGRAM. 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 application 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 Program
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

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of _____) SS

1. Dwain E. Gibson

certify that the attached printed Notice was
taken from the IPSWICH TRIBUNE

printed and published in IPSWICH, SD

County of EDMUNDS and State of

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

MAY 29, 1996

JUNE 5, 1996

Cost of Printing: 67.90

Dwain E. Gibson

(Signature)

Publisher

(Title)

6/6/96

(Date Signed)

HEARING OF NOTICE to Validate Vested Water Right Application No. 5910-3 to Appropriate Water and Flood Control Application No. FC-18

Notice is given that LaVern Biermar
37150 145th Street, Mansfield, SD
57460 has filed an application to validate
a vested water right claim and obtain a
flood control permit for a dam on Stony
Run Creek in Edmunds County.

Vested Water Right Application No.
5910-3 claims the impoundment of 447.8
acre feet of water by a dam in Grass
Lake. The dam is located in the SW 1/4
NW 1/4 Section 14, T121N, R66W. The
lake is a non-meandered lake located in
the W 1/2 of Section 14, E 1/2 Section
15 and the NW 1/4 NW 1/4 Section 23;
all in T123N, R66W. The dam was con-
structed with a crest height of 7.0 feet on
Stony Run Creek at the natural outlet to
Grass Lake. The dam was originally con-
structed to raise the water level in Grass
Lake to an elevation which water will flow
down a man-made ditch to North
Scatterwood Lake. This application
claims a priority date of November 16,
1937.

Pursuant to SDCL 46-2A-2, the Chief
Engineer recommends VALIDATION of
Vested Water Right Application No.
5910-3 because 1) water has been
appropriated as described for the
impoundment with a priority date of
November 16, 1937, 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.

Flood Control Application No. FC-18
requests authorization for the reconstruc-
tion and modification of the dam on
Stony Run Creek listed above. The crest
of the dam was raised to a height of 10.1
feet in the fall of 1994. A secondary spill-
way was also added at a height of 5.9
feet which is 1.1 feet lower than the
height of the original dam.

Pursuant to SDCL 46-2A-2, the Chief
Engineer recommends APPROVAL of
Application No. FC-18 because 1) the
project will not increase the likelihood or
severity of flood damages downstream,
2) will not endanger human life or prop-
erty, 3) will not impair existing water
rights, and 4) is in the public interest.

Any person interested in opposing or
supporting these applications must file
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
Program, 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 inter-
ested person or the applicant must be
filed by June 28, 1996. The petition may
be informal, but must include a state-
ment describing the petitioner's interest
in the applications, the petitioner's rea-
sons for opposing or supporting the
applications, and the signature and mail-
ing address of the petitioner or the peti-
tioner's legal counsel, if legal counsel is
obtained.

The Water Management Board will
consider these applications at 9:00 a.m.,
July 10, 1996, Floyd Matthew Training
Center, Joe Foss Building, 523 East
Capitol, Pierre, SD. The Chief Engineer's
recommendation is not final or binding
upon the Board. The Board is authorized
to 1) approve, 2) approve with qualifica-
tions, 3) defer, or 4) deny either applica-
tion based on the facts presented at the
public hearing. The July 10, 1996, hear-
ing 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 June 28, 1996.

Any hearing will be an adversary pro-
ceeding. Any person filing a petition
and/or the applicant have the right to be
represented by a lawyer and may pre-
sent evidence or cross-examine witness-
es 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 June 28, 1996,
at the above Water Rights Program
address to request copies of information
pertaining to these applications, 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-11, 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, 46-5-31, 46-5-47,
46-5-48; and Board Rules ARSD
74:02:01:01 thru 74:02:01:15. Nettie H.
Myers, Secretary, Department of
Environment and Natural Resources.

(T 5-29; 6-5)





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 24, 1997

LaVern Bierman
37150 145th Street
Mansfield, SD 57460

Dear Mr. Bierman:

I am contacting you regarding an error that unfortunately occurred in the publication of the notice of hearing for Vested Water Right Application No. 5910-3 and Flood Control Permit Application No. FC-18. These are the two applications for your structure on Stony Run Creek at the natural outlet to Grass Lake. The Water Management Board approved these applications after conducting a hearing on October 2, 1996.

The notice of hearing published in the Ipswich Tribune and Faulk County Record contained an error in the legal description of the surface area impounded by Grass Lake. The township was incorrectly listed as being Township 123 North when in fact the correct township is T121N.

I doubt that this error impacted participation in the October 2, 1996, hearing. Nonetheless, readvertisement of the notice of hearing is necessary to ensure citizens are given an opportunity to comment based on factual information. A hearing before the Water Management Board will be scheduled for October 1, 1997. I do not believe the Board's decision to approve the applications will change as a result of this readvertisement.

A notice of hearing readvertising the applications will be sent to the newspapers for publication in the near future. I will also be sending a copy of this notice to you and the attorney for the citizens who opposed the applications along with an explanation of the error. The cost of readvertising the notice of hearing will be paid by the Water Rights Program.

I personally apologize for this error occurring. This legal description error should have been discovered and corrected by myself in the processing of the applications.

Sincerely,


Eric Gronlund
Water Rights Program
(605) 773-3352

c: Ryan Frohling, USFWS, RR 1, Box 25, Columbia, SD 57433-9761



July 22, 1997

NOTICE

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

TO: LaVern Bierman
37150 145th Street
Mansfield, SD 57460
and Parties of Record (see attached list)

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

SUBJECT: Readvertisement of Notice of Hearing to Validate Vested Water Right
Application No. 5910-3 and Flood Control Application No. FC-18, LaVern
Bierman

Vested Water Right Application No. 5910-3 proposed validation of a claim for an existing dam capable of impounding 447.8 acre-feet of water in Grass Lake. Flood Control Permit Application No. FC-18 requested authorization for the 1994 reconstruction and modification of the dam. The Water Management Board approved these applications after conducting a hearing on October 2, 1996.

The notice of hearing published in the Ipswich Tribune and Faulk County Record contained an error in the legal description of the surface area impounded by Grass Lake. The township was incorrectly listed as being Township 123 North. The correct location of Grass Lake is the W1/2 of Section 14, E1/2 of Section 15 and the NW1/4 NW1/4 of Section 23; all in T121N, R66W. Although this error may not have impacted participation in the October 2, 1996, hearing, readvertisement of the notice of hearing is necessary to give an opportunity to comment based on the correct legal description.

The enclosed notice of hearing to readvertise these applications will be published in the Ipswich Tribune and the Faulk County Record on July 30 and August 6, 1997. A hearing before the Water Management Board is scheduled for October 1, 1997.

Testimony was presented at the original hearing in support and opposition to these applications that reflected the concerns of area residents. The Board's decision to approve these applications is not expected to change as a result of this readvertisement unless new substantive evidence is presented.

Please feel free to contact Eric Gronlund at (605) 773-3352 if you have any questions on the readvertisement of these applications.

c: Diane Best, Assistant Attorney General

enclosure

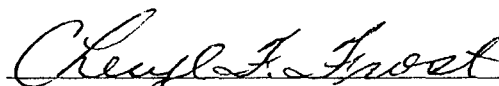
CERTIFICATION

I hereby certify that on July 22, 1997, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 22, 1997, along with a copy of the Readvertisement of Notice of Hearing, and a copy of the Parties of Record list regarding Readvertisement of Notice of Hearing to Validate Vested Water Right Application No. 5910-3 and Flood Control Application No. FC-18, LaVern Bierman, addressed as stated below, and on the attached Parties of Record list:

A copy of the above described Notice and attachments was sent Inter-office to:

Diane Best, Assistant Attorney General, Capitol Building.

Tim Olson, South Dakota Department of Game, Fish & Parks, Joe Foss Building.



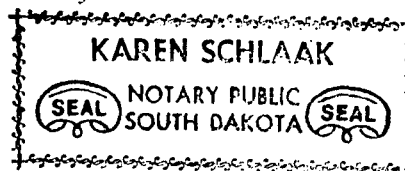
Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

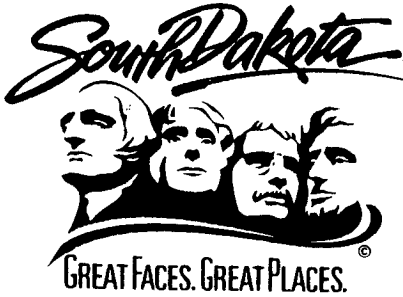
Sworn to, before me, this 23rd day of July, 1997



Notary Public



KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 22, 1997

Faulk County Record
Box 68
Faulkton, SD 57438-0068

Attn: Legal Department

Enclosed is a Readvertisement of Notice of Hearing on Vested Water Right No. 5910-3 and Flood Control Application No. FC-18 to be published twice. Please publish the first notice on July 30, 1997, with the second publication 7 days later.

Please bill the Water Rights Program for the cost of the advertisement.

A copy of BOTH publications must be SENT to the WATER RIGHTS PROGRAM. 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 by the Water Management Board until proof of publication has been received.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

FIRST TRANSMITTAL NOTICE

No. 5910-3 & FC-18

Date _____

We are in receipt of your letter of _____ enclosing Readvertisement of Notice of Hearing to Appropriate Water by Permit No. 5910-3 which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

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

Name

Newspaper

Instruction to Newspaper - Publish first Notice on July 30, 1997, with the second publication 7 days later. The Water Rights Program is responsible for payment.

READVERTISEMENT OF NOTICE OF HEARING To Validate Vested Water Right Application No. 5910-3
and Flood Control Application No. FC-18

Notice is given of readvertisement of Vested Water Right Application No. 5910-3 and Flood Control Application No. FC-18 for LaVern Bierman, 37150 145th Street, Mansfield SD 57460. The applications were filed on February 26, 1996. The Water Management Board approved these applications after conducting a hearing on October 2, 1996. After the proceedings concluded an error was found to have occurred in the public notice of these applications. Readvertisement of the notice of hearing published May 29 and June 5, 1996 in the Ipswich Tribune and the Faulk County Record is needed to correct the legal description of the lake location.

Vested Water Right Application No. 5910-3 seeks validation of a claim to impound 447.8 acre-feet of water by a dam in Grass Lake. The dam is located in the SW 1/4 NW 1/4 Section 14-T121N-R66W. The lake location was previously incorrectly advertised as being located in ~~T123N~~-R66W. The correct location of the non-meandered lake is the W 1/2 of Section 14, E 1/2 Section 15 and the NW 1/4 NW 1/4 Section 23; all in ~~T121N~~-R66W. The dam was constructed with a crest height of 7.0 feet on Stony Run Creek at the natural outlet to Grass Lake. The dam was constructed to raise the water level in Grass Lake to an elevation which will allow water to flow down a man-made ditch to North Scatterwood Lake. The water right claims a priority date of November 16, 1937.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of readvertised Application No. 5910-3 because 1) water has been appropriated as described for the impoundment with a priority date of November 16, 1937, 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.

Flood Control Application No. FC-18 requests authorization for the reconstruction and modification of the dam on Stony Run Creek listed above. The crest of the dam was raised to a height of 10.1 feet in the fall of 1994. A secondary spillway was also added at a height of 5.9 feet which is 1.1 feet lower than the height of the original dam.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of readvertised Application No. FC-18 because 1) the project will not increase the likelihood or severity of flood damages downstream, 2) will not endanger human life or property, 3) will not impair existing water rights, and 4) is in the public interest.

Any person interested in opposing or supporting these readvertised 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 Program, 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 September 19, 1997. 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.

The Water Management Board will consider these readvertised applications at 9:30 AM (CDT), October 1, 1997, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD. 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 these readvertised applications based on the facts presented at the public hearing. The 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 readvertised applications. The request for an automatic delay must be filed by September 19, 1997.

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 September 19, 1997, at the above Water Rights Program address to request copies of information pertaining to these readvertised applications, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

These readvertised 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-11, 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, 46-5-47, 46-5-48; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; Nettie Myers, Secretary, Department of Environment and Natural Resources.



PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Faulk) SSI, James B. Moritz

certify that the attached printed Notice was taken

from the _____

Faulk County Recordprinted and published in FaulktonCounty of Faulk and

state of South Dakota. The notice was published

in the newspaper on the following two dates:

Wednesday, July 30, 1997Wednesday, Aug. 6, 1997

Cost of Printing _____

\$ 80.26

Jim B. Moritz
(Signature)

Publisher
(Title)

8-6-97
(Date Signed)

No. 206, July 30, Aug. 6, 1997

**Re-advertisement of
Notice of Hearing**

To Validate Vested Water Right Application No. 5910-3 and Flood Control Application No. FC-18.

Notice is given of re-advertisement of Vested Water Right Application No. 5910-3 and Flood Control Application No. FC-18 for LaVern Bierman, 37150 145th Street, Mansfield SD 57460. The applications were filed on February 26, 1996. The Water Management Board approved these applications after conducting a hearing on October 2, 1996. After the proceedings concluded an error was found to have occurred in the public notice of these applications. Re-advertisement of the notice of hearing published May 29 and June 5, 1996 in the Ipswich Tribune and the Faulk County Record is needed to correct the legal description of the lake location.

Vested Water Right Application No. 5910-3 seeks validation of a claim to impound 447.8 acre-feet of water by a dam in Grass Lake. The dam is located in the SW 1/4 NW 1/4 Section 14-T121N-R66W. The lake location was previously incorrectly advertised as being located in T 1 23N-R66W. The correct location of the non-meandered lake is the W 1/2 of Section 14, E 1/2 Section 15 and the NW 1/4 NW 1/4 Section 23; all in T121N-R66W. The dam was constructed with a crest height of 7.0 feet on Stony Run Creek at the natural outlet to Grass Lake. The dam was constructed to raise the water level in Grass Lake to an elevation which will allow water to flow down a man-made ditch to North Scatterwood Lake. The water right claims a priority date of November 16, 1937.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of re-advised Application No. 5910-3 because 1) water has been appropriated as described for

the impoundment with a priority date of November 16, 1937, 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.

Flood Control Application No. FC-18 requests authorization for the reconstruction and modification of the dam on Stony Run Creek listed above. The crest of the dam was raised to a height of 10.1 feet in the fall of 1994. A secondary spillway was also added at a height of 5.9 feet which is 1.1 feet lower than the height of the original dam.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of re-advised Application No. FC18 because 1) the project will not increase the likelihood or severity of flood damages downstream, 2) will not endanger human life or property, 3) will not impair existing water rights, and 4) is in the public interest.

Any person interested in opposing or supporting these re-advised 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 Program, 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 September 19, 1997. 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.

The Water Management Board will consider these re-advised applications at 9:30 AM (CDT), Octo-

ber 1, 1997, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD. 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 these re-advised applications based on the facts presented at the public hearing. The 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 re-advised applications. The request for an automatic delay must be filed by September 19, 1997.

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 September 19, 1997, at the above Water Rights Program address to request copies of information pertaining to these re-advised applications, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

These re-advised 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-11, 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, 46-5-47, 46-5-48; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; Nettie Myers, Secretary, Department of Environment and Natural Resources.



My Commission Expires
Jan. 17, 2005

Val Ramsdell

PAYMENT REQUEST FORM

PAYEE: Faulk County Record
Box 68
Faulkton, SD 57438

FROM: Water Rights Program
523 E. Capitol
Pierre, SD 57501-3181

DESCRIPTION OF SERVICE, PRODUCE OR TRANSFER

Re-advertisement of Notice of Hearing to Validate Vested
Water Right Applicatoin No. 5910-3 and Flood Control Application
No. FC-18, published on July 30, and August 6, 1997.

AMOUNT: \$80.26

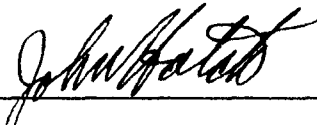
FUNDING SOURCE:

GENERAL: X

FEDERAL:

COMMENTS:

AUTHORIZATION: _____



8-7-97

I declare and affirm under the penalties of perjury that this claim is
in all things, true and correct. I further agree to comply with the
provisions of the Civil Rights Act of 1964 and regulations issued
thereunder relating to nondiscrimination in federal assisted programs.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 22, 1997

Ipswich Tribune
Box 7
Ipswich, SD 57451-0007

Attn: Legal Department

Enclosed is a Readvertisement of Notice of Hearing on Vested Water Right No. 5910-3 and Flood Control Application No. FC-18 to be published twice. Please publish the first notice on July 30, 1997, with the second publication 7 days later.

Please bill the Water Rights Program for the cost of the advertisement.

A copy of BOTH publications must be SENT to the WATER RIGHTS PROGRAM. 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 by the Water Management Board 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 Program
Joe Foss Building
Pierre SD 57501-3181

No. 5910-3 + FC-18

Date _____

We are in receipt of your letter of _____ enclosing Readvertisement of Notice of Hearing to Appropriate Water by Permit No. 5910-3 which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper



Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
County of EDMUNDS)

I, IPSWICH TRIBUNE *David E. L.*

certify that the attached printed Notice was taken

from the IPSWICH TRIBUNE

printed and published in IPSWICH

County of EDMUNDS and

state of South Dakota. The notice was published

in the newspaper on the following two dates:

JULY 30, 1997 & AUG. 6, 1997

Cost of Printing \$79.94

Ruth Gibson
(Signature)

Lee A. Bookkeeper
(Title)

Aug. 7, 1997
(Date Signed)

READVERTISEMENT OF NOTICE OF HEARING To Validate Vested Water Right Application No. 5910-3 and Flood Control Application No. FC-18

Notice is given of readvertisement of Vested Water Right Application No. 5910-3 and Flood Control Application No. FC-18 for LaVern Bierman, 37150 145th Street, Mansfield, ND 57460. The applications were filed on February 26, 1996. The Water Management Board approved these applications after conducting a hearing on October 2, 1996. After the proceedings concluded an error was found to have occurred in the public notice of these applications. Readvertisement of the notice of hearing published May 29 and June 5, 1996 in the Ipswich Tribune and the Faulk County Record is needed to correct the legal description of the lake location.

Vested Water Right Application No. 5910-3 seeks validation of a claim to impound 447.8 acre-feet of water by a dam in Grass Lake. The dam is located in the SW 1/4NW 1/4 Section 14-T121N-R66W. The lake location was previously incorrectly advertised as being located in T123N-R66-W. The correct location of the nonmeandered lake is the W 1/2 of Section 14, E 1/2 Section 15 and the NW 1/4NW 1/4 Section 23; all in T121N-R66W. The dam was constructed with a crest height of 7.0 feet on Stony Run Creek at the natural outlet to Grass Lake. The dam was constructed to raise the water level in Grass Lake to an elevation which will allow water to flow down a man-made ditch to North Scatterwood Lake. The water right claims a priority date of November 16, 1937.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of readvertised Application No. 5910-3 because 1) water has been appropriated as described for the impoundment with a priority date of November 16, 1937, 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.

Flood Control Application No. FC-18 requests authorization for the reconstruction and modification of the dam on Stony Run Creek listed above. The crest of the dam was raised to a height of 10.1 feet in the fall of 1994. A secondary spillway was also added at a height of 5.9 feet which is 1.1 feet lower than the height of the original dam.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of readvertised Application No. FC-18 because 1) the project will not increase the likelihood or severity of flood damages downstream, 2) will not endanger human life or property, 3) will not impair existing water rights, and 4) is in the public interest.

Any person interested in opposing or supporting these readvertised 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 Program, 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 September 19, 1997. 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.

The Water Management Board will consider these readvertised applications at 9:30 AM (CDT), October 1, 1997, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD. 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 these readvertised applications based on the facts presented at the public hearing. The 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 readvertised applications. The request for an automatic delay must be filed by September 19, 1997.

Any hearing will be an adversary proceedings. 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 September 19, 1997, at the above Water Rights Program address to request copies of information pertaining to these readvertised applications, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

These readvertised 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-11, 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, 46-5-47, 46-5-48; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15, Nettie Myers, Secretary, Department of Environment and Natural Resources.

(Publish T 7-30; 8-6)

PAYMENT REQUEST FORM

PAYEE: Ipswich Tribune
Box 7
Ipswich, SD 57451-0007

FROM: Water Rights Program
523 E. Capitol
Pierre, SD 57501-3181

DESCRIPTION OF SERVICE, PRODUCE OR TRANSFER

Readvertisement of Notice of Hearing to Validate Vested
Water Right Application No. 5910-3 and Flood Control
Application No. FC-18, published on July 30, and
August 6, 1997.

AMOUNT: \$79.94

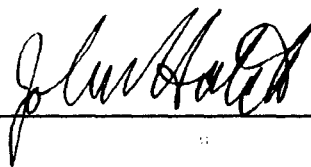
FUNDING SOURCE:

GENERAL: X

FEDERAL:

COMMENTS:

AUTHORIZATION: _____



8-11-97

I declare and affirm under the penalties of perjury that this claim is
in all things, true and correct. I further agree to comply with the
provisions of the Civil Rights Act of 1964 and regulations issued
thereunder relating to nondiscrimination in federal assisted programs.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 13, 1996

Jacqueline Beadle
Brown & Beadle
PO Box 37
Faulkton SD 57438

Dear Ms. Beadle:

As requested, enclosed are copies of the *Report on Vested Water Right Claim No. 5910-3* and *Flood Control Permit Application No. FC -13*, the *Recommendation of Chief Engineer* for each application, and the applications themselves.

If you have any questions, please contact this office.

Sincerely,

Karen Schlaak

Karen Schlaak
Environmental Scientist
Water Rights Program
(605) 773-3352

enclosures



United States Department of the Interior

FISH AND WILDLIFE SERVICE
SAND LAKE NATIONAL WILDLIFE REFUGE
RR1, BOX 25
COLUMBIA, SOUTH DAKOTA 57433-9761
605/885-6320

IN REPLY REFER TO:



June 19, 1996

John Hatch, Chief Engineer
Department of Environment
and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Dear Mr. Hatch,

I am writing in regards to the Water Permit Application No. FC-18, LaVern Bierman, 37150 145th Street, Mansfield, SD 57460 and the Validation of Vested Water Right Application No. 5910-3, also LaVern Bierman, Mansfield. The U.S. Fish and Wildlife Service strongly supports the recommendation of approval of the water permit and the recommendation of validation of the vested water right.

The FWS would like our support for the recommendation of approval of the water permit and the recommendation of validation of the vested water right to be known to the Water Management Board. We would also appreciate the opportunity to be a party of record should a water hearing before the Water Management Board arise.

Sincerely,

Boyd Schulz
Biological Technician

BROWN & BEADLE LAW OFFICES

JARVIS W. BROWN
JACQUELINE J. BEADLE

PO Box 37, 811 MAIN ST.
FAULKTON, SD 57438-0037

PHONE 605-598-4330
FAX 605-598-6780

June 24, 1996



Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501

Dear Sir:

Enclosed please find a copy of the Petition of Intent to Oppose Validation of Vested Water Right Claim No. 5910-3 and Recommendation of Chief Engineer for Validation of Vested Water Right Application No. 5910-3, LaVern Bierman and Petition to Oppose Flood Control Permit Application No. FC-18 and to Contest Chief Engineer's Recommendation for Water Permit Application No. FC-18 LaVern Bierman.

Included in my Petition is a request for postponement of the scheduled hearing date.

Yours truly,

Jacqueline J. Beadle
Attorney for the Petitioners

JJB:mkh

PETITION OF INTENT TO OPPOSE VALIDATION OF VESTED
WATER RIGHT CLAIM NO. 5910-3 AND RECOMMENDATION OF
CHIEF ENGINEER FOR VALIDATION OF VESTED WATER RIGHT
APPLICATION NO. 5910-3, LAVERN BIERMAN and
PETITION TO OPPOSE FLOOD CONTROL PERMIT APPLICATION NO. FC-18
AND TO CONTEST CHIEF ENGINEER'S RECOMMENDATION FOR
WATER PERMIT APPLICATION NO. FC-18 LAVERN BIERMAN

We, the undersigned petitioners, being residents of Faulk County, South Dakota, file this petition in opposition to the Application to Validate Vested Water Right Application No. 5910-3 to Appropriate Water and Flood Control Application No. FC-18.

The reason for the opposition is as follows:

According to Mr. Mark Rath, Natural Resources Engineer, in 1937 construction of a dam began across the natural outlet of Grass Lake. Report on Vested Water Rights Claim No. 5910-3. The dam was constructed by South Dakota Game, Fish and Parks without a permit in violation of South Dakota Revised Code 1919 §8251. In an attempt to remedy this violation, Mr. LaVern Bierman has filed an application for a permit to validate this appropriation of water by claiming a vested water right.

Mr. Bierman's vested water right application states that the use of the water that has been appropriated by the dam has been "domestic". Pursuant to SDCL § 46-1-6 (7), "domestic use" means:

"Domestic use," use of water not exceeding eighteen gallons per minute on an average daily basis, except for larger domestic wells in operation before July 1, 1983, by an individual, or by a family unit or household, for drinking, washing, sanitary and culinary purposes and other ordinary household purposes; irrigation of a noncommercial family garden, trees, shrubbery or orchard not greater in area than one acre; eighteen gallons per minute or less for uses in schools, parks and other public recreation areas; geothermal heat for a single household; or noncommercial on-farm alcohol production. The use of water supplied by a water distribution system for the preceding purposes, for the occupants of schools, hospitals and other custodial care facilities and for fire protection is a domestic use as against appropriative rights having a priority after June 30, 1978. Stock watering is a domestic use. Use of groundwater by water distribution systems, except for irrigation purposes is a domestic use except where groundwater and water in flowing streams constitute the same water supply source, but only to the extent the water was actually used before July 1, 1978;

According to SDCL § 46-1-6 (7), the use of this water has not been domestic. Instead, the water has been used for recreational purposes. Mr. Rath attests to this fact in his report by stating that "the dam was constructed for the purpose of raising the level in Grass Lake to force water down a man-made ditch to North Scatterwood Lake..." Since North Scatterwood Lake has been full, it has predominately been used for recreational purposes, not domestic as defined under SDCL § 46-1-6 (7).

The term "vested rights" is defined in SDCL §46-1-9. Mr. Bierman does not have a vested water right as it is applied in SDCL §46-1-9 because the water that is subject to this application is not being used for domestic purposes, and no other subsections of SDCL §46-1-9 apply to this case.

The beginning of the construction of the dam in 1937 was accomplished by the South Dakota Game, Fish and Parks without a permit in violation of South Dakota Revised Code 1919 §8151. Presently Mr. Bierman is attempting to remedy this violation by applying for a vested water right. In view of the fact that the water has not been used by Mr. Bierman for domestic use as defined in SDCL §46-1-6 (7), and no other subsection of SDCL §46-1-9 applies, we ask that Mr. Bierman's application for a vested water right be denied.

Pursuant to SDCL §46-2A-11:

"A permit for flood control works may be issued only if the project will reduce the damage from flooding or erosion in the area proposed to be benefitted, the project will not increase the likelihood or the severity of flood damages in areas other than the project area or the area proposed to be benefitted, the project will not endanger human life or property and the project will not impair existing water rights, except to the extent that such rights are extinguished or compensated through agreement or exercise of the power of eminent domain."

In accordance with SDCL §35-2A-11, a flood control application cannot be issued to Mr. Bierman for the dam that was reconstructed and modified in 1994 without restrictions. Irreparable harm has resulted because of this dam which was reconstructed and modified in 1994 without a permit in violation of South Dakota law. North Scatterwood Lake has overflowed its banks, flooding hundreds of acres of land. Most of this land was flooded in the spring of 1995 and much of the water will remain for years to come. Due to the fact that the dam has been prematurely reconstructed and modified, it is no longer merely a likelihood that the project may cause severe flood damage; it is an unfortunate reality.

Furthermore, a flood control permit should not be issued without restrictions because the 1994 dam project has endangered human life and property. When Scatterwood Lake overflowed in the spring of 1995, the town of Chelsea, South Dakota, was on the verge of being under water. Through the courageous and loyal efforts of many concerned people, ditches were dug, sandbags were filled and barricades were erected in a successful attempt at saving the town of Chelsea. The evidence of these efforts remain today because the threat of a flood remains prevalent.

In addition to Chelsea nearly flooding, several roads have been flooded as a result of the 1994 dam project. Water lingers today on several of these roads that were flooded in the spring of 1995. The destruction of these roads has cost the taxpayers of Faulk County thousands of dollars to repair. Unfortunately, as a result of the flooding, the repair and maintenance of these roads continues, costing the taxpayers even more dollars.

Besides the fact that it has cost thousands of dollars to repair these roads, the flood has also prevented travel on several of the roads. Mr. Dixon Batteen was forced to use a boat in order to help his wife get to work and his child to school. The flooding was so severe that Mr. Batteen had to use a boat as a means of transportation for approximately two and one-half weeks.

The instances that have been mentioned above are only a small fraction of the damages that have resulted as consequences of the dam that was reconstructed and modified in 1994 without a permit. In order to prevent future damage to property and possibly human life, a flood control permit should not be issued without restrictions.

The undersigned petitioners do not oppose the dam that was reconstructed in 1994. The petitioners want North Scatterwood Lake to be a good lake for recreation also. However, when Scatterwood Lake is at its full capacity, water should not be allowed to flow into it until its water level recedes.

The damaging effects of Scatterwood Lake overflowing its banks are obvious. Therefore, in order for a flood control permit to be legally issued in compliance with SDCL §46-2A-11, the permit must establish that the flow of water into North Scatterwood Lake must be controlled. One very simple and inexpensive solution which would control the water flow is installing gates on the two culverts located near Mr. LaVern Bierman's farm and installing a culvert with a gate attached to it near the dam. When Scatterwood Lake reaches its full capacity, the gates on the two culverts located near Mr. Bierman's farm would be closed and the gate on the culvert

installed near the dam would be opened. As a result, instead of water flowing into North Scatterwood Lake when it cannot handle any more, the water would flow its natural course through Snake Creek and eventually into the James River.

In summation, the undersigned petitioners enjoy the recreational benefits of Scatterwood Lake and would like Scatterwood Lake to continue to be a good recreational lake.

Furthermore, petitioners concede that a dam is probably needed in order for water to flow into North Scatterwood Lake so it may be used for recreational purposes. However, petitioners oppose the issuance of a flood control permit unless the permit orders that the flow of water into North Scatterwood Lake be controlled so as to prevent severe damages from flooding.

REQUEST FOR POSTPONEMENT

Pursuant to SDCL §46-2A-23, petitioners request postponement of the original hearing date.

The following petitioners are interested in this petition because they have suffered severe flood damage as a result of the reconstruction and modification of the dam in 1994 which was accomplished without a flood control permit

<u>Name</u>	<u>Title</u>	<u>Address</u>	<u>Date</u>
Albert Winkelmann	Landowner	Northville SD	6-21-96
Allen Steward	Land owner	Northville SD	6-21-96
Mary Gernes	Twp Supervisor	Northville SD	6-21-96
Floyd Gernes	Land owner	Northville S.D.	6-21-96
William Gernes	Land owner	Northville SD	6-21-96
Coat Twp	Twp Supervisor	Mannfield SD	6-21-96
Don Carda	Land owner	Chelsea SD	6-21-96
Donald Carda	Land owner	Chelsea S. D.	6-21-96
Joe E. Carda	Land owner	Chelsea SD	6-21-96
Robert Carda	Land owner & town board	Chelsea SD	6-21-96
Colinda Tinley	Town board	Chelsea, SD	6-21-96
Ronald K. Bierma	Twp Supervisor	Chelsea	6-21-96

Name	Title	Address	Date
Oliver Battee	Land Owner & Township Supervisor	HC 66 Box 80 Northville, SD 51465	6-21-96
Norman Battee	Land Owner	HC 66 Box 78 Northville S.D. 51465	6-21-96
Wayne Peterson	Land Owner	H.C. 66 Box 77 Chelsea, S.D.	6-21-96
Leo Karda	Landowner	HC 66 Box 51 Chelsea, S.D.	6-21-96
Donald G. Steward	Twp Supervisor	HC 66 Box 26 Northville S.D.	6-21-96

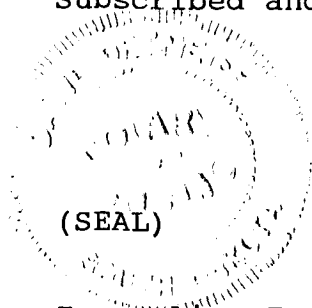
AFFIDAVIT OF PERSON WHO CIRCULATED PETITION FOR SIGNATURES

State of South Dakota)
: ss
County of Faulk)

I, Donald G. Steward, being first duly sworn, on oath state that I am a legal voter of Faulk County, south Dakota; that each of the persons whose names are affixed to the above and foregoing paper signed the same personally and added thereto his post office address and the date of signing; that to the best of my knowledge and belief, each and all of said persons are legal voters of Faulk County, South Dakota, and each signed the petition with full knowledge of its contents.

Donald G. Steward

Subscribed and sworn to before me this 22nd day of June, 1996.



David Ostrowski
Notary Public

~~My commission expires Jan. 19, 2004~~

Jacqueline J. Beadle
Attorney for Petitioners
PO Box 37
Faulkton, SD 57438

**PETITION OF INTENT TO OPPOSE VALIDATION OF VESTED
WATER RIGHT CLAIM NO. 5910-3 AND RECOMMENDATION OF
CHIEF ENGINEER FOR VALIDATION OF VESTED WATER RIGHT
APPLICATION NO. 5910-3, LAVERN BIERMAN and
PETITION TO OPPOSE FLOOD CONTROL PERMIT APPLICATION NO. FC-18
AND TO CONTEST CHIEF ENGINEER'S RECOMMENDATION FOR
WATER PERMIT APPLICATION NO. FC-18 LAVERN BIERMAN**

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The reason for the opposition is as follows:

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"Domestic use," use of water not exceeding eighteen gallons per minute on an average daily basis, except for larger domestic wells in operation before July 1, 1983, by an individual, or by a family unit or household, for drinking, washing, sanitary and culinary purposes and other ordinary household purposes; irrigation of a noncommercial family garden, trees, shrubbery or orchard not greater in area than one acre; eighteen gallons per minute or less for uses in schools, parks and other public recreation areas; geothermal heat for a single household; or noncommercial on-farm alcohol production. The use of water supplied by a water distribution system for the preceding purposes, for the occupants of schools, hospitals and other custodial care facilities and for fire protection is a domestic use as against appropriative rights having a priority after June 30, 1978. Stock watering is a domestic use. Use of groundwater by water distribution systems, except for irrigation purposes is a domestic use except where groundwater and water in flowing streams constitute the same water supply source, but only to the extent the water was actually used before July 1, 1978;

According to SDCL § 46-1-6 (7), the use of this water has not been domestic. Instead, the water has been used for recreational purposes. Mr. Rath attests to this fact in his report by stating that "the dam was constructed for the purpose of raising the level in Grass Lake to force water down a man-made ditch to North Scatterwood Lake..." Since North Scatterwood Lake has been full, it has predominately been used for recreational purposes, not domestic as defined under SDCL § 46-1-6 (7).

The term "vested rights" is defined in SDCL §46-1-9. Mr. Bierman does not have a vested water right as it is applied in SDCL §46-1-9 because the water that is subject to this application is not being used for domestic purposes, and no other subsections of SDCL §46-1-9 apply to this case.

The beginning of the construction of the dam in 1937 was accomplished by the South Dakota Game, Fish and Parks without a permit in violation of South Dakota Revised Code 1919 §8151. Presently Mr. Bierman is attempting to remedy this violation by applying for a vested water right. In view of the fact that the water has not been used by Mr. Bierman for domestic use as defined in SDCL §46-1-6 (7), and no other subsection of SDCL §46-1-9 applies, we ask that Mr. Bierman's application for a vested water right be denied.

Pursuant to SDCL §46-2A-11:

"A permit for flood control works may be issued only if the project will reduce the damage from flooding or erosion in the area proposed to be benefitted, the project will not increase the likelihood or the severity of flood damages in areas other than the project area or the area proposed to be benefitted, the project will not endanger human life or property and the project will not impair existing water rights, except to the extent that such rights are extinguished or compensated through agreement or exercise of the power of eminent domain."

In accordance with SDCL §35-2A-11, a flood control application cannot be issued to Mr. Bierman for the dam that was reconstructed and modified in 1994 without restrictions. Irreparable harm has resulted because of this dam which was reconstructed and modified in 1994 without a permit in violation of South Dakota law. North Scatterwood Lake has overflowed its banks, flooding hundreds of acres of land. Most of this land was flooded in the spring of 1995 and much of the water will remain for years to come. Due to the fact that the dam has been prematurely reconstructed and modified, it is no longer merely a likelihood that the project may cause severe flood damage; it is an unfortunate reality.

Furthermore, a flood control permit should not be issued without restrictions because the 1994 dam project has endangered human life and property. When Scatterwood Lake overflowed in the spring of 1995, the town of Chelsea, South Dakota, was on the verge of being under water. Through the courageous and loyal efforts of many concerned people, ditches were dug, sandbags were filled and barricades were erected in a successful attempt at saving the town of Chelsea. The evidence of these efforts remain today because the threat of a flood remains prevalent.

In addition to Chelsea nearly flooding, several roads have been flooded as a result of the 1994 dam project. Water lingers today on several of these roads that were flooded in the spring of 1995. The destruction of these roads has cost the taxpayers of Faulk County thousands of dollars to repair. Unfortunately, as a result of the flooding, the repair and maintenance of these roads continues, costing the taxpayers even more dollars.

Besides the fact that it has cost thousands of dollars to repair these roads, the flood has also prevented travel on several of the roads. Mr. Dixon Batteen was forced to use a boat in order to help his wife get to work and his child to school. The flooding was so severe that Mr. Batteen had to use a boat as a means of transportation for approximately two and one-half weeks.

The instances that have been mentioned above are only a small fraction of the damages that have resulted as consequences of the dam that was reconstructed and modified in 1994 without a permit. In order to prevent future damage to property and possibly human life, a flood control permit should not be issued without restrictions.

The undersigned petitioners do not oppose the dam that was reconstructed in 1994. The petitioners want North Scatterwood Lake to be a good lake for recreation also. However, when Scatterwood Lake is at its full capacity, water should not be allowed to flow into it until its water level recedes.

The damaging effects of Scatterwood Lake overflowing its banks are obvious. Therefore, in order for a flood control permit to be legally issued in compliance with SDCL §46-2A-11, the permit must establish that the flow of water into North Scatterwood Lake must be controlled. One very simple and inexpensive solution which would control the water flow is installing gates on the two culverts located near Mr. LaVern Bierman's farm and installing a culvert with a gate attached to it near the dam. When Scatterwood Lake reaches its full capacity, the gates on the two culverts located near Mr. Bierman's farm would be closed and the gate on the culvert

installed near the dam would be opened. As a result, instead of water flowing into North Scatterwood Lake when it cannot handle any more, the water would flow its natural course through Snake Creek and eventually into the James River.

In summation, the undersigned petitioners enjoy the recreational benefits of Scatterwood Lake and would like Scatterwood Lake to continue to be a good recreational lake.

Furthermore, petitioners concede that a dam is probably needed in order for water to flow into North Scatterwood Lake so it may be used for recreational purposes. However, petitioners oppose the issuance of a flood control permit unless the permit orders that the flow of water into North Scatterwood Lake be controlled so as to prevent severe damages from flooding.

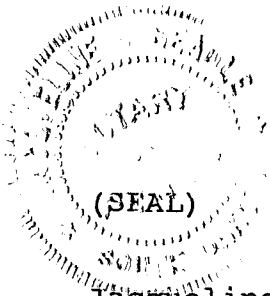
REQUEST FOR POSTPONEMENT

Pursuant to SDCL §46-2A-23, petitioners request postponement of the original hearing date.

The following petitioners are interested in this petition because they have suffered severe flood damage as a result of the reconstruction and modification of the dam in 1994 which was accomplished without a flood control permit

<u>Name</u>	<u>Title</u>	<u>Address</u>	<u>Date</u>
Everett Myers	Faulk Co Comm	1310 Elm St FAULKTON S.D.	6-20-1996
Donald Brewer	Faulk Co. Comm	HCR1, Box 50 Miranda, S.D. 57438	6-21-1996
Karen Hall	FAULK Co. Comm	RR3 Box 24 Zell SD 57469	6-21-96
John H. Swanborg	Faulk Co. Comm	HCR1 Box 63 Cresbard S.D. 57435	6-22-96
Don Stanley	FAULK Co. Comm	1218 St John St FAULKTON, S.D. 57438	6-22-96

Subscribed and sworn to before me this 24 day of June, 1996.



Jacqueline J. Beadle
Notary Public

My Commission Expires Sept. 21, 2003

Jacqueline J. Beadle
Attorney for Petitioners
PO Box 37
Faulkton, SD 57438



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 25, 1996

John Koerner
USFWS
Sand Lake National Wildlife Refuge
RR 1, Box 25
Columbia, SD 57433-9761

Dear John:

Enclosed is a copy of the petition opposing Vested Water Right Application No. 5910-3 and Flood Control Permit Application No. FC-18. The petition also requests an automatic delay of the July 10, 1996, hearing before the Water Management Board. A notice delaying the July 10th hearing date will be sent to all parties of record.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 26, 1996

NOTICE

TO: LaVern Bierman
37150 145th St.
Mansfield, SD 57460
and Parties of Record (see attached list)

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

SUBJECT: Automatic Delay of Hearing for Flood Control Application No. FC-18 and Vested
Water Right Application No. 5910-3, LaVern Bierman

A petition in opposition to Flood Control Application No. FC-18 and Vested Water Right Application No. 5910-3 has been filed. A copy of the petitions filed are enclosed for the applicant. The petition submitted by Jacqueline J. Beadle, attorney for petitioners, requests a postponement of the hearing. Therefore, the hearing on Application Nos. FC-18 and 5910-3 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on July 10, 1996.

The hearing on Application Nos. FC-18 and 5910-3 will now be scheduled for the October 2 and 3, 1996, Water Management Board meeting. Future notice of the date, time and place of the hearing for the applications will be provided to all parties of record.

Please contact Eric Gronlund, staff engineer at (605) 773-3352, if you have any questions.

enclosure

c: Diane Best, Assistant Attorney General

**Parties of Record
for
Flood Control Application No. FC-18
&
Vested Water Right Application No. 5910-3**

Applicant

LaVern Bierman
37150 145th Street
Mansfield, SD 57460

Petition in Support

Boyd Schulz
U.S. Fish and Wildlife Service
Sand Lake National Wildlife Refuge
RR 1, Box 25
Columbia, SD 57433-9761

Petition in Opposition

Jacqueline J. Beadle, Attorney for Petitioners
Brown & Beadle Law Offices
PO Box 37
Faulkton, SD 57438-0037

Petitioners

Evertt Myers, Faulk County Commissioner, 1310 Elm St. Faulkton, SD
Donald Brewer, Faulk County Commissioner, HCR 1, Box 50, Miranda, SD
Karen Harr, Faulk County Commissioner, RR 3, Box 24, Zell, SD
John Swanhorst, Faulk County Commissioner, HCR 1, Box 63, Cresbard, SD
Dean Stanley, Faulk County Commissioner, 1218 St. John St, Faulkton, SD
Albert Winkelman, HC1, Chelsea, SD
Allan Steward. HC1, Chelsea, SD
William Serfling, Township Supervisor, Northville, SD
Dan Carda, HC 1, Chelsea, SD
Donald Carda, Chelsea, SD
Joe E. Carda, Chelsea, SD
Floyd Gjernes, RR, Chelsea, SD
Marvin Gjernes, St Rt., Box 71, Chelsea, SD
Curt Nash, HC, Box 72, Mansfield, SD
Robert Carda, Chelsea, SD
Jolinda Finley, HC 1, Chelsea, SD
Ronald Bierman, RR, Chelsea, SD
Dixon Batteen, HC 66, Box 80, Northville, SD
Norman Batteen, HC 66, Box 78, Northville, SD
Wayne Peterson, HC 66, Box 77, Chelsea, SD
Leo Carda, HC 66, Box 51, Chelsea, SD
Donald Steward, HC 66, Box 76, Northville, SD

CERTIFICATION

I hereby certify that on June 26, 1996, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated June 26, 1996, along with a copy of the Petitions and Parties of Record List, regarding Automatic Delay of Hearing for Flood Control Application No. FC-18 and Vested Water Right Application No. 5910-3, LaVern Bierman, addressed as stated on the attached Notice:

A copy of the above described Notice and Parties of Record List was sent to the individuals listed on the attached Parties of Record List.

A copy of the above described Notice and Parties of Record List was sent Inter-office to:

Diane Best, Assistant Attorney General, Capitol Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 27th day of June, 1996




Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001



DEPARTMENT OF GAME, FISH AND PARKS

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



June 28, 1996

Mr. John Hatch, Chief Engineer
Water Rights Program
S.D. Department of Environment and Natural Resources
Foss Building, 523 East Capitol Ave.
Pierre, SD 57501

RE: Vested Water Rights Claim No. 5910-3 and Flood Control Permit No. FC-18 - LaVern
Bierman, Edmunds County

Dear Mr. Hatch:

The South Dakota Department of Game, Fish and Parks (GF&P) has reviewed the notice of hearing, report and Chief Engineer's recommendation for the above referenced vested water right claim and flood control permit.

Pursuant to SDCL 1-26 we request that GF&P be made a party of record in the proceedings for these applications. GF&P is an interested and potentially affected party by virtue of statutory authority to manage fish and wildlife resources of the state (SDCL Chapter 41). The Department of Game, Fish and Parks also holds vested water right claims for Grass Lake, North Scatterwood Lake and South Scatterwood Lake (Water License No's. 813-3, 812-3 and 1857-3, respectively) for recreational and fish and wildlife propagation purposes. Filing for party status in these proceedings will ensure our ability to protect our interests in water and habitat management within the subject watersheds.

Thank you for the opportunity to comment.

Sincerely,

Tim Olson
Water Permits Coordinator

cc: LaVern Bierman
Doug Alvine, GF&P, Watertown
Jerry Streckfuss, GF&P, Aberdeen



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 12, 1996

NOTICE

TO: LaVern Bierman
37150 145th St.
Mansfield, SD 57460
and Parties of Record (see attached list)

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

SUBJECT: Scheduling Hearing for Flood Control Application No. FC-18 and Vested
Water Right Application No. 5910-3, LaVern Bierman

The Water Management Board will consider Flood Control Application No. FC-18 and Vested Water Right Application No. 5910-3 on October 2, 1996, at 1:00 pm, in the Conference Room, Floyd Matthew Training Center, Foss Building, 523 East Capitol Ave., Pierre, SD. The agenda time is an estimate and may be delayed due to prior agenda items. The July 10, 1996, hearing on these applications was automatically delayed by petitioners.

Applicable provision of the Notice of Hearing published May 29, 1996 and June 5, 1996, in the Ipswich Tribune and the Faulk County Record will still apply at this hearing. This hearing is an adversary proceeding. Any party of record has the right to be present and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Contact Eric Gronlund at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General

**PARTIES OF RECORD
FOR
FLOOD CONTROL APPLICATION NO. FC-18
&
VESTED WATER RIGHT APPLICATION NO. 5910-3**

Applicant

LaVern Bierman
37150 145th Street
Mansfield, SD 57460

Petition in Support

Boyd Schulz
U.S. Fish and Wildlife Service
Sand Lake National Wildlife Refuge
RR 1, Box 25
Columbia, SD 57433-9761

Petition of Interest

Tim Olson
South Dakota Department of Game, Fish and Parks
523 East Capitol Ave.
Pierre, SD 57501

Petition in Opposition

Jacqueline J. Beadle, Attorney for Petitioners
Brown & Beadle Law Offices
P.O. Box 37
Faulkton, SD 57438-0037

Petitioners

Everett Myers, Faulk County Commissioner, 1310 Elm St., Faulkton, SD 57438
Donald Brewer, Faulk County Commissioner, HCR 1, Box 50, Miranda, SD 57463
Karen Harr, Faulk County Commissioner, RR 3, Box 24, Zell, SD 57483
John Swanhorst, Faulk County Commissioner, HCR 1, Box 63, Cresbard, SD 57435
Dean Stanley, Faulk County Commissioner, 1218 St. John St., Faulkton, SD 57438
Albert Winkelman, HC 1, Chelsea, SD 57431
Allan Steward, HC 1, Chelsea, SD 57431
William Serfling, Township Supervisor, Northville, SD 57465
Dan Carda, HC 1, Chelsea, SD 57431
Donald Card, Chelsea, SD 57431
Joe E. Carda, Chelsea, SD 57431
Floyd Gjernes, RR, Chelsea, SD 57431
Marvin Gjernes, St Rt., Box 71, Chelsea, SD 57431
Curt Nash, HC, Box 72, Mansfield, SD 57460
Robert Carda, Chelsea, SD 574331
Jolinda Finley, HC 1, Chelsea, SD 57431
Ronald Bierman, RR, Chelsea, SD 57431
Dixon Batteen, HC 66, Box 80, Northville, SD 57465
Norman Batteen, HC 66, Box 78, Northville, SD 57465
Wayne Peterson, HC 66, Box 77, Chelsea, SD 57431
Leo Carda, HC 66, Box, 51, Chelsea, SD 57431
Donald Steward, HC 66, Box 76, Northville, SD 57465

CERTIFICATION

I hereby certify that on August 12, 1996, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated August 12, 1996, along with a copies of the Parties of Record List, regarding Scheduling Hearing for Flood Control Application No. FC-18 and Vested Water Right Application No. 5910-3, LaVern Bierman, addressed as stated below and on the attached Parties of Record List:

A copy of the above described Notice and Parties of Record List were sent inter-office to:

Diane Best, Assistant Attorney General, Capitol Building.

Tim Olson, SD Department of Game, Fish & Parks, Joe Foss Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 26th day of August, 1996




Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 6, 1996

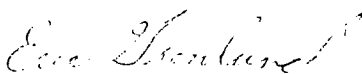
LaVern Biermann
37150 145th Street
Mansfield, SD 57460

Dear Mr. Biermann:

In response to our telephone conversation, enclosed is a copy of Recognized Vested Water Right Claim Nos. 812-3, 813-3 and 1857-3 held by the Department of Game, Fish and Parks. These claims did not address the dam on Stoney Run Creek at the natural outlet of Grass Lake.

If you have any questions, please contact Mark Rath or myself at (605) 773-3352.

Sincerely,


Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 4, 1996

NOTICE

TO: LaVern Bierman
37150 145th Street
Mansfield, SD 57460
and Parties of Record (see attached letters)

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

A handwritten signature in black ink, appearing to read "John Hatch", written over the typed name and title.

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

The Water Management Board directed John Guhin, the Board's attorney, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision for Vested Water Right Application No. 5910-3 and Flood Control Application No. FC-18. The Board will consider the proposed Findings, Conclusions and Final Decision at 1:00 PM on December 4, 1996, in the Conference Room, Floyd Matthew Training Center, 523 E. Capitol Ave., Pierre, SD 57501.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and Parties of Record (name and addresses enclosed) by November 14, 1996. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney and all Parties of Record by November 25, 1996.

Oral arguments by parties filing written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision may be made on December 4, 1996. The public hearing was completed October 2, 1996. No additional testimony will be received on December 4, 1996.

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

**PARTIES OF RECORD
FOR
FLOOD CONTROL APPLICATION NO. FC - 18
&
VESTED WATER RIGHT APPLICATION NO. 5910-3**

<u>Applicant</u>	LaVern Bierman 37150 145th Street Mansfield, SD 57460
<u>Attorneys for Petitioners in Opposition</u>	Jarvis Brown and Jacqueline Beadle Brown & Beadle Law Offices P.O. Box 37 Faulkton, SD 57438-0037
<u>Petitioner in Support</u>	Boyd Schulz U.S. Fish and Wildlife Service Sand Lake National Wildlife Refuge RR 1, Box 25 Columbia, SD 57433-9761
<u>Petitioner in Support</u>	Tim Olson South Dakota Department of Game, Fish and Parks 523 East Capitol Ave. Pierre, SD 57501

CERTIFICATION

I hereby certify that on October 4, 1996, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 4, 1996, along with a copy of the Parties of Record List, regarding Preparation of Findings of Fact, Conclusions of Law and Final Decision for Vested Water Right Application No. 5910-3 and Flood Control Application No. FC-18, addressed as stated below, and on the attached Parties of Record List:

LaVern Bierman, 37150 145th Street, Mansfield, SD 57460.

A copy of the above described Notice and attachment were sent inter-office to:

John Guhin, Deputy Attorney General, Capitol Building.

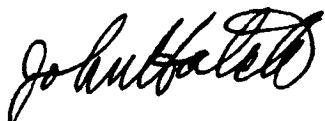
Diane Best, Assistant Attorney General, Capitol Building.

Tim Olson, Department of Game, Fish & Parks, Joe Foss Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 7th day of October, 1996


Notary Public



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 31, 1996

NOTICE

TO: LaVern Bierman
37150 145th Street
Mansfield, SD 57460
and parties of record (see attached list)

FROM: *for* John Hatch, Chief Engineer
Water Rights Program
(605) 773-3352

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

This is to notify you that the Final Decision, including Findings of Fact and Conclusions of Law, were adopted December 4, 1996, by the Water Management Board for Vested Water Right Claim No. 5910-3 and Flood Control Permit Application No. FC-18. A copy of the signed Findings of Fact, Conclusions of Law and Final Decisions is enclosed.

South Dakota Statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days of this notice and be in accordance with procedures established in SDCL 1-26-31.

enclosure

c: John Guhin, Deputy Attorney General
Diane Best, Assistant Attorney General

**PARTIES OF RECORD
FOR
FLOOD CONTROL APPLICATION NO. FC - 18
&
VESTED WATER RIGHT APPLICATION NO. 5910-3**

Applicant

LaVern Bierman
37150 145th Street
Mansfield, SD 57460

Attorneys for Petitioners
in Opposition

Jarvis Brown and Jacqueline Beadle
Brown & Beadle Law Offices
P.O. Box 37
Faulkton, SD 57438-0037

Petitioner in Support

Boyd Schulz
U.S. Fish and Wildlife Service
Sand Lake National Wildlife Refuge
RR 1, Box 25
Columbia, SD 57433-9761

Petitioner in Support

Tim Olson
South Dakota Department of Game, Fish and Parks
523 East Capitol Ave.
Pierre, SD 57501

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF VESTED WATER)	
RIGHT CLAIM NO. 5910-3 AND)	FINDINGS OF FACT, CONCLUSIONS
FLOOD CONTROL PERMIT)	OF LAW AND FINAL DECISION
APPLICATION NO. FC-18, LAVERN)	
BIERMAN)	

FINDINGS OF FACT

1. This is an application for validation of a vested right and also an application for a flood control permit. Because the matters are interwoven, these findings and conclusions apply to both matters.

2. The history of Vested Right Claim No. 5910-3 begins in approximately 1928 when South Dakota Game, Fish and Parks constructed a ditch from Grass Lake to North Scatterwood Lake. The purpose of the ditch was to supply water from Grass Lake to North Scatterwood Lake. Unfortunately for the operation of this ditch, the natural outlet of Grass Lake was at a elevation lower than the ditch.

3. The origin of the structure at issue today is found in a November 16, 1937, agreement between Edward C. Ryman and A. Ruth Ryman and the Game, Fish and Parks Commission for an easement to allow Game, Fish and Parks to construct the original dam.

4. Pursuant to the 1937 easement, a dam was constructed across the natural outlet of Grass Lake and had the effect of diverting flows down the Game, Fish and Parks' ditch to North Scatterwood Lake. The 1937 dam did not have an emergency spillway.

5. The dam was rebuilt and repaired several times subsequent to 1937. There is no evidence in the record that the size of the dam was changed up to 1994 at the time of the reconstruction now before this Board.

6. In 1969-70, prior to the reconstruction of the dam in question, the city of Chelsea had serious flooding problems.

7. The storage capacity of the dam, prior to the 1994 reconstruction, was 447.8 acre feet.

8. As of 1994, the dam had a crest of 7 feet. It had no emergency spillway. If the water flowed higher than the dam's crest, it would overtop the dam and eventually make its way to Snake Creek.

9. The Applicant claims the use of the water for domestic purposes.

10. The applicant testified that the water in the dam is in fact used for stock watering which is a domestic purpose. No party to this action disputes that, subsequent to 1937, the waters of the dams have in fact been used for domestic purposes up to the present time.

11. In July of 1993, the condition of the dam in question was poor. The applicant noticed a hole in the dam caused by a muskrat or other animal. The applicant therefore placed bales of hay in the dam in a successful attempt to save the dam on a temporary basis.

12. The applicant thereafter sought assistance of United States Fish and Wildlife Service to reconstruct the dam. The U.S. Fish and Wildlife agreed to reconstruct the dam.

13. In the fall of 1994, the dam was reconstructed. The modifications to the existing dam included raising the crest height by 3.10 feet. The crest length was extended from 190 feet to 322 feet. The capacity of the primary spillway was increased from 54 cfs to 108 cfs. An 88-foot-wide emergency spillway with an 824 cfs capacity was added to the structure; the dam did not then have an emergency spillway.

14. The height of the emergency spillway was 2.9 feet above the bottom of the primary spillway and 1.1 feet below the old crest height of the dam.

15. The Board finds that the reconstruction of the dam will significantly increase the safety of the dam. Prior to the dam reconstruction, water could build up behind the structure to the height of 7.0 feet. Because there was no emergency spillway, flows over the 7.0 feet level would have overtopped the crest of the dam. This creates a particularly dangerous condition if the structure were to wash out.

16. The emergency spillway is 1.1 feet below the old crest height. This has the effect of releasing water earlier to Snake Creek. As a result, the threat of the dam washing out is very significantly decreased.

17. A comparison of flows with and without the modifications indicates the increased safety of the system. In the spring of 1995, after the modification, water flowed out the outlet channel to a depth of approximately 2 feet or .9 feet above the old crest height. The approximate release rate through the spillway was 440 cfs. If the dam had not been modified and

the flood water had overtopped the structure by .4 feet, the release rate to Snake Creek would have been approximately 900 cfs. This rate posed a potential of major damage to the dam structure and obviously would have created a more serious threat downstream along Snake Creek.

18. Contrary to the assertions of the opponents of the application, the Board finds that the project will not increase the likelihood or severity of flood damages downstream towards Chelsea.

19. The Board finds that the project will not increase the likelihood of severity of flood streams downstream based upon two major factors. First, as set forth above, the actual occurrences in the spring of 1995, as set out in Finding 17 above, indicate that the structure as modified decreased the peak flows in that situation from approximately 900 cfs to 440 cfs along Snake Creek. Clearly the lower flows, albeit for a longer period of time, did not increase the likelihood or severity of flood damages downstream towards Chelsea. Second, the Board notes the failure of the opponents of the application to adduce any direct evidence that lowering the spillway somehow increased the likelihood or severity of flood damages downstream towards Chelsea.

20. The Board finds that there was, in fact, heavy flooding downstream of the dam in the past year after reconstruction of the dam. The city of Chelsea was especially adversely affected and certain individuals were essentially isolated from their homes by high water conditions. The Board

finds no evidence that the reconstruction of the dam caused these harms. The Board finds that the extraordinary water conditions over the past several years have resulted in the filling of potholes and the saturation of the ground. Together with additional precipitation, these conditions produced the difficult and unfortunate conditions which the downstream opponents of this application faced.

21. The Board finds, in addition, that most of the water which the downstream entities and farmers had to deal with did not originate in the Stony Run drainage basin in which the dam is found but rather flowed from the Preacher's Run drainage basin.

22. The opponents of the application have suggested that any flood control permit should be conditional to provide for the installation of two culverts near Mr. Bierman's farm and a culvert with a gate attached to it near the dam. The opponents suggest that when Scatterwood Lake reaches its full capacity, the gates on the two culverts located near Mr. Bierman's farm would be closed and the gate on the culvert installed near the dam would be opened. As a result, the opponents propose, instead of water flowing into North Scatterwood Lake when it cannot handle any more, the water would flow in its natural course through Snake Creek and eventually into the James River.

23. The opponents to the application submitted this proposal some time near the end of June of 1996 but had not, as of the date of hearing in October 1996, located any person or entity willing to take responsibility for control of the gates.

Furthermore, the opponents of the permit ignore the effect that the change in the flow of waters would have on those adjoining Snake Creek. It appears probable that the operation of the gates in the way proposed by the opponents of this application would in fact increase the flooding on persons adjoining Snake Creek.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of these matters.
2. The applicant and his predecessors have maintained a dam with a capacity of 447.8 acre feet of water and have appropriated water from the dam for domestic purposes since November 16, 1937.
3. There has been no showing of a three-year interruption of the use of this water without legal excuse.
4. This use has been developed without unlawful impairment of existing rights. The Board specifically concludes that no opponent of the application has argued that the existence of the dam from 1937 up to 1994 damaged them. The Board also concludes that the reconstruction of the dam did not cause additional damage to them and in fact lessened any potential damage to them.
5. The use of water for domestic use is a beneficial use.
6. The use of the water is in the public interest.
7. The Board concludes that Vested Right Application No. 5910-3 should be granted.
8. The Board also concludes that Application No. FC-18 should be granted and concludes that the project will

not increase the likelihood or severity of flood damages downstream. The Board specifically concludes that the lowering of the spillway will in fact decrease the likelihood and severity and flood damages downstream.

9. The Board concludes that approval of FC-18 will not endanger human life or property but instead will tend to decrease the threat to human life or property.

10. The Board concludes that approval of Application No. FC-18 will not impair existing water rights and notes specifically that no damage to any existing water right has been alleged.

11. The Board concludes that the approval of FC-18 is in the public interest because it will decrease the threat of severe flooding downstream.

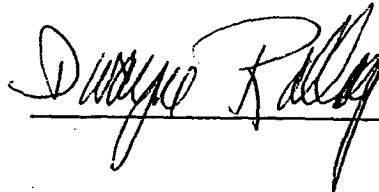
FINAL DECISIONS

1. Vested Right Application No. 5910-3 for 447.8 acre feet of water is validated with a priority date of November 16, 1937.

2. The application for Flood Control Permit No. FC-18 is approved.

Dated this 27th day of December, 1996.

BY THE BOARD:



CERTIFICATION

I hereby certify that on December 31, 1996, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated December 31, 1996, along with a copy of the Parties of Record list and a copy of the Findings of Fact, Conclusions of Law and Final Decision, regarding Adopt of Findings of Fact, Conclusions of Law and Final Decision for Vested Water Right Claim No. 5910-3 and Flood Control Permit Application No. FC-18, addressed as stated below, and on the attached Parties of Record list:

A copy of the above described Notice and attachments was sent inter-office to:

John Guhin, Deputy Attorney General, Capitol Building.

Diane Best, Assistant Attorney General, Capitol Building

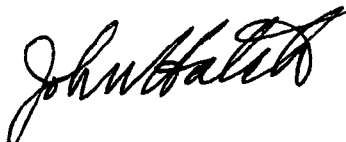
Tim Olson, Department of Game, Fish & Parks, Joe Foss Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 2nd day of January, 1997




Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

NOV 12 1997

LaVern Bierman
37150 145th St
Mansfield SD 57460

Dear Mr. Bierman:

Enclosed are Validated Vested Water Right and Water License No. 5910-3 and Flood Control Permit No. FC-18.

As long as you use the water beneficially, as stated in the Water License and Flood Control Permit, the 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

enclosures

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