

WATER PERMIT NO. 6104-3

Name of Applicant: Wenton W Peters

Address: 1410 E Ash, Mitchell SD 57301

Phone:

Amount of Water Claimed: 42 acre-feet storage dam

Total Acres: NA

Source of Water Supply: runoff

Water to be used for: fish & wildlife propagation and livestock water

County: Aurora

Type of Waste Disposal System: NA

Location: 8 miles southeast of Plankinton

PRIORITY Date Received: 10-5-1998

Fee: \$15

Corrected Application Received:

Period of Annual Use: January 1 – December 31

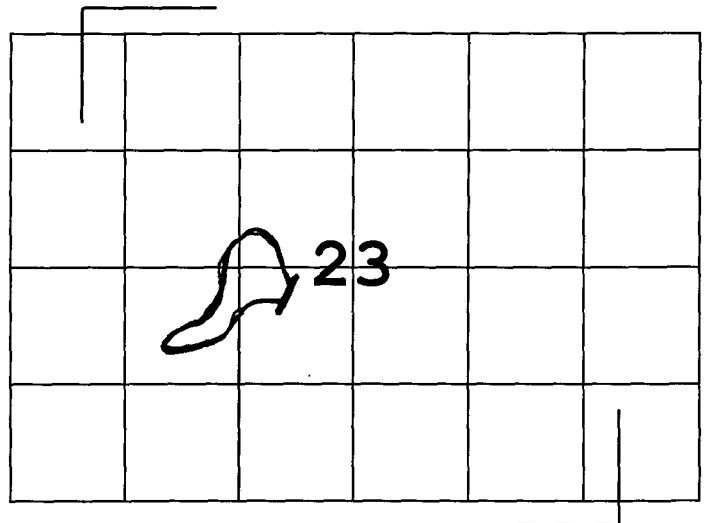
Remarks: Vested Right Claimed with a January 1, 1936 priority date

Diversion Point: NE ¼ SW 1/4

Sec 23-T102N-R63W

Water Impounded: N ½ SW ¼ and S ½ NW 1/4

Sec 23-T102N-R63W



Depth of Well: NA

Well Driller:

Remarks:

Type of Map: topo

Prepared by: Steven D Spawn, USFWS

Reviewed and the Number Assigned on: 10-6-1998

By: Karen Schlaak

Notice of Hearing - date to intervene: _____

**SOUTH DAKOTA
VESTED WATER RIGHT NO. 6104-3**

Date of Receipt of Claim October 5, 1998.

Date of Validation December 14, 1998.

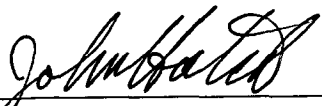
The Chief Engineer, on behalf of the Water Management Board, issues Vested Water Right No. 6104-3 to Wenton W Peters, 1410 E Ash, Mitchell SD 57301 with the following limitations, conditions and qualifications:

1. Water Permit No. 6104-3 authorizes impoundment of 42 acre-feet of water in a dam located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 23 with water impounded in the N $\frac{1}{2}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ NW $\frac{1}{4}$ Section 23; all in T102N-R63W.
2. The water appropriated shall be used for the purpose of providing habitat for fish and wildlife propagation and livestock water and may not exceed the amount of water needed for beneficial use for these purposes.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The priority date of the Vested Water Right is January 1, 1936.
5. The water use system has been constructed and water has been applied to beneficial use.
6. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Vested Water Right No. 6104-3 authorizes a dam with storage capacity of 42 acre feet of water and sufficient to maintain the water level to the outlet elevation.
2. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

WATER MANAGEMENT BOARD

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

JAN 19 1999
date



STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 6104-3

(1) Wenton W Peters, 1410 E Ash, Mitchell SD 57301 made Application No. 6104-3, October 5, 1998 for validation of a vested right claim to impound 42 acre-feet of water from runoff, Aurora County, South Dakota for fish & wildlife propagation and livestock water purposes. Vested Water Right No. 6104-3, was validated December 14, 1998 with a priority date of January 1, 1936. Construction of the described water supply system and application to beneficial use has been completed and complies with applicable provisions of South Dakota State Law.

(2) It is certified that the vested right owner is entitled to impound 42 acre-feet of water for beneficial use with sufficient water annually to maintain the water level to the outlet elevation. The location of the storage dam is located in the NE ¼ SW ¼ Section 23-T102N-R63W.

(3) Pursuant to South Dakota Water Law 46-5-30.1 Wenton W Peters, 1410 E Ash, Mitchell SD 57301 the holder and/or owner of Vested Water Right No. 6104-3 is issued a license to impound 42 acre-feet of water from runoff with sufficient water annually to maintain the water level to the outlet elevation with a priority date of January 1, 1936 from the location specified in (2) of this license for fish and wildlife propagation and livestock water. This license is subject to any limitations or qualifications listed in Vested Water Right No. 6104-3 and subject to South Dakota State Law.



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

JAN 19 1999

date



FORM 2: Application for uses other than irrigation
(type or print)

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>6104-3</u>	(office use only) Hydrologic Unit <u>10/60011</u>
	Basin <u>James River</u>	
	Newspaper <u>The Stickney Argus, Stickney, SD</u>	



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

Check use(s) of water:

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

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

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

- Name of Applicant Wenton Peters Phone _____
(check one) ☒ Owner ☐ Tenant/lessee
Mailing Address 1410 E. Ash, Mitchell State SD 57301
(Street, RR. or Box) (Zip Code)
- Amount of water claimed 42 **GPM ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (***Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply Impoundment of water in a dam
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)
Dam - NE1/4 SW1/4 Sect. 23, T102N, R63W -- Water impounded in the N1/2 SW1/4 and the S1/2
NW1/4 Section 23, T102N, R63W County Aurora
- County or counties where water will be used Aurora
- Annual period during which water is to be used January 1 - December 31
- Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)
Routine maintenance of existing earthen spillway. Install principle spillway trickle tube.

STATE OF SOUTH DAKOTA)
County of DAVISON SS

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

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

Signed Wenton Peters
Subscribed and sworn to before me this 30th day of September 19 98

Nancy B. Schroeder
Notary Public

Expiration: 10-1-03

Supplemental Information

(type or print in ink)



1. Well Information - Proposed Construction NOT APPLICABLE

- a) Drill Hole Diameter _____ Depth _____
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack _____ 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 NOT APPLICABLE

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

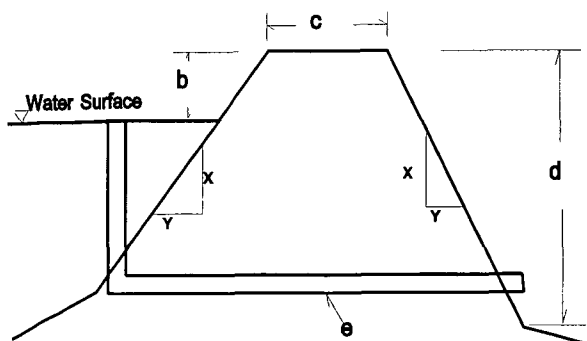
3. Dugout Information NOT APPLICABLE

- 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:



- b) Freeboard 3 feet _____
- c) Crest Width 12 feet _____
Crest Length 300 feet _____
- d) Height 6 feet _____
- e) Primary Outlet Capacity _____
If pipe, diameter 15" _____
- f) Secondary Spillway Capacity _____
Spillway Width 80 feet _____
- g) X & Y Slope _____
Upstream 3:1 _____
Downstream 3:1 _____
- h) Surface Area of Impoundment 15.0 acres _____
- i) Storage 42 Acre Feet _____
- j) Drainage Area Above Dam 1,200 Acres _____

Affidavit of Water Use

Form 2B

(Type or Print in Ink)

Note: This Form is supplemental to Form 2 and is to be used when an affidavit is needed to document historical water use, 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) Wenton Peters

Mailing Address 1410 E. Ash, Mitchell SD 57301

(Street, RR or Box)

(City)

(State)

(Zip Code)

A. ~~Notice of Appropriation~~ _____ Date of Posting _____

~~Date of Recording~~ _____ Recording Date _____

B. Date of start of construction of water supply system MID 1930's - 1935

C. Date that water was first applied to beneficial use 1936

D. Name of owner of original water supply system THOMAS JONES Sr

E. Amount of water originally applied to beneficial use 100% - LIVESTOCK, WILDLIFE

F. Present use of water - amount of water now being used WILDLIFE ONLY

Date that this water was first used PURCHASED JAN 1997

G. Chronological History of Water Use

*This water was used as a "Stock dam" for many years
upon purchasing the property I decided to use it
exclusively for wildlife.*

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

State of South Dakota)
) SS

County of DAVISON)

I, WENTON W PETERS
(print or type)

the applicant, certify that I have read the foregoing and that the matters therein are true.

Signed

Subscribed and sworn to before me

Wenton W Peters
September 30, 19 98
Randy B. Schroeder
Notary Public
Expiration: 10-01-03

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 are true.

(Print Name)

(Print Name)



Steve Spawn
Lake Andes Refuge, USFWS
38672 291st Street
Lake Andes, SD 57356

November 19, 1997

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

Dear Mr. Spawn:

I am writing as a follow-up to our telephone conversation regarding permitting requirements for a WPA impoundment constructed in the 1940's. You indicated the structure impounds approximately 35 acre feet of water and is located in the SW1/4 Section 23, T102N, R63W. You indicated that USFWS along with the cooperating landowner want to rehabilitate the structure. It is my understanding the structure has not failed and water has always been impounded (when available) and the proposed project is maintenance in nature.

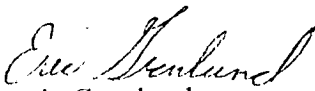
If the above is true, I believe the structure may qualify for a vested location notice. This would entail simply submitting a location notice (form enclosed). In making this statement I am assuming the structure impounds water on a dry draw. A dry draw is defined as "any ravine or watercourse not having an average daily flow of at least 180 gpm of water during the period May first to September thirtieth, inclusive." If the water course is not a dry draw then a vested water right application will need to be filed (form and instruction sheet enclosed). The vested water right application process requires public notice.

When submitting either the location notice form or the vested water right application, please provide any documentation that exists on when the structure was constructed and whether it has continuously impounded water.

Finally, I am enclosing a location notice filed in 1980 for a small 1.5 acre foot structure. This structure is located in the same legal description you provided. However, I doubt it is for the same structure.

Steve, I know this is a little different than what we talked about on the phone; if you have any questions do not hesitate to give me a call.

Sincerely,


Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure



United States Department of the Interior

FISH AND WILDLIFE SERVICE
LAKE ANDES NATIONAL WILDLIFE REFUGE COMPLEX
38672 291st Street
LAKE ANDES, SOUTH DAKOTA 57356-6838
605-487-7603



Eric Gronlund
DENR, Water Rights Program
Joe Foss Bldg., 523 E. Capitol
Pierre, SD 57501-3181



August 31, 1998

Eric,

Enclosed is an application for a vested location notice concerning a dam repair project in Aurora County. We spoke about the project last fall and you sent me some info. pertaining to water rights laws and what we would need to do concerning this project. Attached to the vested location notice is a copy of an aerial photo dated July 19, 1941. The date of the photo is located in the lower left corner of the page. The map shows the dam was already in place in 1941. Also, to the best of my knowledge, the structure has continuously impounded water since the time it was built. Please give me a call if you have any questions. Thank-you for your assistance.

Sincerely,
Steven D. Spawn
Steven D. Spawn
Private Lands Specialist



**VESTED
LOCATION NOTICE
FOR DAM/DUGOUT**

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

Aurora
COUNTY

Location Notice No.

I, Wenton Peters, of _____

1410 E. Ash, Mitchell, SD 57301
Address & Zip Code

Aurora
County

Wenton Peters, of the following described land, do hereby
(owner or operator)

notify the Water Management Board of the State of South Dakota and all others concerned that I am exercising my right under SDCL 46-4, for construction of a dam/ditch plug for the purpose of impounding runoff waters for wildlife/livestock purposes.

The following data is presented in compliance with SDCL 46-4-3 and 46-4-4.

(1) Date of:

(a) This notice August 10, 1998

(b) Proposed construction October 1, 1998

(2) Legal description of the land upon which the dam/dugout is located:

NE 1/4 SW 1/4 23-102-63

(describe to nearest 40 acre sub-division)

(3) Location of the dam/dugout from a section corner:

(see attached aerial photo)

(4) County Aurora

(5) The owner of the land Wenton Peters

(6) Acre feet of water claimed annually 42

Notes: If the storage of the proposed structure at the spillway crest overflow elevation exceeds twenty five (25) acre feet, a water permit from the Water Management Board is required.

A location notice is only required on a dugout, if the dugout captures surface runoff waters.

** Continue on next page **



(7) Complete the following information for the proposed dam/dugout:

* Items to be completed for a dugout

*a) Dam/Dugout designed by U.S.F.W.S.
38672 291st St., Lake Andes, SD 57356

b) Freeboard 3 feet

d) Height 6 feet

*Depth, if Dugout feet

Crest width 12 feet

e) Outlet Dimensions

Pipe dia. 15"

Crest Length 300 feet

Spillway width 80 feet

f) X & Y Slope:

Upstream 3:1

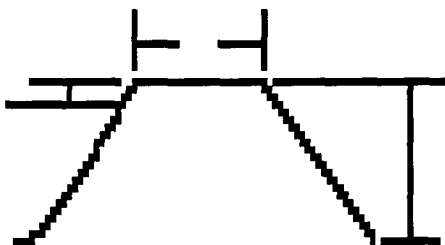
Downstream 3:1

*g) Water Surface Area 15.0 acres

*h) Storage at spillway crest or overflow elevation (acre feet) 42

i) Maximum storage to top of dam.
(acre feet) 80

*j) Drainage area above dam/dugout
1200 acres



Enclosed herewith is ten dollars (\$10.00). The Water Management Board is requested to file this Location Notice in their official records. A copy of this Location Notice has been filed (do not record) with the Register of Deeds of Aurora County in accordance with SDCL 46-4-3.

Wenton Peters
owner

STATE OF SOUTH DAKOTA)

U.S.F.W.S.

COUNTY OF Aurora)

LOCATOR

I, Wenton Peters the applicant, certify that I have read this Location Notice and that the matters stated in this notice are true and that I intend, and am able to start construction within sixty days after the filing of this notice.

Signed

Wenton Peters

Subscribed and sworn before me this 12 day of August, 1998.

(seal)

Haney B. Schroeder
notary public

My Commission expires: 10-01-03



NOT TO SCALE

102-63

129.6

(150)
69.9

36.4

TRANSFERRED

To Tom
Call
him

'91

DAVISON

33.2

DAVISON

TRANSFER

Wentony Peters
farm # 345

T621

3

70.8 T2435

Be careful
of ditch.
You cannot
see it

71.1

8.4

T2436

27.3

lf

102-63

2

2



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 4, 1998

Steven Spawn
U. S. Fish and Wildlife Service
Lake Andes NWR
38672 291st Street
Lake Andes SD 57356-6838

Dear Steven:

I am writing regarding the vested location notice you submitted on behalf of Wenton Peters for repair of a dam. In filing the vested location notice you followed the direction I provided in a letter, dated November 19, 1997. Since last fall, similar situations have occurred that caused us to re-evaluate whether a vested water right or a vested location notice should be obtained for these type of old dams. The Chief Engineer has determined that dams which has been in existence prior to 1955 and store more than 25 acre feet of water will need to obtain a vested water right. This is assuming a vested water right or location notice is not already on file for the dam.

I know this is different than what we discussed last year. The bottom line is we want to ensure the dam owner has an unquestionable legal right to the impoundment of the water.

I am enclosing a partially completed vested water right application form using the information provided on the location notice. Please have the application signed and notarized and complete the highlighted portions of the "Affidavit of Water Use" to the best of your ability. Also sign the map verifying the location of the dam as required to complete an application [see Item 2. d) on the application instruction sheet]. Finally, I have receipted the \$10 check filed with the location notice. Since the application filing fee for a vested water right is \$15, an additional \$5 will need to be remitted. The applicant also needs to be aware that this application will need to be public noticed and he will be responsible for this cost.

I apologize for any inconvenience that this may cause Mr. Peters or yourself. I want to make sure this is done right to there is no chance of future legal entanglements. Please feel free to call me if you have any questions or would like a more complete explanation.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure



← Dated aerial
photo from
7-19-1941
Steven D. Spaw
USFWS, Bio. Tech

61043

Vested Water Right
Application No. 6104-3
Wentou W. Peters

$$\left. \begin{array}{l} \text{Top of Dam Elev.} - 100 \\ \text{P. Spillway Elev.} - 97 \\ \text{2nd Spillway Elev.} - 98.5 \text{ (Assumed)} \\ \text{D/S Toe Elev.} - 94 \end{array} \right\} \text{Height} = 6 \text{ ft}$$

* Dam Height is only 6 ft; therefore, it Does Not meet the requirements of the Safety of Dams Rules, Chapter 74:02:08

Normal Storage Capacity - 42 Ac-Ft.
Maximum Storage Capacity - 80 Ac-Ft.

From USGS WRI 80-80" Tech. for Est. Flood Peaks ... in SD"

$$DA = 1200 \text{ Ac} = 1.88 \text{ mi}^2$$

$$\text{Slope} = 40 \text{ ft/mile}$$

$$SI = 3.33$$

$$\begin{aligned} Q_{25} &= 83.4 A^{.60} S^{.44} SI^{-.72} \\ &= 83.4 (1.88)^{.60} (40)^{.44} (3.33)^{-.72} \\ &= 83.4 (1.46) (5.06) (0.42) \\ &= \underline{260 \text{ cfs}} \end{aligned}$$

$$\begin{aligned} Q_{50} &= 106 A^{.63} S^{.45} SI^{-.69} \\ &= 106 (1.88)^{.63} (40)^{.45} (3.33)^{-.69} \\ &= 106 (1.48) (5.26) (.44) \\ &= \underline{365 \text{ cfs}} \end{aligned}$$

Secondary Spillway Flow

$$\begin{aligned} Q &= CLH^{3/2} \\ &= (2.6)(80)(1.5)^{3/2} \\ &= \underline{382 \text{ cfs}} \end{aligned}$$

NRCS Annual Yield

$$\begin{aligned} DA &= 1200 \text{ Ac} \\ ISO &= 2\frac{1}{2} \\ CN &= 76 \text{ (Assumed)} \end{aligned}$$

$$\begin{aligned} 10\% \text{ chance} &= 2.3 \\ 2.3 \times 1200/12 &= \underline{230 \text{ Ac-Ft}} \end{aligned}$$

$$\begin{aligned} 50\% \text{ chance} &= 0.5 \\ 0.5 \times 1200/12 &= \underline{50 \text{ Ac-Ft.}} \end{aligned}$$

$$\begin{aligned} 80\% \text{ chance} &= 0.2 \\ 0.2 \times 1200/12 &= \underline{20 \text{ Ac-Ft.}} \end{aligned}$$

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

No 415850

Pierre, September 2, 1998

RECEIVED OF Wenton Peters, 1410 E. Ash, Mitchell, SD 57301
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. <u>6604-3</u> to Appropriate Water, to construct and to put water to beneficial use _____	10	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	10000

By

Chief Engineer

John Hatch

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

N2 415888

Pierre, October 5, 19 98

RECEIVED OF Wenton W. Peters, 1410 E. Ash, Mitchell, SD 57301
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. <u>6104-3</u> to Appropriate Water, to construct and to put water to beneficial use _____	5 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 5 00

By _____
Chief Engineer

John Halch (P)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 28, 1998

Steven Spawn
U. S. Fish and Wildlife Service
Lake Andes NWR
38672 291st Street
Lake Andes SD 57356-6838

Dear Steve:

In early September I sent you a letter in regard to the vested location notice submitted on a dam of Wenton Peters. At that time I indicated that a vested water right should be obtained for a dam which impounds greater than 25 acre feet of water. Since the Peters' dam impounds 42 acre feet of water, I enclosed a partially completed vested water right application. To date, I have not received the completed vested water right application. Please let me know the status of the application for Mr. Peters' dam.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

REPORT ON
WATER PERMIT APPLICATION NO. 6104-3

Wenton W. Peters
November 10, 1998

Water Permit Application No. 6104-3 has been filed by Wenton W. Peters to validate a Vested Water Right Claim to appropriate 42 acre-feet of water from runoff in a dam which is located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23-T102N-R63W, in Aurora County. The water will be used to provide habitat for fish and wildlife propagation and livestock watering. The application claims a priority date of January 1, 1936.

Discussion:

The existing dam is 6 feet high with a normal storage capacity of 42 acre-feet with a reservoir level at the spillway elevation, and a maximum storage capacity of 80 acre-feet with a reservoir level at the top of dam elevation. Due to the small size of the structure, the structure is not subject to the requirements of the Safety of Dams Rules, Chapter 74:02:08.

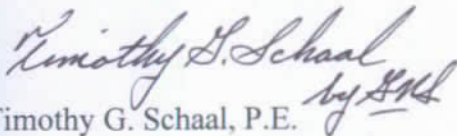
The US Fish and Wildlife Service proposes to install a new 15 inch diameter CMP conduit as the primary spillway with 3 feet of available head. The dam has an existing 80 foot wide earthen secondary spillway with a capacity of approximately 380 cfs. The dam has a drainage area of 1200 acres (1.88 square miles). A 25-year frequency event will produce a peak of approximately 260 cfs and a 50-year frequency event will produce a peak of approximately 365 cfs.

The annual yield for this drainage area with a 10 percent chance of occurrence, or 1 out of 10 years, is expected to be 230 acre-feet. The annual yield with a 50 percent chance of occurrence, or 1 out of 2 years, is expected to be 50 acre-feet and the annual yield with a 80 percent chance of occurrence, or 8 out of 10 years, is expected to be 20 acre-feet.

The existing dam is located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23-T102N-R63W near the headwater of Enemy Creek about 30 miles upstream of its confluence with the James River. There are no existing Water Permits/Rights located on Enemy Creek between the existing dam and the James River.

Conclusions:

1. Vested Water Right Claim No. 6104-3 should be validated since unappropriated water is available, the dam has been in existence since 1936 and approval should not have any adverse effect on existing Water Rights/Permits.
2. If approved, the low flow bypass requirement for downstream domestic use should be a qualification on Water Permit Application No. 6104-3.


Timothy G. Schaal, P.E.

Natural Resources Engineer III

Approved by:



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

RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER
RIGHT APPLICATION NO. 6104-3, Wenton W. Peters

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Environment and Natural Resources concerning Validation of Vested Water Right Application No. 6104-3, Wenton W. Peters, 1410 East Ash, Mitchell SD 57301.

The Chief Engineer is recommending VALIDATION of Application No. 6104-3 for a 42 acre feet of water because 1) water has been appropriated as described for livestock watering and fish and wildlife uses with a priority date of January 1, 1936, 2) the use has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Vested Water Right No. 6104-3 authorizes a dam with storage capacity of 42 acre feet of water and sufficient to maintain the water level to the outlet elevation.
2. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

See report on application for additional information.

A handwritten signature in blue ink, appearing to read "John Hatch", is written over the printed name.

JOHN HATCH, Chief Engineer
November 10, 1998



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

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

November 16, 1998

Wenton W. Peters
1410 E. Ash
Mitchell, SD 57301

Dear Mr. Peters:

Vested Water Right Application No. 6104-3 for fish and wildlife propagation and livestock water use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of the Stickney Argus printed at Stickney, SD (Ph # (605) 732-4555). For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

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

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

c: Steve Spawn, USFWS, Lake Andes Refuge, 38672 291st Street, Lake Andes, SD 57356.

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.



November 16, 1998

The Stickney Argus
Box 37
Stickney, SD 57375-0037

ATTENTION: Legal Department

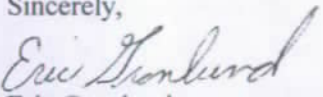
Enclosed is a Notice of Hearing on Vested Water Right Application No. 6104-3 to Appropriate Water to be published twice. Please publish the first notice on November 25, 1998, with the second publication 7 days later.

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 Wenton W. Peters, 1410 E. Ash, Mitchell, SD 57301 (Ph # (605) 996-8610).

Please send the Water Rights Program the first publication immediately. The publication is checked for accuracy so any corrections can be made in the second publication. You may use the form below or fax a copy of the first publication. Any fax should be sent to the attention of Karen Schlaak at (605) 773-4068. Publication errors can invalidate the public notice.

After the second publication, **please send us an affidavit or use the enclosed Proof of Publication form.** The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CU T HERE-----

V.R. No. 6104-3

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

Date _____
We are in receipt of your letter of November 16, 1998, enclosing Notice of Hearing to Appropriate Water by Vested Water Right Application No. 6104-3 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper

NOTICE OF HEARING to Validate
Vested Water Right Application No. 6104-3 to Appropriate Water

Notice is given that Wenton W Peters, 1410 E Ash, Mitchell SD 57301 has filed an application to validate a vested water right claim to impound 42 acre-feet of water from runoff in a dam located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 23 with water impounded in the N $\frac{1}{2}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ NW $\frac{1}{4}$ Section 23; all in T102N-R63W. This application requests impoundment of sufficient water to maintain the water level at the outlet elevation. The water will be used to provide habitat for fish and wildlife propagation and livestock water. The water use has a claimed priority date of January 1, 1936.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 6104-3 because 1) water has been appropriated as described for providing habitat for fish and wildlife propagation and livestock water with a claimed priority date of January 1, 1936, 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. In accordance with SDCL 46-2A-23, the chief engineer will act on the application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and chief engineer. The applicant must file a petition if contesting 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 December 14, 1998.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Nettie H. Myers, Secretary, Department of Environment and Natural Resources.

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) SS
County of Aurora)

I, Barbara Howard

certify that the attached printed Notice was
taken

from the The Stickney Argus

printed and published in Stickney

County of Aurora and

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

Nov. 25 and Dec. 2, 1998

Cost of Printing \$42.93

Barbara Howard
(Signature)

Editor

(Title)

12-2-98

(Date Signed)

PUBLIC

NOTICE OF HEARING TO VALIDATE VESTED WATER RIGHT APPLICATION No. 6104-3 TO APPROPRIATE WATER

Notice is given that Wenton W Peters, 1410 E. Ash, Mitchell, SD 57301 has filed an application to validate a vested water right claim to impound 42 acre-feet of water from runoff in a dam located in the NE 1/4 SW 1/4 Section 23 with water impounded in the N 1/2 SW 1/4 and the S 1/2 NW 1/4 Section 23; all in T102N-R63W. This application requests impoundment of sufficient water to maintain the water level at the outlet elevation. The water will be used to provide habitat for fish and wildlife propagation and livestock water. The water use has a claimed priority date of January 1, 1936.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 6104-3 because 1) water has been appropriated as described for providing habitat for fish and wildlife propagation and livestock water with a claimed priority date of January 1, 1936, 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. In accordance with SDCL 46-2A-23, the chief engineer will act on the application, as recommended, unless a petition is filed



NOTICE

opposing the application or the applicant files a petition contesting the chief engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and chief engineer. The applicant must file a petition if contesting 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 December 14, 1998.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application.

Nettie H. Myers, Secretary,
Department of Environment
and Natural Resources

(Publ. 11-25 & 12-2, 98)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

JAN 19 1999

VR 6104-3

Wenton W. Peters
1410 E. Ash
Mitchell, SD 57301

Dear Mr. Peters:

Enclosed are your Validated Vested Water Right and Water License No. 6104-3. As long as you use the water beneficially, as stated in the Water License, the State Water Laws provide that you have a continuing right to use the water.

Very truly yours,

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

enclosures

c: Steven Spawn, USFWS, 38672 291st St., Lake Andes, SD 57356-6838.