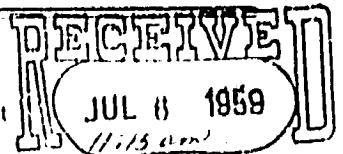


No. 644-5Water Division No. 3 Big Sioux River District
(blank to be filled by the Engineer for the W. R. C.)STATE WATER RESOURCES COM.
PIERRE, SOUTH DAKOTA

APPLICATION FOR PERMIT To Appropriate Water within the State of South Dakota

(NOTE—Draw a line through items not applicable.)

1. Name of applicant South Dakota Department of Game, Fish and Parks
Postoffice address Pierre, County Hughes, State South Dakota

- I. If a corporation
- (a) Name of same
 - (b) Date and place of incorporation
 - (c) Amount of capital stock
 - (d) Amount paid in
 - (e) Names and addresses of directors

(NOTE—A certified copy of articles of incorporation must accompany the application.)

II. Method of accomplishing the work and financial resources of the applicant:

- (a) Method of accomplishing work (Whether by contract, employment of others, or by direct labor)

- (b) Cash on hand, \$
- (c) Treasury stock, \$
- (d) Bonds to be issued, \$
- (e) Other resources, \$

2. Name of diversion work BLUE DOG LAKE - Day county
3. Amount of water claimed As required to fill lake to outlet level - approximately 6120
acres-feet per year cubic feet per second
4. Source of water supply Local watershed
SE corner SW 1/4 SW 1/4, Sec. 28, T. 122, R. 54
5. Location of point of diversion SE 1/4 SW 1/4, Sec. 28, T. 122, R. 54
on _____ bank _____ County.
6. Annual period or periods during which water is to be used All year long
7. To be used for:

I. Irrigation or domestic use: Gravity, overhead sprinkling or combination system?

- (a) Number of acres to be irrigated _____ acres.

- (b) Legal subdivisions to be irrigated

(NOTE—A list of lands to be irrigated, giving each subdivision and fraction with acreage thereof, should be written here, or may be appended as a part of this application. Same must also be shown on accompanying map.)

- (c) Statement as to domestic use (giving location, etc.)

II. Stockwatering, mining, milling, power, fish culture, fire protection and public recreation:

- (a) Nature of use
- Fish and wildlife propagation, conservation and recreation purposes.
-
- Name any of the above uses claimed

- (b) Amount of power to be generated _____ horse power.

Amount claimed for engine cooling

- (c) Location of plant

- (d) Method of developing power

- (e) Point where water will be returned to stream

No. 488-3

8. Estimated cost of work:

(a) Head Gates, \$----- (b) Pumping plant, \$-----
(c) Fluming, \$----- (d) Canal earth, \$----- Rock, \$-----
(e) Other structures ----- \$----- Total, \$-----

9. Description of diversion works:

I. Nature of works: (Reservoir, dam, ditch, flume, pumping plant, etc.)

Concrete weir in front of 2 10' x 6' box culverts

II. Dimensions of works: Information requested not applicable. Blue Dog Lake is a meandered lake. Maximum depth is approximately 15 feet

(a) Dam: Height ----- feet; length at bottom ----- feet; length at top ----- feet; thickness at bottom ----- feet; thickness at top -----

feet; slope at front water face -----; slope at back face -----

material used in construction Highway grade for U. S. 12

(b) Reservoir: Capacity when filled 12,300 acre feet. Surface area at highwater mark 2040 acres. Lake raised 1 foot in 1934 making 92 more surface acres.

DEPTH AT OUTLET- FEET	SURFACE AREA AT EACH DEPTH AT OUTLET- ACRES	FEET	ACRE- FEET CAPACITY

(c) * Head gate: Width ----- feet; height ----- feet;
Material -----

(d) Canal: Total length ----- miles.

LOCATION BELOW HEADGATE	DEPTH	BOTTOM WIDTH	WIDTH AT WATER-LINE	GRADE PER MILE
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet
At ----- Mile	----- feet	----- feet	----- feet	----- feet

(Give dimensions where reductions in size are made.)

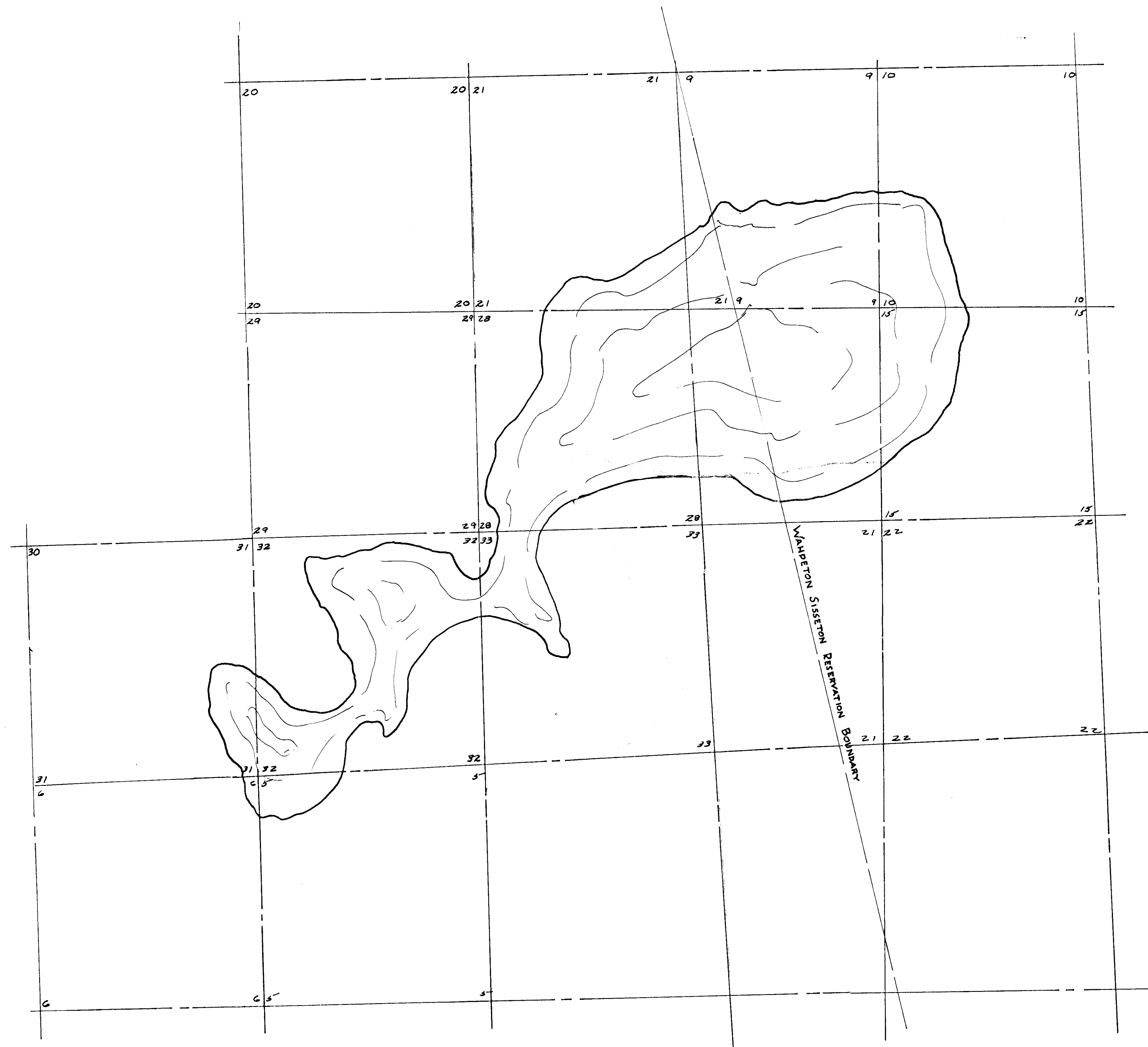
10. Time required for completion of work Completed years. Not applicable - a meandered lake
11. Time required for complete application of water to the proposed beneficial use Completed years.
12. Choice of newspaper for publication of notice of intention to appropriate -----

STATE OF SOUTH DAKOTA
County of Hughes } ss.

I, Harry R. Woodward, being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of owner, that I have read the above foregoing statement, examined the map accompanying the same, and that I know of my own personal knowledge that the matters therein stated and shown are true.

Signed Harry R. Woodward
Subscribed and sworn to before me this 3rd day of July 1959
Edward B. Johnson
Notary Public (or other qualified officer.)

*Each diversion must have a headgate or measuring device.



BLUE DOG LAKE
 R. 54 & 55 W. T. 22 N. CODINGTON CO. SOUTH DAKOTA
 SCALE 1" = 1 MI.
 SOUTH DAKOTA DEPT. OF GAME FISH & PARKS

Remarks by State Water Resources Commission:

"Vested Right Claimed"

STATE OF SOUTH DAKOTA

County of

DeWitt

ss.

Pierre, South Dakota,

Presented 12, 1959

This is to certify that the foregoing application was received by the Commission at 11:15 o'clock

A.m. upon the 6th day of July, 1959.

State Water Resources Commission

By:

JOHN J. JAMES

Chief Engineer, Executive Officer

Number of permit 641-3.

Date of first receipt of application July 6, 1959

Date of return to applicant for correction, amendments or changes required as follows July 10, 1959

Date of receipt of corrected application October 2, 1959

Date from which applicant may claim right 5340 acre feet annually - 1889, 280 acre feet annually - 1934

Approved November 12, 1959, Recorded in Book 5 Page 257

This is to certify that we have examined the foregoing application for a permit to appropriate water of the State of South Dakota, and we hereby grant the same as stated herein, subject, however, to the following limitations and conditions:

1st. The equivalent of at least one-fifth of the work above specified is to be completed on or before

Completed, 1959

2nd. The whole of said work is to be completed on or before Completed, 1959

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is

Completed, 1959

4th. The water appropriated shall be used for the purpose of public recreation

5th. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be injuriously affected by this appropriation.

6th. The amount of the appropriation herein granted shall not exceed 6120 acre feet annually, cubic feet per second; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before June 31, 1955; said water to be used during the following described annual period:

Continuously

Witness my hand this 12th day of November, 1959.

State Water Resources Commission

By:

JOHN J. JAMES

Chief Engineer, Executive Officer

Certificate of Construction Issued November 12, 1959

Water License Issued November 12, 1959

An Ordinary High Water Mark was established on Blue Dog Lake at an elevation of 1800.7 feet msl at the May 27 & 29, 1981 Water Management Board meeting.

October 8, 1981, the Water Management Board adopted Findings of Fact, Conclusions of Law and a Final Decision to clarify Game, Fish and Parks Dept. Water Right No. 641-3 to allow the water level at Blue Dog Lake to be maintained no higher than 1800.2 msl.

Permit No. 641-3Big Sioux RiverWater Division No. 3

Water District

Certificate of Completion of Works

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That the South Dakota Department of Game, Fish and Parksof Pierre, County of Hughes, and State ofSouth Dakota, the holder vested right of Permit No. 641-3, issued upon ApplicationNo. 641-3, bearing date of priority of 1889 & 1934, authorizing the diversion of6120 acre feet annually ~~contingent~~ of the waters of Blue Dog LakeCounty of Day, State of South Dakota, at a point near the
SE Corner SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 28 and a point in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 32, T 122 N,R 54 Wfor public recreationalpurposes, has fully complied with the provisions of the laws of the State of South Dakota relating to proof of
completion of the works of diversion set out and described in said Permit; that said works are recognized as satisfactory~~for~~ for diverting and conveying to the place of intended use 6120 acre feet annually ~~contingent~~~~of~~ of water; and that the ~~beneficial uses~~ uses of said water are described as follows.to-wit: to be used in place for public recreational purposesWitness my hand this 12th day of November, A. D. 1959

State Water Resources Commission

By:

J. W. GRIMES,

Chief Engineer, Executive Officer

STATE OF SOUTH DAKOTA

WATER LICENSE No. 641-3

WHEREAS, On the 6th day of July A. D. 1959

the South Dakota Department of Game, Fish and Parks

of Pierre County of Hughes and State of South Dakota duly made application (No. 641-3) to us for a Vested Right permit to use 6120 acre feet annually ~~XXXXXX~~ of the waters of Blue Dog Lake County of Day, State of South Dakota, for public recreational purposes; and

WHEREAS, On the 12th day of November A. D. 1959 Vested Right Permit No. 641-3 was issued to said applicant... for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the completed ~~XXXX~~ day of ~~XXXXXX~~ and for the application to beneficial use of said water on or before the completed ~~XXXX~~ ~~XXXXXX~~ and,

WHEREAS, On the 6th day of July A. D. 1959 Vested Right the holder... of said permit duly made proof of the completion of adequate works for the diversion of 6120 acre feet annually ~~XXXXXX~~ of said waters, as evidenced by our Certificate No. 641-3 dated November 12, 1959 confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 6120 acre feet annually ~~XXXXXX~~ of water, with date of priority of 1889 and, 1934 and,

WHEREAS, On the 6th day of July A. D. 1959 6120 acre feet annually proof was duly made of the application to beneficial use of ~~XXXXXX~~ of said water; to be used in place for public recreational purposes

Page - of Book

Location No.

641-2

Water Division No.

3

Big Stone
Rivers

Water District

Proof of Application of Water to Beneficial Use

PETITION OF HOLDER

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. South Dakota Department of Game, Fish and Parks, Pierre, South Dakota

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business (if a foreign corporation, give name and postoffice of statutory agent,) your position with reference to same, and your authority for appearing in its behalf.

Ans. _____

Ques. 3. State date of posting and date of recording notice of appropriation.

Ans. _____

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Local watershed - SE1SE4 Section 32; Township 122; Range 54

Ques. 5. Describe your works of diversion giving length and height of each dam and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use, and date of completion of same.

Ans. A meandered lake - depth 15 feet - 2040 acres

Lake was raised 1 foot in 1934 by installing weir in box culverts under U.S.

Highway No. 12

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have ACTUALLY been irrigated with said water.)

Ans. Fish and wildlife propagation, conservation and recreation

Ques. 7. If for other than irrigation purpose, state how applied, amount of horse power generated, etc.

Ans. Used in place in lake or reservoir

Ques. 8. What is the minimum amount of water required for the use specified above?

Ans. As required to fill lake to outlet level - approximately 6120 acre feet per year

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans. _____

Ques. 10. State when, how, in what amount and to what extent, the water diverted under above mentioned permit has been used.

Ans. A meandered lake. Used by the public for uses specified except for
that amount lost by evaporation and seepage

(Sign) Henry R. Woodward

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Pierre, County of Hughes
State of South Dakota, on this 3rd day of July A. D. 1959

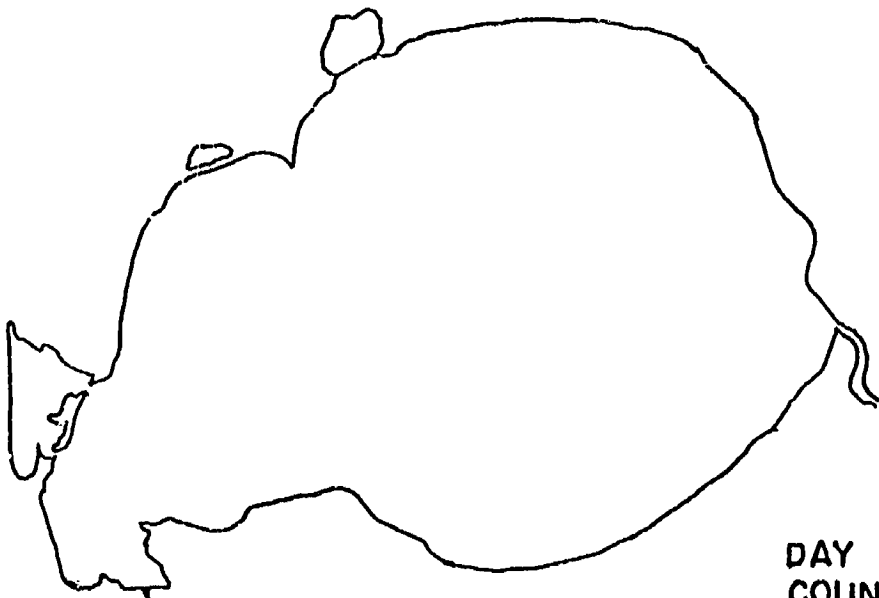
Edna B. Johnson
} Witnesses.

I, the undersigned, do hereby certify that I am a duly qualified elector residing in the immediate vicinity of the diversion works designated in the foregoing testimony, that I have no interest in the works, water or land above described, that I have read the foregoing testimony and that I know of my own personal knowledge that the matters therein stated are true.

Location No.-----	
PROOF OF APPLICATION OF WATER TO BENEFICIAL USE	
PETITION OF HOLDER	
Amount of Water ----- c. f. s.	
Source -----	
County -----	
Purpose -----	
Place of Use -----	
Date of recording -----	
Received and filed -----	

ORDINARY HIGH WATER MARK
INVESTIGATION FOR

BLUE DOG LAKE



DAY
COUNTY



Department of
Water & Natural Resources

Joe Foss Building Water Rights Division
Pierre, South Dakota 57501

(605) 773-3352

Blue Dog Lake Investigation
to Determine the
Ordinary High Water Mark

February 1981

The Board of Water Management pursuant to SDCL 43-17-21 is mandated to establish the Ordinary High Water Mark (OHWM) on public lakes in South Dakota. This report contains the results of the investigation conducted by the Division of Water Rights to determine the elevation of the OHWM for Blue Dog Lake.

Blue Dog Lake is a natural glacial lake positioned centrally in the Waubay outwash deposit. For location of the Lake see page 3. The Lake is approximately two miles long and one and one half miles wide with a planimetered area of 1500 acres. It has a large contributing watershed of 115 square miles and extensive aquifer connection. This provides the lake with relatively stable water levels.

The outlet structure for Blue Dog Lake is located in the southwest corner of the lake (see page 4). This structure has been operated as a variable elevation control structure since 1944; varying between an elevation of 1799.6 feet above mean sea level (msl) to 1800.35 feet msl, referenced to Department of Transportation bench mark #24, embedded rock east of outlet structure, elevation 1811.40 feet (msl).

This structure is to be replaced in the early summer of 1981 with a fixed elevation outlet structure. It is therefore necessary to determine the present OHWM so that an outlet structure elevation can be determined that will not cause an increase in the OHWM.

Blue Dog Lake has undergone several increases in its outlet structure elevation in the last 50 years. These increases have been done to increase the depth of the lake, producing a lake of greater recreational value.

The past increases in the outlet structure have caused a relative increase in the OHWM. This increase was reflected in the abnormal erosion of well established trees along the shoreline. Photos 4 and 5 are examples of this.

Under normal conditions the OHWM is relatively stable, not varying much during the life span of a tree. This allows for the development of a relationship between the lowest elevation a tree can survive on the shoreline, to the lake's OHWM. With the abrupt increase in the OHWM in the past 50 years, this relationship between trees and the OHWM has been destroyed. It is therefore more applicable, under these conditions, to determine the OHWM from water marks, changes in the slope of the shoreline, and soil characteristics.

The principle field investigation for this report was conducted in November, 1980. At that time the examination of the shoreline, banks and vegetation was conducted.

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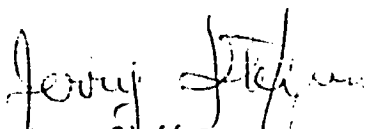
The shoreline exhibited changes in slope and soil characteristics at elevations between 1800.4 and 1801.4 feet msl. This is a wide range which can be attributed to the variation in the erodibility of the shoreline. Photos #1 and 2 are examples of the two extremes. The bank and shoreline in Photo 1 is made up of sand and gravel with little vegetative protection. This type of shoreline is very susceptible to erosion. Whereas the bank and shoreline in Photo 2 is made up of fine sands and clay with dense vegetation making it less susceptible to erosion. The shoreline in Photo 3 is an example of a change in soil characteristics at an elevation between the two extremes. Photos 4, 5, and 6 show varying degrees of erosion. These along with the water marks on the outlet structure in Photo 7 were used to narrow the range of the OHWM.

Conclusions

From the examination of the bed and banks of Blue Dog Lake and of the vegetation found on the shore. It was determined that the Ordinary High Water mark for Blue Dog Lake has been established by the existing conditions at an elevation of 1800.7 feet above mean sea level.

Recommendation

It is recommended by the Water Rights staff that the Water Management Board establish the Ordinary High Water Mark for Blue Dog Lake at an elevation of 1800.7 feet above mean sea level.


Jerry Steffen
Water Resources Engineer

a33108.js

STATE OF SOUTH DAKOTA) SS
COUNTY OF HUGHES)

Swore to, before me, this 23rd day of March, 1981.


Notary Public

LOIS L. RIES, Notary Public
My Commission Expires
February 3, 1983

36 W

R 55 W

N T Y

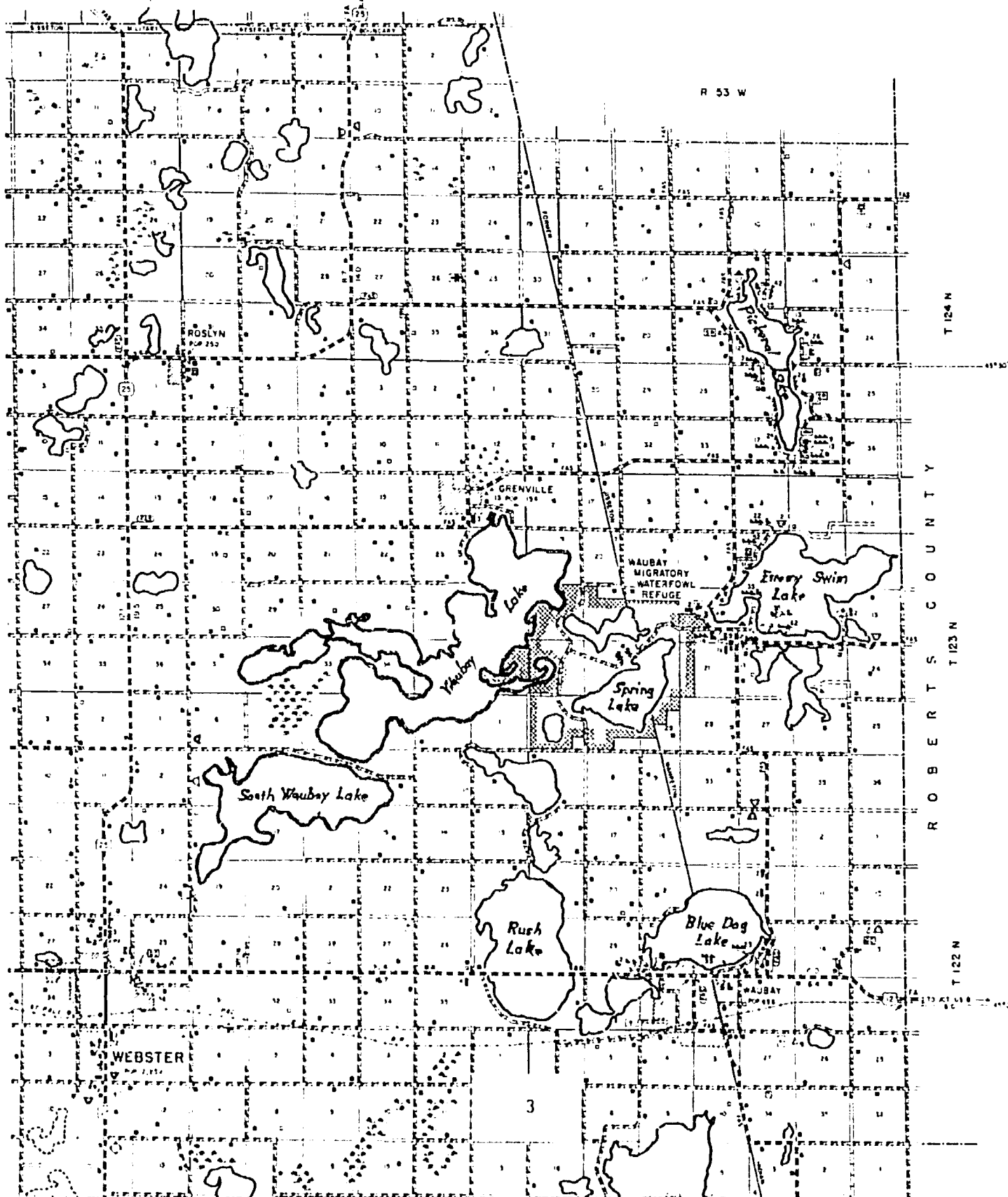
R 53 W

T 124 N

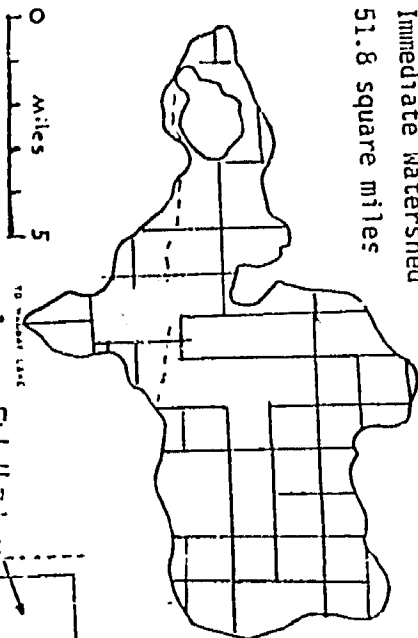
ROBERTS COUNTY

T 123 N

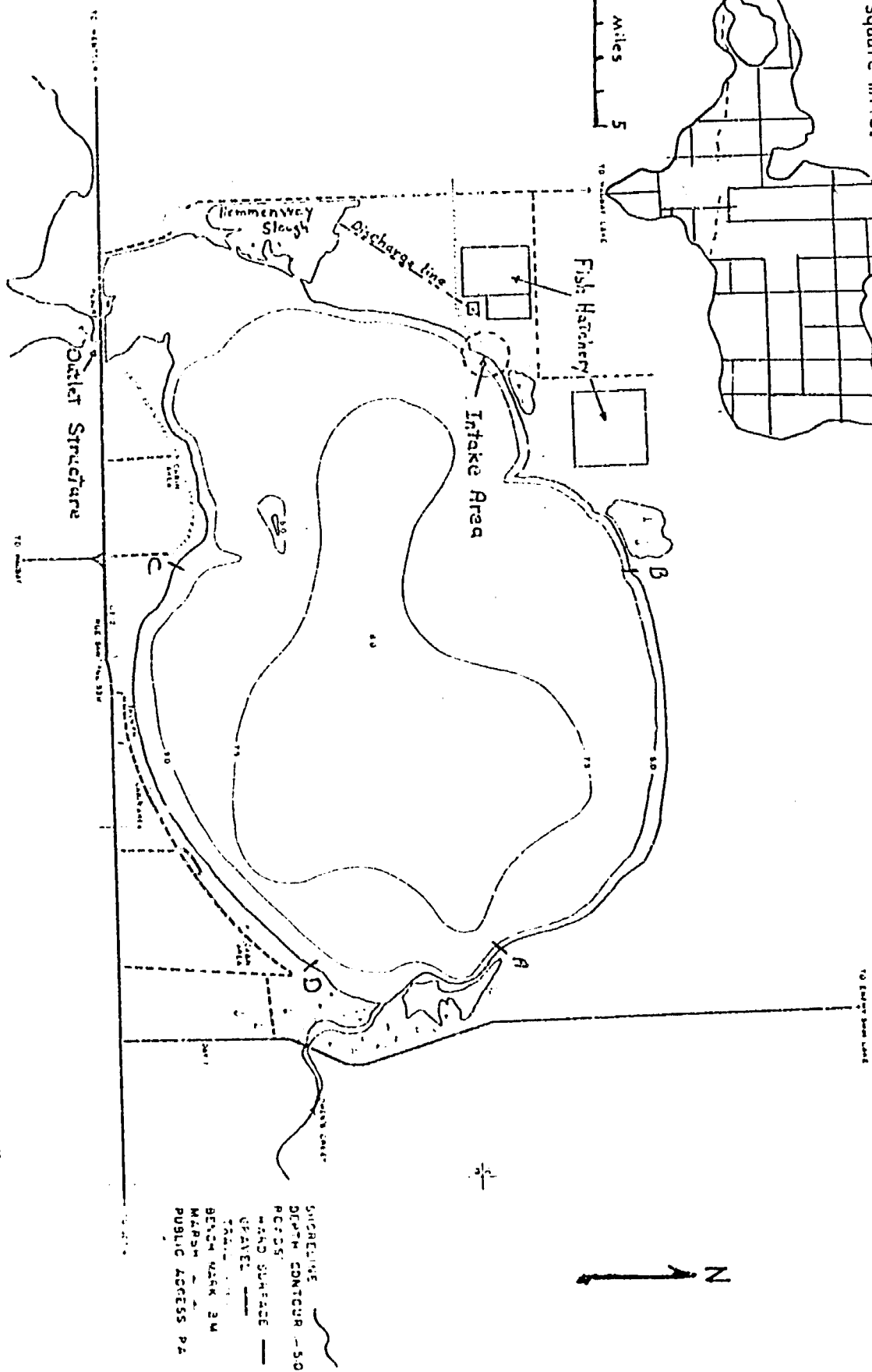
T 122 N



A horizontal scale bar with the word "Miles" written vertically above it. The bar has tick marks at intervals of 1 unit, labeled 0, 1, 2, 3, 4, and 5 from left to right.



4



SOUTH DAKOTA
DEPT OF GAME, FISH AND PARKS
BLUE DOG LAKE

WATER STAGE PLANNED
FULL ACRLS +006

AERIAL PHOTO FIELD WORK COMPLETED BY 11:00 AM

Photo No. 1 -
Southeast Shoreline
Dark Line 1800.0
Base of Trees 1800.4



Photo No. 2 - North Shoreline
Sand and Gravel Bar on Shoreline 1800.5
Change in Slope 1801.4

Photo No. 3 -
Northeast Shoreline
Dark Line, Leaves and Trash 1800.3
Change in Soil Characteristics 1800.7



Photo No. 4 -
South Shoreline
Lakeside Base Elev. Tree Foreground 1801.2
Lakeside Base Elev. Tree Background 1800.6

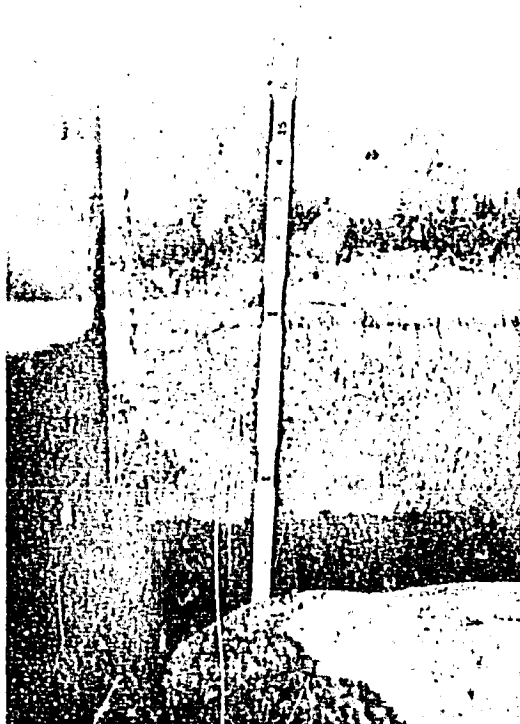


Photo No. 5 - South Shoreline
 Lakeside Base Elev. of Tree 1800.3
 Change in Soil Characteristics 1800.8



Photo No. 6 - South Shoreline
 Lakeside Base Elev. of First Three Trees 1800.2
 1800.2
 1799.9

Photo No. 7 -
Outlet Structure
Top Dark Line 1800.7
White Line 1800.4



STATE OF SOUTH DAKOTA
WATER MANAGEMENT BOARD

IN THE MATTER OF CLARIFICATION	)	FINDINGS OF FACT
OF WATER RIGHT NO. 641-3	)	CONCLUSIONS OF LAW
	)	FINAL DECISION

Having heard and considered all the evidence presented before the Board relating to Blue Dog Lake on March 26, 1981 at the Holiday Inn, Watertown, South Dakota, May 27, 1981 at the Richard B. Kneip Building, Pierre, South Dakota, and July 29, 1981 at the Civil Defense Room, State Capitol, Pierre, South Dakota the Board hereby makes the following Findings of Fact.

1. That Blue Dog Lake is a natural glacial lake of approximately fifteen hundred surface acres located in eastern Day County in the State of South Dakota.

2. That people have long used the lake for recreational purposes including fishing, boating, and swimming.

3. That the Water Management Board is required to establish the ordinary high water marks of South Dakota's lakes. The staff of the Division of Water Rights has provided the engineering and surveying studies to enable the Board to make a determination of the ordinary high water marks.

4. That the determination of the ordinary high water mark of Blue Dog Lake was scheduled to be heard at the March 25 and 26 meeting of the Water Management Board held in Watertown, South Dakota after notice was mailed to all landowners along the lake and published in the Webster Reporter and Farmer on March 11 and 18, 1981.

5. That testimony of all interested parties was heard by the Board on all issues related to the ordinary high water mark, including a discussion of the proper level of the lake and the elevation of the outlet structure.

6. That the Board deferred until the following regularly scheduled meeting a final decision on the ordinary high water mark pending the resolution of a disagreement over the exact elevation of certain indicia of the ordinary high water mark.

7. That at the May 27 and 28 Board meeting, the ordinary high water mark was established at 1800.7 feet mean sea level. No other action was taken regarding Blue Dog Lake at this or at the March 1981 Board meeting.

8. That the South Dakota Division of Highways intends to replace the old outlet structure with a new structure in conjunction with highway construction on Highway 12 in Day County. However, the Division of Highways was unsure of the proper and legal elevation to be established for the replacement structure and asked for guidance from the South Dakota Department of Water and Natural Resources to remove the uncertainty.

9. That the old structure was constructed in 1944 in such a manner as to allow the elevation to be controlled by installing or removing planks on top of the concrete portion of the structure, but that the new structure was to be built so that the lake level could not be varied.

10. That the elevation of the top of the concrete portion of the outlet structure was at 1799.6 feet mean sea level. This elevation represented an increase in the elevation of the lake over what it had been maintained at prior to the construction of the structure in 1944. The lake level had also been increased in 1933 by the South Dakota Department of Game, Fish & Parks.

11. That at some time in 1944 or thereafter, but prior to 1955, the South Dakota Department of Game, Fish & Parks began controlling the lake level by placing wooden planks in the outlet structure. This raising of the lake level occurred regularly and continuously so as to cause the ordinary high water mark to be at 1800.7 feet mean sea level. In a lake with the characteristics and size of Blue Dog Lake, the ordinary high water mark is generally about .5 feet above the ordinary high water level of the lake.

12. That in 1959, Game, Fish & Parks made a vested right filing with the Water Resources Commission for the waters of Blue Dog Lake necessary to fill the lake to the outlet level.

13. That, following the staff's study of the ordinary high water mark, uncertainty arose over whether Game, Fish & Park's water right included the level the lake had been con-

trolled at for close to thirty years or conversely, the level of the lake at the upper level of the concrete weir. The Division of Water Rights then asked the Board for a clarification of Game, Fish & Parks vested Right No. 641-3.

14. That notice of a hearing on this matter was served by certified mailing upon all interested parties. The hearing was held at the July 29 and 30 meeting of the Water Management Board. All interested parties were given the opportunity to testify at that hearing.

15. That the Department of Game, Fish & Parks, in its continuous action of maintaining the lake level at approximately 1800.2 feet mean sea level, was acting at all times with the understanding that its water right permitted this action.

16. That other vested rights on South Dakota lakes have been issued to Game, Fish & Parks on the basis of the level at which the lakes were maintained rather than at the level of the permanent outlet structures.

17. That in all the years that Game, Fish & Parks maintained the water level at Blue Dog Lake, complaints about the water level were received only beginning in 1980.

18. That it is in the public interest to remove any uncertainty regarding ambiguous water rights on file in the State.

CONCLUSIONS OF LAW

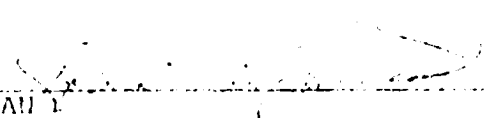
1. That Board has jurisdiction to consider a request to clarify a water right within the State of South Dakota.

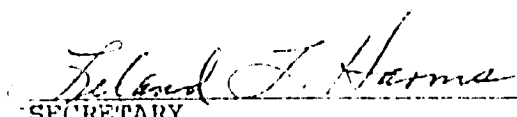
2. Proper notice was given and the due opportunity for all interested parties to testify was provided by the Board.

FINAL DECISION

Water Right No. 641-3 is hereby clarified to allow a water level at Blue Dog Lake to be maintained at no higher than 1800.2 feet mean sea level.

Dated this 3rd day of October, 1981.


CHAIRMAN


SECRETARY



Department of Water & Natural Resources

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

September 21, 1988

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

Dear Mr. Beringson:

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

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

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

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

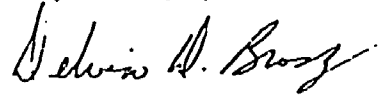


September 21, 1988
Richard Beringson, Secretary
Page 2

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

Please advise if you have any questions.

Very truly yours,


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

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

641-3

AGENDA

WATER MANAGEMENT BOARD MEETING

May 27 & 28, 1981

Place: Meeting Room #1, Kneip Building at Church & Illinois, Pierre SD

Wednesday, May 27, 1981

8:30 AM Call to Order

Approval of March 25 & 26, 1981 Minutes

Set September Meeting Place & Date

Status and Review of Water Rights Litigation

Update on Controversies

Don Madsen, New Underwood

Gerald Braun, Warner

9:00 AM Cancellation Considerations

Requests for Extension of Time

"Vested Right" Considerations

Establish Blue Dog Lake Water Mark

9:45 AM Break

10:00 AM Administer Oath to Water Rights Staff

Introduction of Board & Water Rights Staff

Requirements Before Water Right Application Can Be Advertised

Requirements At Time of Hearing

Water Right Hearings (see attached list)

12:00 noon Lunch

1:00 PM Reconsideration of Deferred Applications

4539-3 Kirk Hulstien, Lincoln Co.

4659-3 Frank Seitzinger, Sully Co.

3088-3 Ronald G Lehr, Beadle Co.

4400-3 Huron Colony, Beadle Co.

4674-3 William Minow, Bon Homme Co.

RECEIVED
RELATION
20
7
NOV 10 1981
INTERMEDIATE

Mr. Hatch stated on page 25, paragraph 2 from the bottom, line 2 "west to east" should be "east to west". Line 3 of the same paragraph "the east side" should be "the west side".

Mr. Harms MOVED, SECONDED by Mr. Arend that the minutes be APPROVED as amended with the original minutes reflecting the changes made. MOTION CARRIED.

SEPTEMBER MEETING DATE

Mr. Hatch stated in the future the staff would like to see the meeting dates changed from the last week of the month to the first week of the following month. This would give the staff an additional week to review an application once the soil/water compatibility approval has been received from the State Conservation Commission.

It was the general consensus of the Board to set the meeting for October 7 & 8, 1981 in Brookings.

LITIGATION

John Guhn gave the Board brief update on the general adjudication.

Dan Doyle stated action has been filed against Don Madsen, New Underwood for pumping after a cut off order was issued. He also built a dam on Box Elder Creek which was contrary to his permit. Gerald Braun, Warner has removed the dam which he had put in on Moccasin Creek. South Lincoln Rural Water System has appealed the decision of the Board to deny the change of the qualification on the Davis Well Field pipeline.

Mr. Doyle questioned what the Board was looking at in terms of enforcement of the qualification of the South Lincoln Permit now that the stay has been denied. At the present time, the Rural Water System has to put in the Davis well field pipeline by November 1, 1981.

Mr. Hatch stated the staff believes that some progress should be started by July 1, or action may need to be initiated to obtain compliance with that requirement.

It was the general consensus of the Board that the staff should inquire of the Rural Water System intentions by July 1. If nothing is being done, then at the end of July, this matter could be brought before the Board.

Mr. Hatch stated the staff will contact the Rural Water System after this meeting advising them that the Board expects bids to be called for by the first part of July.

BLUE DOG LAKE - ORDINARY HIGH WATER MARK

Jerry Steffen stated the recommended ordinary high water mark elevation for Blue Dog Lake is still 1800.7 feet MSL. Mr. Arend MOVED, SECONDED by Mr. Walter that the Ordinary High Water Mark for Blue Dog Lake be

set at elevation 1800.7 feet MSL. Also, the Board has determined that Findings of Fact, Conclusions of Law and a Final Decision do not need to be prepared because adequate Findings of Fact have been made in the record.

John Hatch stated he received a call from Don Larson. Mr. Larson was the professional engineer hired by the Blue Dog Lake Association to do the surveying. Their disagreement was that they felt that Mr. Steffen was too conservative in establishing this elevation.

Mr. Steffen stated Mr. Larson wanted the outlet structure elevation at 1800.4 and 1801.0 for the ordinary high water mark. Mr. Steffen stated he recommended the outlet structure be at 1800.2. At the Watertown meeting the question was raised as to the accuracy of Mr. Steffen's surveying, but on checking the levels, both engineers came up with the same elevation of the present weir.

Mr. Steffen stated the Department of Transportation is going to replace the present structure with a new concrete structure. The Transportation Department would like an elevation for that structure. No Department has taken the authority to establish that elevation.

Mr. Doyle stated at the last meeting it was advertised to establish an ordinary high water mark. The Board does not have the authority without a water permit application to set the outlet structure. By setting the outlet structure elevation without approving an application, the Board would be exceeding its jurisdiction. Proper legal notice of a hearing to consider an application to raise the outlet structure elevation should be given before this action could be taken.

Chairman Decker called for a vote on the motion to set the ordinary high water mark at 1800.7. MOTION CARRIED.

Mr. Rylance MOVED, SECONDED by Mr. Arend that the outlet structure on Blue Dog Lake be set at elevation 1800.2 feet MSL.

Mr. Harms stated he did not believe it would be responsible action by the Board to set the elevation for the outlet structure since it was against the advice of the attorneys. It would be illegal action.

Mr. Arend called the question. MOTION LOST with Mr. Walter, Mr. Harms and Mr. Decker voting NO.

Mr. Rylance MOVED, SECONDED by Mrs. Gunderson the Board ask the Blue Dog Lake Association to request that the Board set the weir elevation at 1800.2 through application. MOTION LOST with Mr. Rylance and Mrs. Gunderson voting NO.

It was the general consensus of the Board before the official weir elevation of the Blue Dog Lake outlet structure could be changed, an application to do so must be considered and approved by the Board.

CANCELLATION CONSIDERATIONS

REPRODUCTION: REDUCTION 25%
ROLL NO. 10
DATE MICROFILMED 1-2-70
CAMERA OPERATOR

AGENDA
WATER MANAGEMENT BOARD MEETING
JULY 29 & 30, 1981

PLACE: Civil Defense Meeting Room, State Capitol, Pierre SD

WEDNESDAY, JULY 29, 1981

- 8:30 am Call to Order
 - Board Reorganization
 - Approval of May 1 & May 27 & 28, 1981 Minutes
 - Set December Meeting Place & Date
 - Status & Review of Water Right Litigation
- 9:00 am Cancellation Considerations (see attached list)
 - "Vested Right" Considerations
 - Requests for Extension of Time
- 9:45 am Break
- 10:00 am Administer Oath to Water Rights Staff
 - Introduction of Board & Water Rights Staff
 - Requirements Before Water Right Application can be Advertised & at Time of Hearing
 - Water Rights Hearings (see attached list)
- 12:00 noon Lunch
- 1:15 pm Water Rights Hearings Continued
- 2:15 pm Reconsideration Appl. No. 1208-1, Martin McPherson, Nisland
Appl. No. 1221-1, Trohkimoinen Farm & Ranch, Inc., Vale
- 2:30 pm Break
- 2:45 pm Ivan Shonley - Discussion of Extension on Permit No. 1100-2
 - Report on South Lincoln - Davis Well Field Progress
- 3:15 pm Blue Dog Lake Outlet Elevation Consideration

THURSDAY, JULY 30, 1981

- 9:00 am Reconvene
 - Discussion of Well Construction Standards - Virgil Worm
- 9:30 am Discussion of Proposed Underground Injection Regulations
 - Discussion of Groundwater Heat Pumps
 - Other Business
 - Adjourn

RECEIVED: REDUCED 25-1 ROL NO. 10 DATE MICROFILMED 7-22-79

4788-3, Kent Frerichs, Wilmot, SD

Application is for 4.00 cfs of water from one 70 foot deep well (covered under Permit No. 4108-3) to irrigate 360 acres. Affidavit of publication received. There were no complaints received on the application.

Mr. Decker MOVED, SECONDED by Mrs. Gunderson that Application No. 4788-3 be APPROVED with the Well Interference Qualification. MOTION CARRIED.

BLUE DOG LAKE OUTLET ELEVATION CONSIDERATION

Mr. Hatch stated when the Blue Dog Lake vested right was filed July 6, 1959 by the Department of Game, Fish and Parks, the outlet elevation was not specified on the Water Right. The amount of water claimed, as stated on the water right was "As required to fill the lake to outlet level - approximately 6,120 acre feet per year." The outlet elevation referred to in the Game, Fish and Parks water right has never been specified. Our investigation for the Ordinary High Water Mark has shown that the water level has been maintained at elevation 1800.2 feet above msl for a long enough period to establish the ordinary high water mark, which the Board has already determined to be at elevation 1800.7 msl. Testimony presented at the March 26, 1981 hearing, found on pages 59 & 60 of the March minutes, and an affidavit Mr. Ted Ysbrand submitted concluded that the water level had been maintained through the use of planks at an elevation several inches above the existing concrete weir. The existing concrete weir elevation is 1799.6.

Mr. Hatch stated the purpose of this hearing today is for the Staff to request the Board to clarify Water Right No. 651-3 Game, Fish and Parks Dept. water right for Blue Dog Lake, to specify an outlet elevation of 1800.2 msl. The 1800.2 elevation is based upon the Staff's investigation for the OHWM, where we have determined that for the OHWM to have been established at 1800.7, the water level in the lake would have had to have been maintained about 6 inches lower or at 1800.2. The OHWM will change from the established 1800.7 elevation if the water level is not maintained at 1800.2.

Mr. Hatch further explained that not specifying an outlet elevation is not unique to this particular Game, Fish and Parks Dept. filing. All vested rights of the Game, Fish and Parks Dept. were filed without an outlet elevation being specified. The Staff is asking the Board to clarify what the outlet elevation actually was when the vested right was recognized in 1959. If the Board believes the proposed clarification and designation of an outlet elevation is in order, then the Staff will expect to request that outlet elevations be clarified for Pelican Lake, Lake Kampeska and Lake Madison. Any future lakes for which an OHWM is to be determined, part of the determination would include clarification of the outlet elevation. Mr. Hatch stated he visited with Jack Merwyn, Game, Fish and Parks Dept. Secretary, who was in favor of having these elevations specified in all of their vested rights.

Mr. Hatch stated that if the 1800.2 outlet elevation is set for Blue Dog Lake, the only way any future elevation changes could be made would be through a water permit application process. Previous discussions seemed to have centered around the assumption that the concrete weir at Blue Dog Lake is permanent while the planks were temporary. Based upon testimony presented and the Staff's investigation, it has been shown that the water level has been maintained above the concrete weir at an elevation of 1800.2. This is 7 inches above the concrete weir. Our investigation concludes that the planks have been used to maintain the water level on a permanent basis, and should be considered to be permanent the same as the concrete weir.

Mr. Hatch stated the Staff is asking for clarification of the outlet elevation and recommending, based on our investigation, that the elevation be established at 1800.2. The Board has also received a copy of a petition requesting the Board to establish by rule, a lake elevation of 1800.4, 9.6 inches above the concrete weir, but not less than the 1800.2. If the Board clarifies the Game, Fish and Parks Dept. Right, the petition could be dismissed. Staff investigation does not support the request by the Blue Dog Lake Association for the 1800.4 outlet elevation.

In answer to a question from Mr. Decker, Mr. Hatch stated that the Board has already set the OHWM at 1800.7, if the Board were to set the outlet elevation at the Blue Dog Lake Association's request of 1800.4, they would in affect be raising the OHWM previously set. Over the years, the Ordinary High Water Mark would actually be increased.

Mr. Doyle stated that what is before the Board is the clarification of what the 1959 Vested Right for Game, Fish & Parks, on Blue Dog Lake, actually meant. Nothing is really being changed. Mr. Doyle stated that Mr. Jones is prepared to give testimony on his impression of what happened in 1959 concerning the Vested Right. Mike Hanson, representing Game, Fish and Parks is also present to give some testimony if needed.

Chairman Arend administered the oath to Frank Jorge.

Mr. Jorge stated he represented the four landowners who will be harmed by raising the outlet about the concrete weir, who have already been harmed by the weir being as high as it is. He requested that the weir be lowered two to three feet. Mr. Jorge testified that in 1920, his grandfather had petitioned the Department to lower the lake. At the time, they were raising it with rocks. They were putting in rocks between Rush Lake and Blue Dog Lake which raised the level to two feet below what the present level is. Mr. Jorge stated his grandfather had objected because it damage the land. Since the land is a low-lying area, the wind blows the water over from the shore onto the land and ruins it. Mr. Jorge stated that since the Indians owned land around the lake, they should be consulted before a decision was made.

Mr. Jorge testified that the planks in the lake are only temporary and are not a permanent structure. In order to have a permanent structure, the concrete would have to be raised. The planks can never be

determined to be permanent because they can be removed, and Mr. Jorge stated, as he recalls, they have been removed several times.

Jeff Larson, Attorney representing the Blue Dog Lake Association, requested the Board to consider the testimony given by the Staff. Mr. Larson stated that as the transcript from the March meeting indicates, and the testimony given at that time, the lake level has been at a level of 1800.2 since 1944. The concrete weir was built in such a manner as to help keep the level of the lake at that elevation. Mr. Larson stated the Association feels that this elevation must be maintained in order for the lake to continue to be used in the manner in which it has been for the last 30-40 years.

Mr. Decker MOVED, SECONDED by Mr. Harms that in accordance with Staff recommendation and the Ordinary High Water Mark which has already been set, that the water level at Blue Dog Lake be maintained no higher than 1800.2.

Mike Hanson, Game, Fish and Parks, stated that the Department support the Staff's recommendation. They do admit that there is an ambiguity in the water right issued in 1959. There was testimony given at the March meeting that for the last 20 years, the conservation officer maintained the higher level of the lake by use of the planks. Mr. Hanson felt that thru that the history and the 20 years of maintaining the higher level shows that the ambiguity should be decided in favor of the higher level.

Mr. Jones stated that the Attorney General's Opinion in 1956 or 1957 gave the management of the meandered lakes in South Dakota to the Game, Fish and Parks Department. The Department then established a program of recording the water rights with the Water Management Board, the former Water Resources Commission. At that time, the procedure was to examine the lake to make a survey of the surface acres of the lake, and to request from the Water Resources Commission the amount of water required to maintain the lake at an outlet elevation. Outlet elevations had not been established on very many of the lakes. The wording on the application was "the amount of water required to fill the lake to outlet level". In this case it was 1620 acre feet. The Water Resources Commission by action at that time, said that they would allow 3 feet of water for every surface acre. This would account for evaporation over a year's time. Mr. Jones stated the surface area for Blue Dog Lake at the time the application was submitted was 2,040 acres. There is an indication in the water right that this area was 92 acres over and above the original survey made back in 1889. This was the basis for issuing the permit for the 6,120 acre feet to the outlet level. The outlet level was not specially designated in the application.

In answer to a question from Mr. Harms, Mr. Jones explained that the 92 acres was how much greater in size the lake was after they put in a structure. Mr. Jones stated that if you took the acreage within the 1800.7 OHWM, it would be 2,040 acres.

REPRODUCTIONS

REDUCTION

25:1

ROLL NO

10

DATE MICROFILMED

11 10 62

CAMERA OPERATOR

In answer to a question from Dan Doyle, Mr. Jones stated that back in the 1950's when some of these were being applied for, a number of the lakes were manually controlled by use of planks and in some cases, still are.

Chairman Arend administered the oath to Maurice Olson.

Mr. Olson stated that it had been established at the Watertown meeting that the height of the lake over the years has been the height of the planks. Mr. Olson stated there is talk of raising the level of the lake, and this is not the case at all, it has been at this level for many years.

Mr. Jorges reiterated by stating that anytime there is a temporary structure which can be removed, it is not a permanent structure.

Chairman Arend requested the motion to be read back.

...Mr. Decker MOVED, SECONDED by Mr. Harms that in accordance with Staff recommendation and the Ordinary High Water Mark which has already been set, that the water level at Blue Dog Lake be maintained no higher than 1800.2. Chairman Arend called for a vote on the motion. MOTION CARRIED.

Chairman Arend directed the Staff to prepare Findings of Fact, Conclusions of Law and a Final Decision.

Mrs. Gunderson stated in voting for approval of an application earlier today for Mount Marty College, she was under the impression that she had no prior interest in that application, but upon reading it, she realized she was a member of the Board of Trustees that had applied for the permit. She requested that the action to approve the application be rescinded and that the application be acted on again at which time she will abstain from voting.

4764-3, Mount Marty College, Yankton, SD

Mr. Walter MOVED, SECONDED by Mr. Decker that the Boards action to approve Application No. 4764-3 be rescinded. MOTION CARRIED.

Mr. Walter MOVED, SECONDED by Mr. Decker that Application No. 4764-3 be APPROVED. MOTION CARRIED with Mrs. Gunderson abstaining.

The Blue Dog Lake Association withdrew their petition which had requested the Board to establish by rule, a lake elevation of 1800.4 for Blue Dog Lake.

Meeting recess at 3:55 p.m.



DENR
SOUTH DAKOTA

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
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PIERRE, SOUTH DAKOTA 57501-3182
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Memo to File

Blue Dog Lake in Day County

VWR No. 641-3

The OHWM was set by the Water Management Board on May 27 & 28, 1981.

OHWM elevation 1800.7 fmsl NGVD29

The outlet elevation was set by the Water Management Board on July 29 & 30, 1981.

Outlet elevation 1800.2 fmsl NGVD29