

No. 793-3

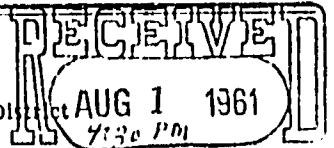
Water Division No. 3 BIG SIOUX RIVER District 1

(To be filled by the Engineer for the W.R.C.)

VESTED RIGHT

APPLICATION FOR PERMIT

STATE WATER RESOURCES COMMISSION
PIERRE, SOUTH DAKOTA



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 BADUS LAKE - Lake County
- As required to fill lake to outlet level - approximately 1050
3. Amount of water claimed acre-feet per year cubic feet per second
4. Source of water supply Bottle Creek
5. Location of point of diversion One point in the watershed located in the NW 1/4 Sec. 23, T 109, R 53. Outlet located in the NW 1/4 Sec 24, T 109, R 53 County.
6. Annual period or periods during which water is to be used All year round
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.) To the high water mark of the undated portions of the E 1/2 of Sec. 23 & the W 1/2 of Sec. 24, all in T. 109, Range 53.

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

- (a) Nature of use Public recreational 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

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.)

II. Dimensions of works. Information requested not applicable. Badus Lake is a meandered lake. Maximum depth is approximately 9 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

(b) Reservoir: Capacity when filledacre feet. Surface area at highwater mark.....352.....acres.

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

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

(d) Canal: Total lengthmiles.

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 workyears. Not applicable - a meandered lake

11. Time required for complete application of water to the proposed beneficial use years.

12. Choice of newspaper for publication of notice of intention to appropriate

STATE OF SOUTH DAKOTA

County ofHughes.....} ss.

I,Miller, J. Fillmore....., 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

Subscribed and sworn to before me this1.....st day ofAugust..... 19. 61.

Notary Public (or other qualified officer.)

Remarks by State Water Resources Commission:

"Vested right" claimed

STATE OF SOUTH DAKOTA
County of HUGHES ss.

Pierre, South Dakota, December 7, 1962

This is to certify that the foregoing application was received by the Commission at 4:30 o'clock
P.m. upon the 1st day of AUGUST, 1961.

State Water Resources Commission

By:

Burton Jones
Chief Engineer, Executive Officer

Number of permit 793-3

Date of first receipt of application: AUGUST 1, 1961

Date of return to applicant for correction, amendments or changes required as follows: _____, 19____

Date of receipt of corrected application _____, 19____

Date from which applicant may claim right 1889, 19____

Approved DECEMBER 7, 1962, Recorded in Book 7 Page 241

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~~ _____

2nd. The whole of said work is ~~to be~~ completed ~~on or before~~ _____

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

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 1050 acre feet annually
~~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 percentum (1%) of one cubic foot of water per second of time for each acre of land to which water is actually~~

used for public recreation

and beneficially ~~applied to irrigation~~ on or before June 30, 1955; said water to be used during the following described annual period:

Continuously

Witness my hand this 7th day of December, 1962

State Water Resources Commission

By:

George L. Quinn

Chief Engineer, Executive Officer

Certificate of Construction issued December 7, 1962

Water License issued December 7, 1962

Permit No. 793-3

Water Division No. 3 Big Sioux River Water District

Certificate of Completion of Works

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That the Department of Game, Fish and Parks

of Pierre, County of Hughes, and State of South Dakota

Vested Right, the holder of Permit No. 793-3, issued upon Application No. 793-3, bearing date of priority of 1889

authorizing the diversion of 1050 acre feet annually of the waters of Battle Creek

County of Lake, State of South Dakota, at a point in the

NW 1/4 NE 1/4 Section 23, T108N, R53W

for public recreation

purposes, has fully complied with the provisions of the laws of the State of South Dakota relating to proof of recognized as

completion of the works of diversion set out and described in said Permit; that said works are satisfactory

for diverting and conveying to the place of intended use 1050 acre feet annually

of water; and that the use of said water are described as follows,

to be used in place for public recreation.

to wit:

Witness my hand this 7th day of December A. D. 1962

State Water Resources Commission

By

Chief Engineer, Executive Officer
J. W. GRIMES

STATE OF SOUTH DAKOTA

WATER LICENSE No. 793-3

WHEREAS, On the 1st day of August A. D. 1961
the Department of Game, Fish and Parks

of Pierre County of Hughes and State of
South Dakota duly made application (No. 793-3) to us for a Vested Right permit to use 1050 acre feet annually
of the waters of Battle Creek
County of Lake, State of South Dakota, for public recreation
purposes; and

WHEREAS, On the 7th day of December A. D. 1962
Vested Right permit No. 793-3 was issued to said applicant for the diversion of said water, recognizing
completion of the works of diversion therein described and for the application to beneficial use of said
water on or before the
and,

WHEREAS, On the 1st day of August A. D. 1961
the holder of said permit duly made proof of the completion of adequate works for the diversion of 1050 acre feet
annually of said waters, as evidenced by our Certificate No. 793-3
dated December 7, 1962 confirming the completion of works of sufficient capacity for
diverting and conveying to the place of intended use 1050 acre feet annually
priority of 1889 and,

WHEREAS, On the 1st day of August A. D. 1961
proof was duly made of the application to beneficial use of 1050 acre feet annually
to be used in place for public recreation.

NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota,
We hereby grant and confirm to the Department of Game, Fish and Parks
of Pierre Vested Right
the holder and owner of said permit No. 793-3

a water right, dating from 1889 to the use of 1050 acre feet annual
cubic feet per second of the waters of Battle Creek

In the County of Lake and State of South Dakota, or so much thereof as may be
necessary for the purposes hereinafter mentioned, to be diverted at a point in the
NW 1/4 NE 1/4 Section 23, T108N, R53W

and ~~to be used for irrigation~~ stored in place

for the purpose of public recreation

subject, however, to the laws of the State of South Dakota applicable to a license for the use of the waters of the
State, and subject, also to the local or community customs, rules and regulations which have been or may be
adopted from time to time by a majority of the users from a common source of supply, canal or lateral from
which such water may be taken, when such rules and regulations have for their object the economical use of such
water.

WITNESS, My hand and seal of our office at Pierre, South Dakota,
this 7th day of December A. D. Nineteen
Sixty-Two.
Hundred and _____

State Water Resources Commission
By:

Chief Engineer, Executive Officer
J. W. GRIMES

STATE OF SOUTH DAKOTA	
Water License No. _____	
To _____	

Source of Supply _____	

County _____	
Am't _____ c. f. s.	
Point of Diversion _____	

Place of Use _____	

Purpose _____	

Date of Priority _____	
Recorded _____	
In Book _____ of _____ Page _____	

December 14, 1962

Mr. Walter J. Fillmore, Director
Department of Game, Fish and Parks
Pierre, South Dakota

Dear Walt:

Enclosed herewith are your "Vested Right" Permit, Certificate of Completion of Works and Water License for the following applications:

<u>No.</u>	<u>Name of Lake</u>	<u>County</u>
633-3	Lonecone Lake	Day
635-3	Hillebrands Lake	Day
639-3	Waubay Lake	Day
737-3	Mound Lake	Lake
788-3	Milwaukee Slough	Lake
789-3	Mud Lake	Lake
790-3	Lake Madison	Lake
791-3	Green Lake	Lake
792-3	Brandt Lake	Lake
✓ 793-3	Badus Lake	Lake

Sincerely,

J. W. GRIMES
Chief Engineer and
Executive Officer

JWG:mf
Encl. as above

Location No.

Water Division No. 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 DakotaBadus Lake

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. Battle Creek - One point in the watershed located in the NW 1/4 Sec. 23T 108, R 53. Outlet located in the NW 1/4 Sec 24, T 108, R 53.

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 9 feet - 350 acres

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. Is required to fill lake to outlet level approximately 150 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) Walter J. Allmon

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 1st day of August A. D. 1961

-----} Witnesses. Edward Johnson
-----11/6/61-----

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 knew 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 -----



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.

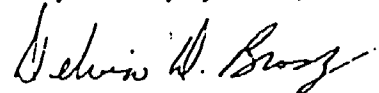


September 21, 1988
Richard Beringson, Secretary
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We will be working with your staff on these validations. We have already discussed setting outlet elevations before validating claims for lakes. Although the work necessary to complete the validation 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
605 773-2352

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