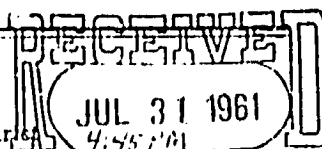


No. 798-3Water Division No. 3 JAMES RIVER District
(Blanks to be Filled by the Engineer for the W. R. C.)

~~VESTED RIGHT~~ APPLICATION FOR PERMIT

STATE WATER RESOURCES COMM.
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 or 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 WILMARTH LAKE - Aurora Co.
3. Amount of water claimed As required to fill lake to outlet level - approximately 450
acres-feet per year cubic feet per second
4. Source of water supply West Firessteel Creek
5. Location of point of diversion One point in the watershed located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 35,
T 105, R 63; Outlet located in NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 36, T 105, R 65
_____ on _____ bank _____ County.
6. Annual period or periods during which water is to be used Continuously
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.) N $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 36,SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 25 and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 35 all in T. 105, R. 65.

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

(a) Nature of use public recreational uses
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) Flumling, \$----- (d) Canal-earth, \$----- Rock, \$-----
 (e) Other structures ----- \$----- Total, \$30,000.00

9. Description of diversion works:

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

II. Dimensions of works.

(a) Dam: Height 33 feet; length at bottom 500 feet; length at top 1000 feet; thickness at bottom 160 feet; thickness at top 12 feet; slope at front water face 3:1; slope at back face 1 1/2:1; material used in construction earth fill
 (b) Reservoir: Capacity when filled 1500 acre feet. Surface area at highwater mark 143 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 - not applicable years.

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 not applicable

STATE OF SOUTH DAKOTA

County of Hughes } ss.

I, Walter 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 Walter J. Fillmore

Subscribed and sworn to before me this 7/24 day of July 1951

Notary Public (or other qualified officer.)

Remarks by State Water Resources Commission:

"Vested right" Claimed

STATE OF SOUTH DAKOTA
County of WAGNER } ss.

Pierre, South Dakota, December 10, 1962

This is to certify that the foregoing application was received by the Commission at 4:45 o'clock
p.m. upon the 31st day of July, 1961.

State Water Resources Commission

By:

for Burton Jones
Chief Engineer, Executive Officer

Number of permit 798-3

Date of first receipt of application July 31, 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: 1937, 19____

Approved December 10, 1962 Recorded in Book 7 Page 246

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~~ _____, 19____

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

completed, 19____

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 450 acre feet annually
~~one cubic foot 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 twentieth (1/20) of one cubic foot of water per acre of time for each acre of land to which water is actually~~

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

Continuously
Witness my hand this 10th day of December, 1962

State Water Resources Commission

By:

W. B. Quinn
Chief Engineer, Executive Officer

Certificate of Construction Issued December 10, 1962

Water License issued December 10, 1962

Permit No. 798-3Water Division No. 3 James 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 Parksof Pierre, County of Hughes, and State of South Dakota, the holder Vested Right of Permit No. 798-3, Issued upon ApplicationNo. 798-3, bearing date of priority of 1937, authorizing the diversion of450 acre feet annually of the waters of West Firesteel CreekCounty of Aurora, State of South Dakota, at a point in theSE¹ NE¹ Section 35, T105N, R65W, for public recreationpurposes, 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 assatisfactory for diverting and conveying to the place of intended use 450 acre feet annuallyof water; and that the land proposed for irrigation by use of said water are described as follows,to-wit: to be used in place for public recreation.Witness my hand this 10th 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. 798-3

WHEREAS, On the 31st day of July A. D. 1961
the Department of Game, Fish and Parks

of Pierre County of Hughes and State of
South Dakota duly made application (No. 798-3) to us for a Vested Right permit to use 450 acre feet annually
of the waters of West Firesteel Creek
County of Aurora, State of South Dakota, for public recreation
purposes; and

WHEREAS, On the 10th day of December A. D. 1962
Vested Right / Permit No 798-3 was issued to said applicant... recognizing
for the diversion of said water, with providing for the
completion of the works of diversion therein described ~~XXXXXX~~
and ~~XXXXXX~~ application to beneficial use of said
water ~~XXXXXX~~ and,
and,

WHEREAS, On the 31st day of July A. D. 1961
the holder... of said permit duly made proof of the completion of adequate works for the diversion of 450 acre feet
annually ~~XXXXXX~~ of said waters, as evidenced by our Certificate No. 798-3
dated December 10, 1962 confirming the completion of works of sufficient capacity for
diverting and conveying to the place of intended use 450 acre feet annually
of water, with date of
priority of 1937 and,

WHEREAS, On the 31st day of July A. D. 1961
proof was duly made of the application to beneficial use of 450 acre feet annually
of said water;
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. 798-3
a water right, dating from 1937 to the use of 450 acre feet annually
cubic feet per second of the waters of West Firesteel Creek
in the County of Aurora and State of South Dakota, or so much thereof as may be
necessray for the purposes hereinbelow mentioned, to be diverted at a point in the
SE¹ NE¹ Section 35, T105N, R65W
and ~~and~~ 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 10th day of December A. D. Nineteen
Hundred and Sixty-Two.

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 20, 1962

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

Dear Walt:

Enclosed herewith are your "Voated 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>
794-3	Buffalo Slough	Lake
795-3	Long Lake	Jerauld
796-3	Crow Lake	Jerauld
797-3	Cottonwood Lake	Jerauld
✓798-3	Wilmarth Lake	Aurora
799-3	Stoddard Lake	Aurora
800-3	Fish Lake	Aurora
801-3	White Lake	Aurora
802-3	Stickney Lake	Aurora
803-3	Stoney Run	Beadle

Sincerely,

J. W. GRIMES
Chief Engineer and
Executive Officer

JWG:mf
Encls. 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 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. West Firesteel Creek - one point in the watershed located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 35, T. 105, R. 65. Outlet located in NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 36, T. 105, R. 65.

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. Earth Dam - approximately 500 feet long and 32 feet highImpoundment of 143 acres at dam site

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 spillway outlet - approximately 450 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. Been in use ever since 1937 when dam was constructed. Used by the public
..... for the uses specified except for that amount lost by evaporation and seepage.

(Sign) Walter J. Hillman

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 Winnipeg, County of Winnipeg

State of South Dakota, on this 7th day of August A. D. 1942

..... } Witnesses. Edward Johnson
..... } 12-1-42

I, the undersigned, 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 -----	



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.

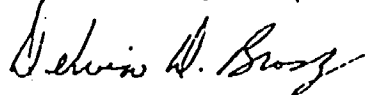


September 21, 1988
Richard Beringson, Secretary
Page 2

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