

No. 917-3Water Division No. 3 WHEATSTONE CREEK District
(Blanks to be filled by the Engineer for the W. R. C.)

DEC 8 1961

STATE WATER RESOURCES COM.
DAKOTA STATE ENGINEERVESTED RIGHT
APPLICATION FOR PERMIT

To Appropriative 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 Piarsa, 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 CLEAR LAKE - Marshall County
As required to fill lake to outlet level - 3300 approximate

3. Amount of water claimed acre feet per year cubic feet per second

4. Source of water supply Dry Draw
Two points in the watershed located in the SE 1/4 SW 1/4 Sec. 12,

5. Location of point of diversion T. 126, R. 5, NW 1/4 SE 1/4 Sec. 18, T. 126, R. 53
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.)
- To the ordinary high water mark of the inundated portions of Sec. 12, 13, 14, 25, T. 126, R. 51 & Sec. 18, 19, T. 126, R. 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.)

Information requested not applicable. Clear Lake is a
 II. Dimensions of works. meandered lake. Maximum depth is approximately 25 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 filled ----- acre feet. Surface area at highwater mark ----- 1100 ----- acres.

DEPTH AT OUTLET-Feet	SURFACE AREA AT EACH DEPTH AT OUTLET--ACRES	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 ----- years. 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 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 -----

Subscribed and sworn to before me this -----

day of -----

1961

Notary Public (or other qualified officer.)

*Each diversion must have a headgate or measuring device.

11-6-65

14 | 13

13 | 18

Clear Lake

DEPT. GAME, FISH & PARKS
Pierre, South Dakota

Remarks by State Water Resources Commission:

"Vested right" claimed

STATE OF SOUTH DAKOTA

County of

Hughes

ss.

Pierre, South Dakota,

January 24, 1963

This is to certify that the foregoing application was received by the Commission at 11:30 o'clock

a.m. upon the 8th day of December, 1961.

State Water Resources Commission

By:

Chief Engineer, Executive Officer

Number of permit 917-3

Date of first receipt of application

December 8th, 1961

Date of return to applicant for correction, amendments or charges required as follows:

Date of receipt of corrected application

Date from which applicant may claim right

1889

Approved

January 24, 1963

Recorded in Book

8

Page

5

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

completed

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 3300 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-seventieth (1/70) 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 for irrigation on or before

June 30, 1955

during the following described annual period:

Continuously

Witness my hand this

24th

day of

JANUARY

1963.

State Water Resources Commission

By:

Chief Engineer, Executive Officer

Certificate of Construction Issued

JANUARY 24, 1963

Water License Issued

JANUARY 24, 1963

STATE OF SOUTH DAKOTA

WATER LICENSE No. 917-3.....

WHEREAS, On the 8th day of December A. D. 1961

the South Dakota Department of Game, Fish and Parks

of Pierre County of Hughes and State of South Dakota
South Dakota duly made application (No. 917-3) to us for a Vested Right permit to use 3300 acre feet
annually of the waters of dry draws
~~which are necessary~~
 County of Marshall, State of South Dakota, for public recreation
 purposes; and

WHEREAS, On the 24th day of January A. D. 1963
 vested Right / Permit No. 917-3 was issued to said applicant... recognizing
 the diversion of said water and proceeds for the
 completion of the works of diversion therein described; ~~on the 24th day of January 1963~~
 and for the application to beneficial use of said
 water ~~on the 24th day of January 1963~~
 and,

WHEREAS, On the 8th day of December A. D. 1961
the holder... of said permit duly made proof of the completion of adequate works for the diversion of 3300 acre feet
annually ~~of said waters~~ of said waters, as evidenced by our Certificate No. 917-3
dated January 24, 1963 confirming the completion of works of sufficient capacity for
diverting and conveying to the place of intended use 3300 acre feet annually
priority of 1889 ~~with respect to~~ of water, with date of
and,

WHEREAS, On the 8th day of December A. D. 1961
proof was duly made of the application to beneficial use of 3300 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 South Dakota Department of Game, Fish and Parks
of Pierre Vested Right
the holder and owner of said permit No. 917-3
a water right, dating from 1839 to the use of 3300 acre feet
annually dry draws
of the waters of ~~XXXXXX~~
In the County of Marshall and State of South Dakota, or so much thereof as may be
necessary for the purposes hereinbelow mentioned, to be diverted at points in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 12, T126N,
R54W, and in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 18, T126N, R53W
and ~~XXXXXX~~ 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 24th day of January A. D. Nineteen
Hundred and Sixty-Three

State Water Resources Commission

By:

J. W. GRIMES
Chief Engineer, Executive Officer

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 _____

Permit No. 917-3Water Division No. 3 Whetstone Creek 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 Parks

of Pierre, County of Hughes, and State of South Dakota,
 the holder of Permit No. 917-3, issued upon Application No. 917-3, bearing date of priority of 1889

authorizing the diversion of 3300 acre feet annually ~~xxxxxx~~ of the waters of dry draws

County of Marshall, State of South Dakota, at points in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 12, T126N, R54W, and in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 18, T126N, R53W

for public recreation

purposes, has ^s 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 ~~xxxxxx~~ satisfactory.

~~xxxxxx~~ for diverting and conveying to the place of intended use 3300 acre feet annually ~~xxxxxx~~

~~xxxxxx~~ of water; and that the ~~xxxxxx~~ use of said water are described as follows, to-wit: to be used in place for public recreation

Witness my hand this 24th day of January A. D. 1963

State Water Resources Commission

By: J. W. GRIMES
 Chief Engineer, Executive Office

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. Dry Draw - two points in the watershed located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 12,
T. 126, R. 54, NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 18, T. 126, 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 25 feet - 1100 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. As required to fill lake to outlet level - approximately 3300 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 remainder left used by the public for use specified except for that
amount lost by evaporation and seepage

(Sign) Edw. Johnson

I here 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 7 day of December A. D. 1961
Edw. Johnson
Witnesses. 11-8-65

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 -----	

Conversation or File Documentation

NAME OF PERSON OR FILE: SD Dept. of Game, Fish and Parks - Clear Lake

ADDRESS: _____ COUNTY _____

DATE: _____ TELEPHONE _____

RE: Ordinary High Water Mark Determination

COMMENTS:

December 9 & 10, 1982 - Water Management Board Minutes

Mr. Arend MOVED, SECONDED by Mr. Walter that the Ordinary High Water Mark for
Clear Lake be established at 1823.7 feet msl. That Vested Water Right No. 917-3
be clarified to require the outlet at Clear Lake to be at an elevation of
1823.0 feet msl. MOTION CARRIED.

For more information see the OHWM file.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.



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.

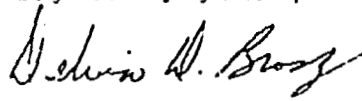


September 21, 1988
Richard Beringson, Secretary
Page 2

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

LAW OFFICES
RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP
ONE COURT STREET
POST OFFICE BOX 1030
ABERDEEN, SOUTH DAKOTA
57402-1030

LLOYD C. RICHARDSON, JR.
OF COUNSEL
JAMES A. WYLY
ROY A. WISE
WILLIAM K. SAUCK, JR.
JACK H. HIEB
CHRISTOPHER D. DOHRER
RICHARD L. RUSSMAN
ZACHARY W. PETERSON

E-Mail: jhieb@rwwsh.com

RECEIVED
JUN - 6 2007
WATER RIGHTS
PROGRAM

DWIGHT CAMPBELL (1887-1964)
STANLEY R. VOAS (1909-1972)

TELEPHONE (605) 225-6310
FACSIMILE (605) 225-2743

June 5, 2007

Mr. Garland Erbele
Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501

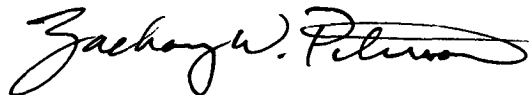
Dear Mr. Erbele:

Re: Clarence Roehrich's Petition for
Declaratory Ruling

With this correspondence I am enclosing a Petition for Declaratory Ruling addressed to the South Dakota Water Management Board. I forwarded a copy of the same to Eric Gronlund on May 31, 2007. Pursuant to S.D. Admin. R. 74:02:01:48, I will be serving a copy of the Petition upon all known persons whose pecuniary interests would be directly and immediately affected by a declaratory ruling on this Petition. Once I have done so, I will provide proof of such service to you.

Best regards.

Sincerely,



Zachary W. Peterson

ZWP/kkt
Enclosure

cc: Clarence Roehrich

RECEIVED

JUN - 6 2007

WATER RIGHTS
PROGRAM

PETITION FOR DECLARATORY RULING

TO THE SOUTH DAKOTA WATER MANAGEMENT BOARD:

I, Clarence Roehrich ("petitioner"), request that the Water Management Board ("Board") issue a decision declaring that the South Dakota Department of Game, Fish, and Parks ("GFP") improperly extended the outlet structure controlling the release of water at Clear Lake in Marshall County, South Dakota, in contravention of SDCL 46-5-1.1. Pursuant to S.D. Admin. R. 74:02:01:50, the petitioner additionally requests that the Board clarify or amend Vested Water Right No. 917-3, belonging to the GFP, to include an appropriate outlet elevation on Clear Lake consistent with the rights of owners of real property riparian to Clear Lake.

In a South Dakota Department of Water & Natural Resources Report from November, 1982, it was recommended that Clear Lake's Ordinary High Water Mark ("OHWM") be established at 1823.7 feet msl. The report also recommended that Vested Water Right No. 917-3, belonging to the GFP, be clarified to allow the water level at Clear Lake to be maintained at an elevation no higher than 1823.0 feet msl. At the Board's 21st meeting on December 9 and 10, 1982, after discussion on the issue, the OHWM was set at 1823.7 and the outlet elevation was set at 1823.0.

The outlet structure at Clear Lake is a concrete weir that is approximately 30 feet wide. Prior to December 2006, the weir was set at an elevation of 1821.74 feet msl on the west side

and 1822.12 on the east side. In December, 2006, the GFP increased the elevation of the outlet structure to 1823.00 feet. On information and belief, the increase in elevation has no environmental or biological necessity.

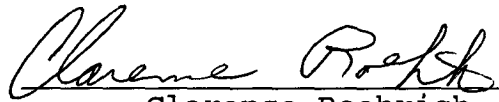
The additional elevation to the outlet structure has caused significant flooding to the petitioner's property. The road leading to the petitioner's home was made impassable for much of the spring. The petitioner's dock and fire pit on the west side of his property were submerged. The shoreline on the east side of the property has been washed away, and the waterline, at one point, nearly reached the petitioner's cabin. Significant portions of the petitioner's property remain under water. Based on information available to the petitioner, others owning property riparian to Clear Lake have sustained shoreline damage as a result of the increased elevation of the outlet structure.

The petitioner requests that the Board order that the GFP restore the outlet structure to its previous level in order to prevent future flood damage to the riparian owners of real property near Clear Lake. Alternatively, the petitioner requests that the Board order the GFP to alter the outlet structure's elevation to a level that would alleviate flooding. On information and belief, the outlet structure's elevation could be

reduced by approximately six inches without imposing a significant burden upon the GFP.

The petitioner also asks that the Board clarify or amend Vested Water Right No. 917-3 to include an outlet elevation that is consistent with the rights of owners of real property riparian to Clear Lake.

Dated this 31 day of May, 2007.


Clarence Roehrich



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

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

June 8, 2007

Jack Hieb and Zach Peterson
PO Box 1030
Aberdeen SD 57402

Dear Mr. Hieb and Mr. Peterson:

Please find enclosed the notice of hearing on the Petition filed by Clarence Roehrich for a declaratory ruling regarding the outlet elevation for Clear Lake in Marshall County. The notice has been sent to the Publisher of the Britton Journal printed at Britton SD (Ph # 605-448-2281). You will need to contact the newspaper and authorize publication of this notice. 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 the notice and to arrange for payment. Early contact with the paper can eliminate delays. Upon receiving authorization, the publisher has been instructed to publish your notice once each week for two consecutive weeks. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the declaratory ruling.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosure



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 8, 2007

Britton Journal
PO Box 69
Britton SD 57430-0069

ATTENTION: Legal Public Notice

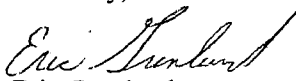
Enclosed is a Notice of hearing on a petition filed by Clarence Roehrich for a declaratory ruling regarding the outlet elevation for Clear Lake in Marshall County to be published twice. Please publish the first notice on June 13, 2007 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

The petitioner must verify to you that the notice is to be published, before you make the first publication. **Please BILL the for the cost of publication.** The petitioner Clarence Roehrich, c/o Jack Hieb, Attorney, PO Box 1030, Aberdeen SD 57402.

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 petitioner 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 petitioner.

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

Declaratory Ruling on Clear Lake

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

Date _____

We are in receipt of your letter of June 7, 2007 enclosing Notice of Hearing on Declaratory Ruling which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper

WATER RIGHT PROGRAM
SOUTH DAKOTA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

FACSIMILE TRANSMITTAL SHEET

TO: Britton Journal	FROM: Eric Gronlund
COMPANY:	DATE: June 8 2007
FAX NUMBER: 448-2282	TOTAL NO. OF PAGES INCLUDING COVER: 4
PHONE NUMBER:	SENDER'S TELEPHONE NUMBER: (605) 773-3352
RE: Publication notice for Clear Lake declaratory ruling	SENDER'S FAX NUMBER: (605) 773-4068

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ AS YOU REQUESTED

NOTES/COMMENTS:

Please find enclosed the publication notice for a petition filed requesting a declaratory ruling on the outlet elevation of Clear Lake. The petitioner or his representative will need to contact you to authorize publication. The notice will need to be published on June 13 and 20th.

I have also sent this information via US Mail and to the newspaper email address.

If you have any questions, please do not hesitate to contact me.

Eric Gronlund
Water Rights Program, DENR
605 773-3352

WATER RIGHTS PROGRAM
JOE FOSS BUILDING
523 E. CAPITOL AVE.
PIERRE, SD 57501

Instruction to Newspaper - Publish first Notice on June 13, 2007 with the second publication 7 days later. Clarence Roehrich is responsible for payment.

NOTICE OF HEARING on Petition for a Declaratory Ruling on Clear Lake, Marshall County

Notice is given that Clarence Roehrich, through counsel, Jack Hieb, PO Box 1030, Aberdeen SD 57402 has petitioned the Water Management Board for a declaratory ruling regarding the outlet elevation on Clear Lake in Marshall County. Mr. Roehrich is asking the Water Management Board to issue an order that requires the South Dakota Department of Game, Fish and Parks to lower the elevation of the outlet for Clear Lake.

In 1982, the Water Management Board established the ordinary high water mark and outlet elevation for Clear Lake. The Board set the ordinary high water mark at 1823.7 feet above mean sea level (fmsl) and the outlet elevation at 1823.0 fmsl. The outlet structure for the lake is a concrete weir that is approximately 30 feet wide. Mr. Roehrich's petition states that prior to December 2006, the outlet was at an elevation of 1,821.74 fmsl on the west side of the weir and 1,822.12 fmsl on the east side of the weir. In December 2006, the Department of Game, Fish and Parks reconstructed the outlet and set the outlet elevation at the 1982 Board approved outlet elevation of 1,823.0 fmsl.

The Department of Game, Fish and Parks hold Vested Water Right Claim No. 917-3, which is for water as required to fill the lake on an annual basis up to the outlet elevation of 1823.0 fmsl with a priority date of November 2, 1889. The outlet is located in the NE 1/4 Section 23, T126N, R54W.

Petitioner Roehrich requests that the Water Management Board order the Department of Game, Fish and Parks to lower the outlet weir to an elevation of 1821.74 fmsl, which is the elevation of the lowest part of the weir prior to 2006. Alternatively, if the Board does not agree to lower the weir to 1821.74 fmsl, the petitioner asks that the Board order the Department of Game Fish and Parks to lower the elevation of the outlet weir by six inches to 1822.5 fmsl. The Petitioner's reason for this request is to prevent flood damage to his riparian property adjacent to Clear Lake. The petitioner additionally requests that if the Board agrees to order the Department of Game, Fish and Parks to lower the outlet's elevation, the Board amend Vested Water Right Claim No. 917-3 to include the newly established outlet elevation.

The petition for a declaratory ruling and validation of Vested Water Right Claim No. 917-3 will be considered by the Water Management Board at 10:00 AM on July 11, 2007, in the Community Room, Milbank's Visitors Center, 1001 East 4th Avenue, Milbank SD. The agenda time is an estimate and may be delayed due to prior agenda items. If the Board accepts the petition, the Board may issue one of the following decisions after all evidence is taken at the hearing: 1) order the outlet elevation be 1,821.74 fmsl; 2) order the outlet elevation be 1,822.5 fmsl; 3) reaffirm the outlet elevation of 1,823.0 fmsl; 4) defer action; 5) take no action or do some combination of the above. In addition, the Board will consider validation of Vested Water Right Claim No. 917-3 consistent with their ruling on the declaratory ruling. The Chief Engineer recommends validation of Vested Water Right Claim No. 917-3 to the outlet elevation.

Any person intending to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with Jack Hieb, counsel for Mr. Roehrich and the Chief Engineer by July 2, 2007. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605) 773-3352"; Clarence Roehrich's mailing address is Clarence Roehrich, c/o Jack Hieb, Attorney, PO Box 1030, Aberdeen SD 57402. The petition may be informal but must include a statement describing the petitioner's interest in the petition for a declaratory ruling, the petitioner's reasons for opposing or supporting the petition for declaratory ruling, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Clarence Roehrich need not file a petition to intervene. The July 11, 2007, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer by any interested person. The request for an automatic delay must be filed by July 2, 2007.

This hearing will be an adversary proceeding. Any person filing a petition has the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Contact Eric Gronlund by July 2, 2007, at the above Water Rights Program address to request copies of information pertaining to this petition for declaratory ruling or if you have special needs for which special arrangements can be made.

A petitioner may request use of the Office of Hearing Examiners pursuant to SDCL 1-26-18.3 rather than the hearing procedure describe above. A request to use the Office of Hearing Examiners must be filed with the Chief Engineer by July 2, 2007.

This petition for a declaratory ruling is made pursuant to Board General Rules, Sections 74:02:01:46 thru 74:02:01:50. The Board has legal authority and jurisdiction to consider this matter pursuant to SDCL 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17, 46-2A-16, 46-2A-17, 46-5-1 thru 46-5-2.

Steven M. Pirner, Secretary
Department of Environment and Natural Resources.

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JUN 21 2007

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA, County of Marshall.

WATER RIGHTS
PROGRAM

Douglas M. Card of said county, being first duly sworn on oath says that he is publisher of the BRITTON JOURNAL, a weekly newspaper printed and published in the City of Britton, in the County of Marshall, and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly and has been published within said County for fifty-two successive weeks, next prior to the publication of the notice herein mentioned and is printed wholly or in part in an office at said place of publication;

that the

Notice of Hearing on Petition
(Roehrich)

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet and is made a part of this affidavit, was published in said newspaper at least once each week for two successive weeks, on the day of each week on which said newspaper was regularly published, to wit:

June 13, 2007

June 20, 2007

that the full amount of the fee charged for the publication of said notice inures to the benefit of publisher of said newspaper, that no agreement or understanding for the division thereof has been made with any person, and that no part thereof has been agreed to be paid to any other person whomsoever, and that the fee for the publication thereof

Eighty-five and ⁶⁹/₁₀₀

Douglas M. Card

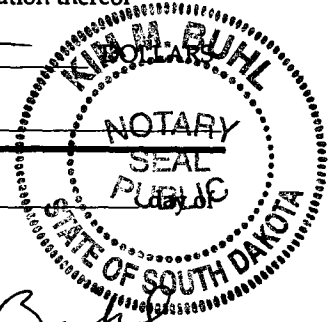
Subscribed and sworn to before me this

20th

June A. D., 2007

Kim M. Buhl

Notary Public, Marshall County, S. D.
My Commission Expires March 12, 2010



2T(June 13-20)

**NOTICE OF HEARING on Petition
for a Declaratory Ruling on Clear
Lake, Marshall County**

Notice is given that Clarence Roehrich, through counsel, Jack Hieb, PO Box 1030, Aberdeen SD 57402 has petitioned the Water Management Board for a declaratory ruling regarding the outlet elevation on Clear Lake in Marshall County. Mr. Roehrich is asking the Water Management Board to issue an order that requires the South Dakota Department of Game, Fish and Parks to lower the elevation of the outlet for Clear Lake.

In 1982, the Water Management Board established the ordinary high water mark and outlet elevation for Clear Lake. The Board set the ordinary high water mark at 1823.7 feet above mean sea level (fmsl) and the outlet elevation at 1823.0 fmsl. The outlet structure for the lake is a concrete weir that is approximately 30 feet wide. Mr. Roehrich's petition states that prior to December 2006, the outlet was at an elevation of 1,821.74 fmsl on the west side of the weir and 1,822.12 fmsl on the east side of the weir. In December 2006, the Department of Game, Fish and Parks reconstructed the outlet and set the outlet elevation at the 1982 Board approved outlet elevation of 1,823.0 fmsl.

The Department of Game, Fish and Parks hold Vested Water Right Claim No. 917-3, which is for water as required to fill the lake on an annual basis up to the outlet elevation of 1823.0 fmsl with a priority date of November 2, 1889. The outlet is located in the NE 1/4 Section 23, T126N, R54W.

Petitioner Roehrich requests that the Water Management Board order the Department of Game, Fish and Parks to lower the outlet elevation to an elevation of 1821.74 fmsl, which is the elevation of the lowest part of the weir prior to 2006. Alternatively, if the Board does not agree to lower the weir to 1821.74 fmsl, the petitioner asks that the Board order the Department of Game Fish and Parks to lower the elevation of the outlet weir by six inches to 1822.5 fmsl. The Petitioner's reason for this request is to prevent flood damage to his riparian property adjacent to Clear Lake. The petitioner additionally requests that if the Board agrees to order the Department of Game, Fish and Parks to lower the outlet's elevation, the Board amend Vested Water Right Claim No. 917-3 to include the newly established outlet elevation.

The petition for a declaratory ruling and validation of Vested Water Right Claim No. 917-3 will be considered by the Water Management Board at 10:00 AM on July 11, 2007, in the Community Room, Milbank's Visitors Center, 1001 East 4th Avenue, Milbank SD. The agenda time is an estimate and may be delayed due to prior agenda items. If the Board accepts the petition, the Board may issue one of the following decisions after all evidence is taken at the hearing: 1) order the outlet elevation be 1,821.74 fmsl; 2) order the outlet elevation be 1,822.5 fmsl; 3) reaffirm the outlet elevation of 1,823.0 fmsl; 4) defer action; 5) take no action or do some combination of the above. In addition, the Board will consider validation of Vested Water Right Claim No. 917-3 consistent with their ruling on the declaratory ruling. The Chief Engineer recommends validation of Vested Water Right Claim No. 917-3 to the outlet elevation.

Any person intending to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with Jack Hieb, counsel for Mr. Roehrich and the Chief Engineer by July 2, 2007. The Chief Engineer's address is "Water Rights Program,

Foss Building, 523 E Capitol, Pierre SD 57501 (605) 773-3352"; Clarence Roehrich's mailing address is Clarence Roehrich, c/o Jack Hieb, Attorney, PO Box 1030, Aberdeen SD 57402. The petition may be informal but must include a statement describing the petitioner's interest in the petition for a declaratory ruling, the petitioner's reasons for opposing or supporting the petition for declaratory ruling, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Clarence Roehrich need not file a petition to intervene. The July 11, 2007, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer by any interested person. The request for an automatic delay must be filed by July 2, 2007.

This hearing will be an adversary proceeding. Any person filing a petition has the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Contact Eric Gronlund by July 2, 2007, at the above Water Rights Program address to request copies of information pertaining to this petition for declaratory ruling or if you have special needs for which special arrangements can be made.

A petitioner may request use of the Office of Hearing Examiners pursuant to SDCL 1-26-18.3 rather than the hearing procedure describe above. A request to use the Office of Hearing Examiners must be filed with the Chief Engineer by July 2, 2007.

This petition for a declaratory ruling is made pursuant to Board General Rules, Sections 74:02:01:46 thru 74:02:01:50. The Board has legal authority and jurisdiction to consider this matter pursuant to SDCL 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17, 46-2A-16, 46-2A-17, 46-5-1 thru 46-5-2.

Steven M. Pirner, Secretary
Department of Environment and Natural
Resources. 49

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June 14, 2007

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WATER RIGHTS
PROGRAM

Mr. Garland Erbele
Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Dear Mr. Erbele:

Re: Clarence Roehrich's Petition for
Declaratory Ruling

With this correspondence I am enclosing a Certificate of Service indicating that we served a copy of the Petition upon all known cabin owners on Clear Lake.

Best regards.

Sincerely,

Jack H. Hieb
Jack H. Hieb *JKH*

JHH/kkt
Enclosure

cc: Clarence Roehrich
Richard Neill

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Clarence Roehrich, hereby certifies that on the 15th day of June, 2007, a true and correct copy of **MEMORANDUM** and **PETITION FOR DECLARATORY RULING** was mailed by first-class mail to:

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South Dakota Department
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Jeff and Janice Wing
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Sioux Falls, SD 57107

Mr. Lowell Wymm
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A handwritten signature in cursive script, reading "Zachary W. Peterson", is written over a horizontal line.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 18, 2007

NOTICE

TO: Clear Lake Property Owners and Affected Individuals

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Petition for Declaratory Ruling regarding the Outlet Elevation of Clear Lake in
Marshall County, South Dakota

The South Dakota Water Management Board has received a petition for declaratory ruling filed by Clarence Roehrich regarding the outlet elevation of Clear Lake in Marshall County.

Enclosed is the public notice scheduling a July 11, 2007 hearing before the Board. This notice is being published in the Britton Journal on June 13 and 20, 2007.

The Water Management Board will consider the petition at 10:00 AM on July 11, 2007 in the Community Room, Milbank's Visitor Center, 1001 East 4th Avenue, Milbank SD. Any person intending to participate in the hearing before the Board must file a written petition by July 2, 2007 as set forth in the public notice. Notice of changes in the hearing time or date will only be provided to parties that have filed a petition.

If you have any questions, please contact Lynn Beck or Eric Gronlund at (605) 773-3352.

Enclosure

cc: Diane Best, Assistant Attorney General
Jack Hieb, PO Box 1030, Aberdeen SD 57402-1030

Instruction to Newspaper - Publish first Notice on June 13, 2007 with the second publication 7 days later. Clarence Roehrich is responsible for payment.

NOTICE OF HEARING on Petition for a Declaratory Ruling on Clear Lake, Marshall County

Notice is given that Clarence Roehrich, through counsel, Jack Hieb, PO Box 1030, Aberdeen SD 57402 has petitioned the Water Management Board for a declaratory ruling regarding the outlet elevation on Clear Lake in Marshall County. Mr. Roehrich is asking the Water Management Board to issue an order that requires the South Dakota Department of Game, Fish and Parks to lower the elevation of the outlet for Clear Lake.

In 1982, the Water Management Board established the ordinary high water mark and outlet elevation for Clear Lake. The Board set the ordinary high water mark at 1823.7 feet above mean sea level (fmsl) and the outlet elevation at 1823.0 fmsl. The outlet structure for the lake is a concrete weir that is approximately 30 feet wide. Mr. Roehrich's petition states that prior to December 2006, the outlet was at an elevation of 1,821.74 fmsl on the west side of the weir and 1,822.12 fmsl on the east side of the weir. In December 2006, the Department of Game, Fish and Parks reconstructed the outlet and set the outlet elevation at the 1982 Board approved outlet elevation of 1,823.0 fmsl.

The Department of Game, Fish and Parks hold Vested Water Right Claim No. 917-3, which is for water as required to fill the lake on an annual basis up to the outlet elevation of 1823.0 fmsl with a priority date of November 2, 1889. The outlet is located in the NE1/4 Section 23, T126N, R54W.

Petitioner Roehrich requests that the Water Management Board order the Department of Game, Fish and Parks to lower the outlet weir to an elevation of 1821.74 fmsl, which is the elevation of the lowest part of the weir prior to 2006. Alternatively, if the Board does not agree to lower the weir to 1821.74 fmsl, the petitioner asks that the Board order the Department of Game Fish and Parks to lower the elevation of the outlet weir by six inches to 1822.5 fmsl. The Petitioner's reason for this request is to prevent flood damage to his riparian property adjacent to Clear Lake. The petitioner additionally requests that if the Board agrees to order the Department of Game, Fish and Parks to lower the outlet's elevation, the Board amend Vested Water Right Claim No. 917-3 to include the newly established outlet elevation.

The petition for a declaratory ruling and validation of Vested Water Right Claim No. 917-3 will be considered by the Water Management Board at 10:00 AM on July 11, 2007, in the Community Room, Milbank's Visitors Center, 1001 East 4th Avenue, Milbank SD. The agenda time is an estimate and may be delayed due to prior agenda items. If the Board accepts the petition, the Board may issue one of the following decisions after all evidence is taken at the hearing: 1) order the outlet elevation be 1,821.74 fmsl; 2) order the outlet elevation be 1,822.5 fmsl; 3) reaffirm the outlet elevation of 1,823.0 fmsl; 4) defer action; 5) take no action or do some combination of the above. In addition, the Board will consider validation of Vested Water Right Claim No. 917-3 consistent with their ruling on the declaratory ruling. The Chief Engineer recommends validation of Vested Water Right Claim No. 917-3 to the outlet elevation.

Any person intending to participate in the hearing before the Board by presenting evidence or cross-examining witnesses according to SDCL 1-26, must file a written petition with Jack Hieb, counsel for Mr. Roehrich and the Chief Engineer by July 2, 2007. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605) 773-3352"; Clarence Roehrich's mailing address is Clarence Roehrich, c/o Jack Hieb, Attorney, PO Box 1030, Aberdeen SD 57402. The petition may be informal but must include a statement describing the petitioner's interest in the petition for a declaratory ruling, the petitioner's reasons for opposing or supporting the petition for declaratory ruling, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Clarence Roehrich need not file a petition to intervene. The July 11, 2007, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer by any interested person. The request for an automatic delay must be filed by July 2, 2007.

This hearing will be an adversary proceeding. Any person filing a petition has the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Contact Eric Gronlund by July 2, 2007, at the above Water Rights Program address to request copies of information pertaining to this petition for declaratory ruling or if you have special needs for which special arrangements can be made.

A petitioner may request use of the Office of Hearing Examiners pursuant to SDCL 1-26-18.3 rather than the hearing procedure describe above. A request to use the Office of Hearing Examiners must be filed with the Chief Engineer by July 2, 2007.

This petition for a declaratory ruling is made pursuant to Board General Rules, Sections 74:02:01:46 thru 74:02:01:50. The Board has legal authority and jurisdiction to consider this matter pursuant to SDCL 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17, 46-2A-16, 46-2A-17, 46-5-1 thru 46-5-2.

Steven M. Pirner, Secretary
Department of Environment and Natural Resources.

CERTIFICATION

I hereby certify that on June 18, 2007, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated June 18, 2007, petition for declaratory ruling regarding the outlet elevation for Clear Lake in Marshall County addressed as stated below.

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Post Office Box 222
Selby, SD 57427

Kim and Sandra Alberty
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Jeff and Jeani Amacher
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Warren and Barb Anderson
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Rock Valley IA 51427

Mr. Vern Anderson
6687 - 6th Street Northeast
Carrington, ND 58421

Mr. Dave Andreson
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Britton, SD 57430

Ms. Florence Andrews
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Colfax, ND 58018-9640

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Mr. Lowell Wymm
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Forman, ND 58032

Jack Hieb
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Aberdeen SD 57402-1030

A copy of the Notice was sent Inter-office to:

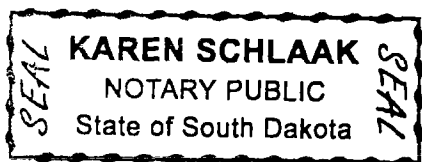
Diane Best, Assistant Attorney General, 1302 E Hwy 14, Suite 1, Pierre SD 57501-8501


Gail Jacobson
Water Rights Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 18th day of June, 2007.


Karen Schlaak
Notary Public
My Commission expires April 1, 2013





DEPARTMENT OF GAME, FISH AND PARKS

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

June 26, 2007

Water Rights Program
Foss Building
523 E. Capitol Avenue
Pierre, SD 57501
ATTN: Garland Eberle, Chief Engineer

Mr. Jack Hieb
Richardson, Wyly, Wise, Sauck & Hieb
Attorneys at Law
PO Box 1030
Aberdeen, SD 57402

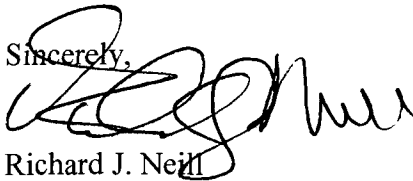
Re: Response to Petition for Declaratory Ruling regarding outlet elevation on Clear Lake in Marshall County, SD, filed by Clarence Roehrich

Gentlemen:

Enclosed herewith Mr. Eberle will find the original, and Mr. Hieb will find a copy, of the RESPONSE TO PETITION FOR DECLARATORY RULING which is being submitted on behalf the South Dakota Department of Game, Fish and Parks in the above referenced matter.

Please be advised that the Department of Game, Fish and Parks, as an interested party in the above matter, respectfully requests that the hearing in the above matter scheduled for July 11, 2007, in Milbank, South Dakota, be automatically delayed for at least 20 days.

Thank you and best wishes.

Sincerely,


Richard J. Neill
Assistant Attorney General/General Counsel
SD Department of Game, Fish and Parks

Encl.

RESPONSE TO PETITION FOR DECLARATORY RULING

TO THE SOUTH DAKOTA WATER MANAGEMENT BOARD:

Comes now the South Dakota Department of Game, Fish and Parks (hereinafter "Department") and in response to the Petition for Declaratory Ruling dated May 31, 2007, of Clarence Roehrich regarding the outlet elevation on Clear Lake in Marshall County, South Dakota, alleges and states:

1. The Department is interested in these proceedings by virtue of the fact that the relief requested in the petition would affect Department's Vested Water Right No. 917-3 which is for water as required to fill Clear Lake on an annual basis up to the outlet elevation of 1,823.0 fmsl with a priority date of November 2, 1889.

2. The Department opposes the relief requested in the petition for the following reasons:

A.) The Department did not act in an improper manner or in contravention of SDCL 46-5-1.1 when it increased the elevation of the outlet structure at Clear Lake to 1,823.0 fmsl in December of 2006. Department's actions in so doing were authorized by and in compliance with the action taken by the Water Management Board on December 10, 1982, which clarified Water Right No. 917-3 to require the outlet at Clear Lake to be set at an elevation of 1,823.0 feet msl.

B.) The Water Management Board has already taken action to clarify Water Right No. 917-3 by virtue of the action taken at its meeting on December 10, 1982, which said action was neither objected to nor appealed by any interested party, and which said action is *res judicata* and binding on the parties to these proceedings.

C.) The petitioner, Clarence Roehrich, does not have standing to request that the Water Management Board clarify or amend Vested Water Right No. 917-3.

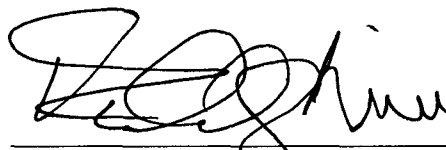
D.) The property of the petitioner, Clarence Roehrich, is subject to an easement in favor of the Department, which said easement grants the Department the right to maintain a lake on said real estate "providing the crest elevation of any dam, or spillway on the outlet, is not more than 16 inches higher than the elevation of the natural outlet of the lake," and which said easement was filed for record in the office of the Register of

Deeds of Marshall County, South Dakota, on June 23, 1954, at 9:00 o'clock A.M. and recorded in Book RM of Miscellaneous Records on page 70. The elevation of the natural outlet of the lake is 1,823.0 fmsl; therefore, petitioner is deemed to have notice that any portion of petitioner's property situated at or below an elevation of 1,824.33 fmsl is subject to flooding which may result from the Department's exercise of the rights granted under said easement. The Department is advised that the elevation of the south corner of the house located on petitioner's property is 1,824.19 fmsl, and the elevation of the garage located on petitioner's property is 1,822.90 fmsl.

3. As a temporary emergency measure to control flooding of his property and prevent or alleviate damage thereto, the petitioner, Clarence Roehrich, with the permission of the Board of Commissioners of Marshall County, South Dakota, and under the guidance of the Marshall County Highway Superintendent, caused deep cuts to be made on both sides of the outlet structure at Clear Lake to release water from the lake. These actions were taken without petitioner or any authorized representative of Marshall County having promptly notified the chief engineer of the construction of such emergency facilities as required by SDCL 46-5-48, and the Department requests that this Board declare said actions to be improper and unlawful.

4. The Department does not object to and joins in the Chief Engineer's recommendation that Water Right No. 917-3 be validated; however, said validation should confirm the outlet elevation of 1,823.0 fmsl as previously established for Water Right No. 917-3 by the Water Management Board in its action taken on December 10, 1982.

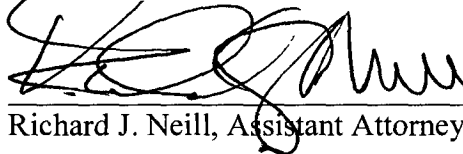
Dated this 26th day of June, 2007.

A handwritten signature in black ink, appearing to read "Richard J. Neill", written over a horizontal line.

Richard J. Neill, Attorney for Department
523 E. Capitol Avenue
Pierre, SD 57501
(605) 773-2750

CERTIFICATE OF SERVICE

Richard J. Neill, attorney for the South Dakota Department of Game, Fish and Parks, hereby certifies that the original of the foregoing **RESPONSE TO PETITION FOR DECLARATORY RULING** was hand delivered to and served upon the Water Rights Program, Foss Building, 523 E. Capitol, Pierre, SD 57501, ATTN: Garland Eberle, Chief Engineer, and a true and correct copy of the foregoing **RESPONSE TO PETITION FOR DECLARATORY RULING** was served upon the Petitioner, Clarence Roehrich, c/o Jack Hieb, Attorney, PO Box 1030, Aberdeen, SD 57402, by U. S. Mail with postage thereon fully prepaid, on the 26th day of June, 2007.

A handwritten signature in black ink, appearing to read 'R. J. Neill', is written over a horizontal line.

Richard J. Neill, Assistant Attorney General

RECEIVED

JUN 27 2007

WATER RIGHTS
PROGRAM

Mark Steiner

11706 442nd Ave

Lake City, SD 57247

June 22, 2007

Chief Engineer

Water Rights Program

Gas Building

523 E Capital

Pierre, SD

Attention: Eric Brandlund

My name is Mark Steiner. I own real property which is located on the south and west side of Clear Lake located in Marshall County. I support the application of Clarence Roerich to return the level of Clear Lake to 1821.74 which I understand was the level of the lake prior to December of 2006.

My family has lived and farmed next to the lake for four generations. The current high water is severely damaging the lake and the shoreline. It is also flooding my property.

I request I be given an opportunity to speak on this application before the Water Board on Monday on July 11th.

cc: Jack Kuhl

Mark Steiner

Brewster Building Center, Inc.
1209 E. 4th Ave
P.O. Box 309
Milbank, SD 57252

Phone: 605-432-5401
Fax: 605-432-4898

RECEIVED

JUN 29 2007

WATER RIGHTS
PROGRAM

To Garland Erbele,

THIS IS AN INFORMAL NOTICE THAT I'm
A RESIDENT AT CLEAR LAKE IN MARSHALL
COUNTY AND HAVE A VESTED INTEREST IN
THE SPILL-WAY HEIGHT. IT IS FOR THIS REASON
I PETITION TO HAVE MY OPINION HEARD AT
THE NEXT MEETING OF THE DEPT OF ENVIRONMENT
& NATURAL RESOURCES REGARDING THIS SITUATION.

THANK YOU

Tom Brewster

P.O. Box 19

Sisseton, S.D.

57262

David Gilbertson
215 North Huron Ave.
Pierre, SD 57501
June 18, 2007

Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol
Pierre, SD 57501
Attention: Mr. Eric Gronlund

RECEIVED
JUN 19 2007
WATER RIGHTS
PROGRAM

To Whom It May Concern:

I wish to appear and offer comment and evidence concerning the application of Clarence Roerich which is set to be heard before the Water Management Board on July 11, 2007 at 10:00 a.m. in Milbank South Dakota. I wish to appear in my personal capacity as a proponent of Mr. Roerich's application.

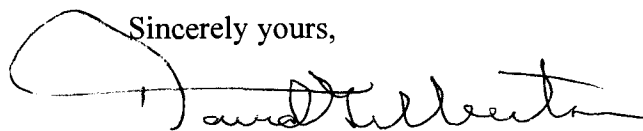
I have an interest in this matter as I, along with my wife, are owners of Lots 23, 24, 25 and 26 of Towner Acres Addition which is located on the southwest side of Clear Lake.

I support the return of the outlet elevation to 1,821.74. In reality, due to the outlet that existed until December of 2006, any water in excess of this figure flowed out of Clear Lake and into Roy Lake. With the new spillway, the new height of the lake is badly eroding the bank along my shoreline. It is also threatening my water well which is located on the bank. It has flooded a road upon which I rely on the Tower point for boat access. It has also uprooted shoreline vegetation so that the lake is as dirty as I have ever seen it. I have owned my property since September of 1981.

I appeared and testified at the pervious hearing on this matter in 1982. At that time, the actual level of the lake was so low that setting the outlet at 1,823 had no real effect on it.

I am also serving a copy of this request on Mr. Jack Hieb, counsel for Clarence Roerich.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'David Gilbertson', with a large, looping initial 'D'.

David Gilbertson

June 28, 2007

RECEIVED

JUN 29 2007

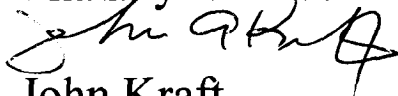
WATER RIGHTS
PROGRAM

To: Garland Erbele, Chief Engineer
Water Rights Program
Foss Building
523 E Capitol
Pierre, SD 57501

I, John Kraft am filing this petition to insure my participation in the proceedings relating to the hearing on the Petition of Declaratory Ruling regarding the outlet elevation of Clear Lake in Marshall County, South Dakota.

I am a permanent resident on the west side of Clear Lake. The elevation of the lake has a direct impact on my property. I believe that the Water Management Board would best serve the residents of Clear Lake by leaving the level of 1823 fmsl. Further, I believe that the Water Management Board should also take into consideration the width of the outlet to insure that levels can be maintained during spring run off or heavy rainfalls.

Thank you in advance for your consideration in this matter.



John Kraft

11664 Schlekeway Drive West
Lake City, South Dakota 57247

cc: Clarence Roehrich, c/o Jack Hieb, Attorney,
PO Box 1030, Aberdeen, SD 57402-1030



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JUN 29 2007

WATER RIGHTS
PROGRAM

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 18, 2007

NOTICE

TO: Clear Lake Property Owners and Affected Individuals

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Petition for Declaratory Ruling regarding the Outlet Elevation of Clear Lake in Marshall County, South Dakota

The South Dakota Water Management Board has received a petition for declaratory ruling filed by Clarence Roehrich regarding the outlet elevation of Clear Lake in Marshall County. Enclosed is the public notice scheduling a July 11, 2007 hearing before the Board. This notice is being published in the Britton Journal on June 13 and 20, 2007.

The Water Management Board will consider the petition at 10:00 AM on July 11, 2007 in the Community Room, Milbank's Visitor Center, 1001 East 4th Avenue, Milbank SD. Any person intending to participate in the hearing before the Board must file a written petition by July 2, 2007 as set forth in the public notice. Notice of changes in the hearing time or date will only be provided to parties that have filed a petition.

If you have any questions, please contact Lynn Beck or Eric Gronlund at (605) 773-3352.

Enclosure

cc: Diane Best, Assistant Attorney General
Jack Hieb, PO Box 1030, Aberdeen SD 57402-1030

*Petition to participate in hearing July 11, 2007
I live on Clear Lake on the west side.*

*Betty A. Carl
116220 Schickeweg Dr.
Lake City, S.D. 57124*

Property description

- Parcel 25.55 37. L318 2525 Lake Trip
14 126 54 Lts 18 Bk3 Schickeweg Add.*
- Parcel 25.55 37. L401 2525 Lake Trip
14 126 54 Lts 1 Bk 4 Schickeweg Add.*
- Parcel 25.55 37. L601 2525 Lake Trip
14 126 54 Lts 1+2 Bk 4 Schickeweg Add.*

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JUL - 2 2007

WATER RIGHTS
PROGRAM

Randy Knecht
40193 112th St
Houghton, SD 57449

June 29, 2007

Garland Erbele,

I write this letter in response to the Outlet Elevation of Clear Lake in Marshall County, South Dakota. Our family has owned property on the lake since 1966. In those 42 years the lake has been defceit water more often than it has been full. To take the outlet structure back to an elevation of 1821.74 feet would be a mistake in my opinion. Clear Lake almost always evaporates water from the 4th of July until it freezes. The more water we start with the better chance there will be to avoid submerged rocks in the lake that do damage to vessels after the water levels drop. I cannot attend the July 11th hearing in Milbank so I am submitting this letter in the hopes that it is appropriate testimony.

Randy Knecht

June 28, 2007

Water Rights Program
Joe Foss Building
Chief Engineer

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JUL - 2 2007

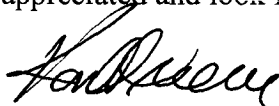
WATER RIGHTS
PROGRAM

Attn: Eric Gronlund

This is in reference to the Clear Lake OHWM petition and am requested to participate in the hearing on July 11, 2007.

I am currently on the Lake Township Board of supervisors and due to the height of the weir, township roads adjacent to and near the structure have been adversely affected.

Your consideration of my request to participate in this hearing would be greatly appreciated and look forward to seeing you on July 11th.



Kent L Duerre
Lake Twp Board Supervisor
116749 Roykota Dr
Lake City, SD 57247

Cc: Jack Hieb
Attorney, Aberdeen, SD



DEPARTMENT OF GAME, FISH AND PARKS

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

July 2, 2007

Water Rights Program
Foss Building
523 E. Capitol Avenue
Pierre, SD 57501
ATTN: Garland Eberle, Chief Engineer

Mr. Jack Hieb
Richardson, Wyly, Wise, Sauck & Hieb
Attorneys at Law
PO Box 1030
Aberdeen, SD 57402

Re: Response to Petition for Declaratory Ruling regarding outlet elevation on Clear Lake in Marshall County, SD, filed by Clarence Roehrich

Gentlemen:

Please be advised that the Department of Game, Fish and Parks wishes to withdraw its request for an automatic delay of the hearing scheduled for July 11, 2007, in Milbank, South Dakota, in the above matter. Accordingly, unless we are notified to the contrary, we are assuming the hearing will be held as originally scheduled.

Thank you and best wishes.

Sincerely,

Richard J. Neill
Assistant Attorney General/General Counsel
SD Department of Game, Fish and Parks

July 2, 2007

Water Management Board
SD Department of Environment and Natural Resources
PMB 2020
Joe Foss Building
523 E Capitol
Pierre SD 57501

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JUL - 3 2007

WATER RIGHTS
PROGRAM

Re: Petition for Declaratory Ruling Regarding the Outlet Elevation of Clear Lake in Marshall County, South Dakota

Dear Board Members:

My name is Todd Kolden, President of the Clear Lake Betterment Association (CLBA), and this letter is submitted as a result of our annual meeting of Association members held on June 10, 2007.

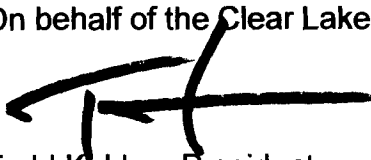
During discussion of the outlet level on Clear Lake, Association members made a motion to have a survey conducted of property owners on Clear Lake to see what the consensus is for an outlet elevation. The motion, in detail, asked for two levels to be surveyed; the current elevation of 1823.0 fmsl, and the old level of 1821.7 fmsl. We also added to the survey Clarence Roehrich's petition of 1822.5 fmsl. The CLBA board of directors agreed to conduct the survey and submit the findings to the Water Management Board (WMB) for consideration when making their decision. The CLBA board of directors have no opinion in this matter and merely followed through with the Association's request.

We mailed 203 surveys (per our list of residents on Clear Lake) on June 19 and asked that surveys be returned no later than June 30 so we could meet the July 2 deadline for submitting results to the WMB. The following is the result of our surveys through June 30:

1823.0 fmsl	30	28.0%
1822.5 fmsl	49	45.8%
1821.7 fmsl	28	26.2%
Total	107	100.0%

Thank you for your attention on this matter and for all you do for the State of South Dakota.

On behalf of the Clear Lake Betterment Association Board of Directors,



Todd Kolden, President
Clear Lake Betterment Association

Cc Jack Hieb



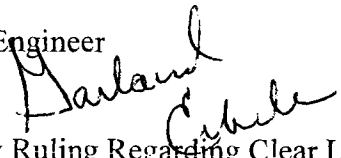
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

July 3, 2007

NOTICE

TO: Jack Hieb
Richardson, Wyly, Wise, Sauck & Hieb
PO Box 1030
Aberdeen SD 57402
and Parties of Record (see attached list)

FROM: Garland Erbele, Chief Engineer
Water Rights Program 

SUBJECT: Petition for Declaratory Ruling Regarding Clear Lake Outlet Elevation, Marshall County

In response to the notice of hearing published in the Britton Journal on June 13 and 20, 2007, petitions to intervene have been filed to the petition for declaratory ruling regarding Clear Lake's outlet elevation. A copy of all petitions received as of July 3, 2007 are enclosed to parties of record. A previous request for an automatic delay of the upcoming hearing filed by the SD Department of Game, Fish and Parks has been withdrawn. Therefore, the hearing in the matter of a declaratory ruling regarding the Clear Lake's outlet elevation will be held on Wednesday, July 11, 2007.

The Water Management Board hearing to consider the petition for declaratory ruling will be at 10:00 AM on July 11, 2007 in the Community Room, Milbank's Visitor Center, 1001 East 4th Avenue, Milbank SD. Applicable provisions of the notice of hearing published June 13 and 20, 2007 in the Britton Journal will apply.

Please contact Lynn Beck or Eric Gronlund, Water Rights Program at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General

PARTIES OF RECORD
PETITION for DECLARATORY RULING REGARDING CLEAR LAKE OUTLET ELEVATION

Petitioner

Counsel for Clarence Roehrich

Jack Hieb
Richardson, Wyly, Wise, Sauck & Hieb
PO Box 1030
Aberdeen SD 57402

PETITIONERS

David Gilbertson
215 North Huron Avenue
Pierre SD 57501

Richard J. Neill, General Counsel
SD Department of Game, Fish and Parks
Foss Building
523 East Capitol Avenue
Pierre SD 57501

Mark Steine
11706 442nd Avenue
Lake City SD 57247

Tom Brewster
PO Box 19
Sisseton SD 57262

Betty G. Carl
116220 Schlekewy Driver
Lake City SD 57247

John Kraft
11644 Schlekeway Driver West
Lake City SD 57247

Randy Knecht
40193 112th Street
Houghton SD 57449

Kent L. Duerre
Lake Twp Board Supervisor
116749 Roykota Drive
Lake City SD 57247

Todd Kolden, President
Clear Lake Betterment Association
PO Box 82
Lake City SD 57247

CERTIFICATION

I hereby certify that on July 3, 2007, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 3, 2007, regarding the hearing for petition for declaratory ruling regarding Clear Lake's outlet elevation, addressed as stated below and on the parties of record list:

Jack Hieb
Richardson, Wyly, Wise, Sauck & Hieb
PO Box 1030
Aberdeen SD 57402

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

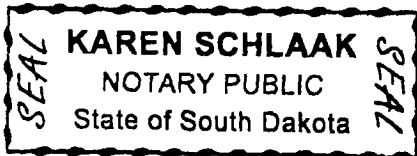
Diane Best, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501


Gail Jacobson
Water Right Program, DENR

[illegible]

Sworn to, before me, this 5 day of July, 2007.

Karen Schlaak
Karen Schlaak
Notary Public
My Commission expires April 1, 2013



PARTIES OF RECORD
PETITION for DECLARATORY RULING REGARDING CLEAR LAKE OUTLET ELEVATION

Petitioner

Counsel for Clarence Roehrich

Jack Hieb
Richardson, Wyly, Wise, Sauck & Hieb
PO Box 1030
Aberdeen SD 57402

PETITIONERS

David Gilbertson
215 North Huron Avenue
Pierre SD 57501

Richard J. Neill, General Counsel
SD Department of Game, Fish and Parks
Foss Building
523 East Capitol Avenue
Pierre SD 57501

Mark Steine
11706 442nd Avenue
Lake City SD 57247

Tom Brewster
PO Box 19
Sisseton SD 57262

Betty G. Carl
116220 Schlekewy Driver
Lake City SD 57247

John Kraft
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40193 112th Street
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Kent L. Duerre
Lake Twp Board Supervisor
116749 Roykota Drive
Lake City SD 57247

Todd Kolden, President
Clear Lake Betterment Association
PO Box 82
Lake City SD 57247



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JUL 17 2007

WATER RIGHTS
PROGRAM

OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

July 16, 2007

Eric Gronlund
Water Rights Program
Department of Environment and Natural Resources
Foss Building
Pierre, SD 57501
INTER-OFFICE

Re: In the Matter of Petition for Declaratory Ruling Regarding
Clear Lake Outlet Elevation, Marshall County

Dear Eric:

Enclosed find the original Water Management Board's Declaratory Ruling in the above-entitled matter. Please forward this document to Chairman Hutmacher for his signature.

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

A handwritten signature in cursive script, reading "Jeffrey P. Hallem".

Jeffrey P. Hallem
Assistant Attorney General

JPH:jmm

Enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

July 24, 2007

NOTICE

TO: Richard J. Neill, General Counsel
SD Department of Game, Fish and Parks
Foss Building
523 East Capitol Avenue
Pierre SD 57501
and Parties of Record (see attached list)

Jack Hieb
Richardson, Wylly, Wise, Sauck & Hieb
PO Box 1030
Aberdeen SD 57402

FROM: Garland Erbele, Chief Engineer
Water Rights Program *Garland Erbele*

SUBJECT: Declaratory Ruling Regarding Clear Lake Outlet Elevation, Marshall County

On July 11, 2007, the Water Management considered Clarence Roehrich's petition for declaratory ruling regarding the outlet elevation for Clear Lake in Marshall County. The Board did not enter a ruling that the South Dakota Department of Game, Fish and Parks acted improperly but did accept the petition to amend, clarify and validate Vested Water Right Claim No. 917-3. The Water Management Board validated Vested Water Right Claim No. 917-3 for Clear Lake in Marshall County to an outlet elevation of 1822.5 feet mean sea level. Enclosed is the order setting forth the Board's decision in this matter.

Enclosure

c: Diane Best, Assistant Attorney General
Jeff Hallem, Assistant Attorney General

PARTIES OF RECORD
PETITION for DECLARATORY RULING REGARDING CLEAR LAKE OUTLET ELEVATION

Petitioner for the Declaratory Ruling

Counsel for Clarence Roehrich

Jack Hieb
Richardson, Wyly, Wise, Sauck & Hieb
PO Box 1030
Aberdeen SD 57402

Petitions filed by:

David Gilbertson
215 North Huron Avenue
Pierre SD 57501

Richard J. Neill, General Counsel
SD Department of Game, Fish and Parks
Foss Building
523 East Capitol Avenue
Pierre SD 57501

Mark Steiner
11706 442nd Avenue
Lake City SD 57247

Tom Brewster
PO Box 19
Sisseton SD 57262

Betty G. Carl
116220 Schlekewy Driver
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John Kraft
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Lake City SD 57247

Randy Knecht
40193 112th Street
Houghton SD 57449

Kent L. Duerre
Lake Twp Board Supervisor
116749 Roykota Drive
Lake City SD 57247

Todd Kolden, President
Clear Lake Betterment Association
PO Box 82
Lake City SD 57247

STATE OF SOUTH DAKOTA

BEFORE THE WATER MANAGEMENT BOARD

IN THE MATTER OF PETITION)
FOR DECLARATORY RULING) WATER MANAGEMENT BOARD'S
REGARDING CLEAR LAKE OUTLET) DECLARATORY RULING
ELEVATION, MARSHALL COUNTY.)

Petitioner Clarence Roehrich filed a Petition for Declaratory Ruling dated May 31, 2007 regarding the outlet elevation for Clear Lake which is located in Marshall County, South Dakota. Petitioner seeks a declaration from the Water Management Board that the Department of Game, Fish and Parks improperly increased the elevation level of the outlet structure for Clear Lake in December of 2006 to 1823.0 fmsl, and that the Department of Game, Fish and Parks Vested Water Right Claim No. 917-3 be clarified or amended to include an outlet elevation of 1821.74 fmsl or alternatively at 1822.5 fmsl.

Notice of Hearing on the Petition for Declaratory Ruling was properly published. Prior to the hearing the following individuals and entities intervened: South Dakota Department of Game, Fish and Parks; David Gilbertson; Mark Steine; Betty G. Carl; Randy Knecht; Todd Kolden; Tom Brewster; John Kraft and Kent L. Duerre.

A hearing before the Water Management Board was held on July 11, 2007, in Milbank, South Dakota, at which a quorum of

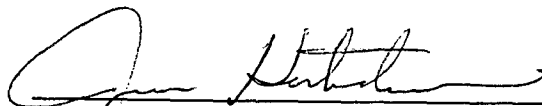
the Board was present. The hearing was held pursuant to ARSD 74:02:01:46 through 74:02:01:50. At the hearing, Petitioner, Department of Environment and Natural Resources and Intervenors presented evidence and argument for the Board's consideration.

The Board, though declining to enter a ruling that the Department of Game, Fish and Parks acted improperly, accepts the Petition for Declaratory Ruling to amend, clarify and validate Vested Water Right Claim No. 917-3. The parties, having agreed that no Findings and Conclusions need to be entered, the Board, based upon the evidence and argument presented at the hearing, and for good cause showing, declares as follows:

That the South Dakota Department of Game, Fish and Parks Vested Water Right Claim No. 917-3 is validated at an outlet elevation of 1822.5 fmsl.

Dated this 20th day of July, 2007.

SOUTH DAKOTA WATER MANAGEMENT BOARD


James Hutmacher, Chairman

CERTIFICATION

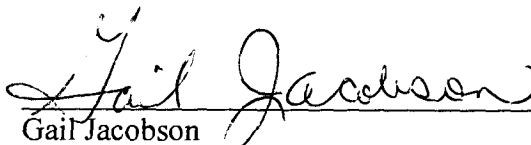
I hereby certify that on July 24, 2007, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated July 24, 2007, regarding the hearing for petition for declaratory ruling regarding Clear Lake's outlet elevation, addressed as stated below and on the parties of record list:

Jack Hieb
Richardson, Wyly, Wise, Sauck & Hieb
PO Box 1030
Aberdeen SD 57402

Richard J. Neill, General Counsel
SD Department of Game, Fish and Parks
Foss Building
523 East Capitol Avenue
Pierre SD 57501

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

Diane Best, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501
Jeff Hallem, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501



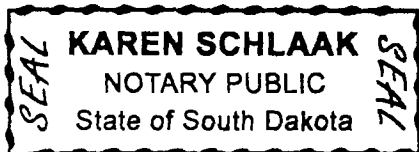
Gail Jacobson
Water Right Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 24th day of July, 2007.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013



SOUTH DAKOTA

VESTED WATER RIGHT NO. 917-3

Date of Receipt of Claim December 8, 1961.

Date of Validation July 11, 2007.

The Water Management Board validated Vested Water Right Claim No. 917-3 for the South Dakota Department of Game, Fish and Parks, Joe Foss Bldg, 523 E Capitol, Pierre SD 57501 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 917-3 authorizes impoundment of sufficient water annually to fill Clear Lake to a maximum outlet elevation of 1822.5 feet mean sea level. The outlet is located in the NE 1/4 Section 23, T126N, R54W.
2. The appropriated water is used for supplying water to Clear Lake's outlet elevation and may not exceed the amount of water needed for beneficial use for recreational use.

The water is to be used during the following annual period: January 1 – December 31.

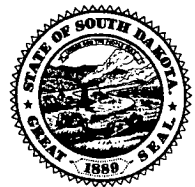
3. The priority date of the Vested Water Right is November 2, 1889.
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

WATER MANAGEMENT BOARD

By: Garland Erbele

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

AUG 03 2007
date



REISSUED
STATE OF SOUTH DAKOTA
WATER LICENSE NO. 917-3

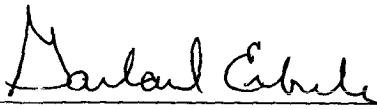
(1) The South Dakota Department of Game Fish and Parks, 523 E Capitol, Pierre SD 57501 was issued Vested Water License No. 917-3, January 24, 1963 for a right to impound 3,300 acre feet of water from dry draws, Marshall County, South Dakota for public recreation purposes. Vested Water Right No. 917-3 has a priority date of November 2, 1889.

On July 11, 2007, the Water Management Board validated Vested Water Right No. 917-3. Vested Water Right No. 917-3 is being reissued to reflect the outlet elevation and location as validated.

(2) The water supply system has been completed and water applied to beneficial use in accordance with South Dakota State Law. Pursuant to South Dakota Codified Law 46-5-30.1, the holder and/or owner of Vested Water Right No. 917-3 is issued a license, bearing a priority date of November 2, 1889. The water right authorizes impoundment of sufficient water annually to fill Clear Lake to a maximum outlet elevation of 1822.5 feet mean sea level for recreational use purposes.

The location of the outlet on Clear Lake is the NE ¼ Section 23-T126N-R54W.

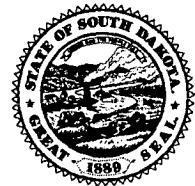
(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Vested Water Right No. 917-3.



Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

AUG 03 2007

date





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

AUG 03 2007

SD Department of Game, Fish and Parks
Jeff Vonk, Secretary
Joe Foss Building
523 E Capitol
Pierre SD 57501

Dear Secretary Vonk:

The Water Management Board has validated the enclosed Vested Water Right and Reissued Water License No. 917-3 for Clear Lake in Marshall County. This validation gives legal status to the claim and is the final document for the vested right.

As long as the water is used beneficially, as stated in the validation, State Water Laws provide that the Dept. of Game, Fish & Parks has a continuing right to sufficient water annually to fill Clear Lake to it's outlet elevation.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

c: Richard J Neill, General Counsel
SD Dept of Game, Fish and Parks



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

August 14, 2007

NOTICE

TO: Marshall County Commission
c/o Julie Hagen, County Auditor
PO Box 130
Britton SD 57430

Lake Township Board
c/o Kent Duerre
116749 Roykota Drive
Lake City SD 57247

FROM: Garland Erbele, Chief Engineer
Water Rights Program, DENR
(605) 773-3352 *Garland Erbele*

SUBJECT: Construction Activities at the Clear Lake Outlet, Marshall County.

The SD Department of Game, Fish and Parks (GFP) modified the outlet structure for Clear Lake in November 2006. The elevation of the outlet structure was raised to 1,823.0 feet mean sea level (fmsl) as established by the Water Management Board in 1982. Property owner, Clarence Roehrich, obtained permission this spring from the Marshall County Commissioners to take temporary emergency measures to control flooding of his property and prevent and alleviate flooding as set forth in South Dakota Codified Law 46-5-48. The temporary emergency facilities consisted of excavated cuts on each side of the newly modified outlet. Mr. Roehrich did not promptly notify the Chief Engineer in accordance with SDCL 46-5-48 regarding construction of the temporary emergency facilities.

On July 11, 2007, the Water Management Board validated the GFP's vested water right No. 917-3 for Clear Lake to an outlet elevation of 1822.5 fmsl. This decision came after considerable testimony on Clarence Roehrich's declaratory ruling request to permanently lower the outlet elevation to 1,821.74 fmsl.

This notice serves to inform Marshall County and Lake Township that GFP has lowered the outlet to elevation 1822.5 fmsl as directed by the Board. In addition, because temporary emergency facilities are no longer required for the immediate protection of life or property as contemplated by SDCL 46-5-48, the cuts alongside the outlet structure are no longer authorized by that statute and, if they are not filled in, will constitute an illegal water diversion under SDCL 46-5-1.1 and/or SDCL 46-5-48. The cuts must be filled in to maintain the integrity of the outlet structure. The GFP has agreed to fill the excavated cuts and is anticipating doing so possibly within the next couple weeks.

If you have any questions regarding the outlet elevation or construction activities that will soon be taking place, please contact Lynn Beck at (605) 773-3352

c: Diane Best, Assistant Attorney General
Richard Neill, Assistant Attorney General

CERTIFICATION

I hereby certify that on August 14, 2007, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated August 14, 2007 regarding Clear Lake Outlet Construction activities addressed as stated below:

Marshall County Commission, C/O Julie Hagen, County Auditor PO Box 130, Britton SD 57430
Lake Township Board, C/O Kent Duerre, 116749 Roykota Ave, Lake City SD 57247

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

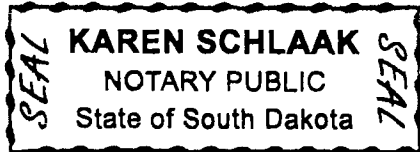
Diane Best, Assistant Attorney General, Mickelson Building
Richard Neill, Attorney for Dept. of Game Fish & Parks, Foss Building


Gail Jacobson
Secretary
Water Rights

[illegible]

Sworn to, before me, this 14th day of August, 2007.

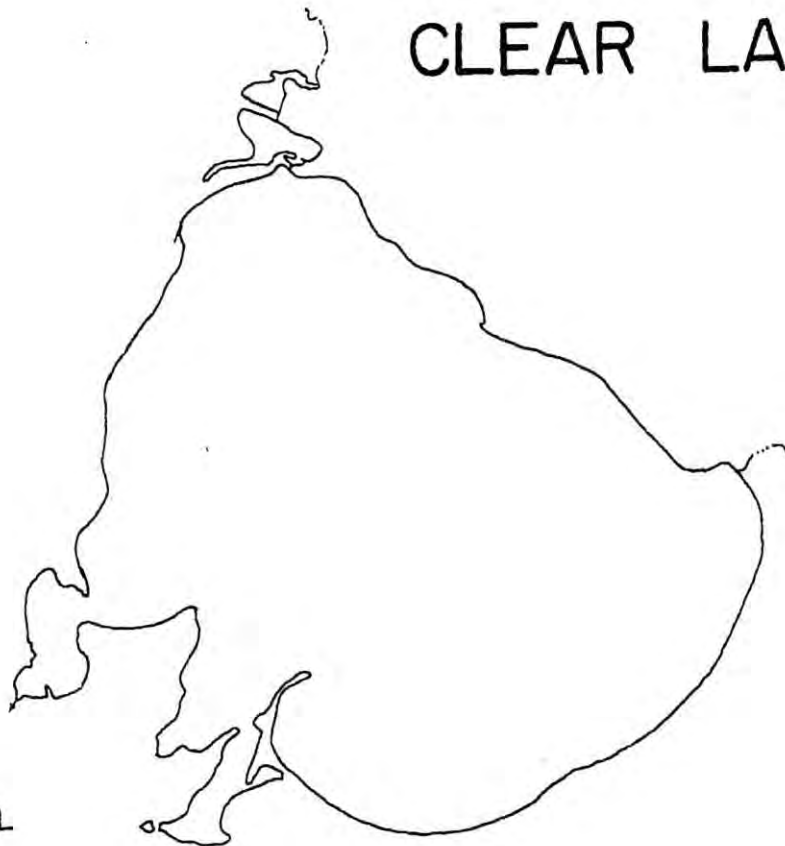
Karen Schlaak
Karen Schlaak
Notary Public
My Commission expires April 1, 2013



917-3

ORDINARY HIGH WATER MARK
INVESTIGATION FOR

CLEAR LAKE



MARSHALL
COUNTY



Department of
Water & Natural Resources

Joe Foss Building
Pierre, South Dakota 57501

November 1982

REPRODUCTIONS: REDUCTION 25:1 ROLL NO. 10 DATE MICROFILMED 11-10-82 CAMERA OPERATOR

TABLE OF CONTENTS

ABSTRACT	1
INTRODUCTION	2
INVESTIGATION.	2
CONCLUSIONS.	4
RECOMMENDATIONS.	4
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BIBLIOGRAPHY	20

RECOMMENDATIONS: RELIGION

261

ROLL NO

10

DATE MICROFILMED

CHIEF OPERATOR

CLEAR LAKE

ABSTRACT

This report contains the results of an investigation performed to determine the Ordinary High Water Mark (OHWM) for Clear Lake in Marshall County. The primary factors involved in calculating the OHWM are: shoreline tree base elevations, erosion mark elevations, outlet structure elevation, and water level elevations.

Based on the findings in this report the OHWM for Clear Lake has been determined to be 1823.7 feet mean sea level (msl).

REPRODUCTIONS

REDUCTION

1/25/77

FOL NO

10

DATE MICROFILMED

CHEN OPERATOR

INTRODUCTION

Authority and Administrator

The Water Management Board is mandated, according to SDCL 43-17-21, to establish the Ordinary High Water Mark on public lakes in South Dakota. This report contains the results of the investigation conducted by the Department of Water and Natural Resources, Water Rights Division, to determine the elevation of the OHWM and outlet structure for Clear Lake.

Explanation of OHWM

The Ordinary High Water Mark is coordinated with the upper limits of the bed of a lake. The determination of the OHWM is derived from the examination of the banks and bed of the lake. This examination is conducted to ascertain where the continuous presence and action of water has left a distinct mark; either by erosion, destruction of terrestrial vegetation, or some other easily recognized characteristic. In examining a lake for the determination of this level, it is necessary to consider the size, watershed, topography, soils and general characteristics of the lake (refer to Appendix A).

Date of Investigation

The principal field investigation for this report was conducted in May, 1982. An examination of the shoreline, banks, and vegetation of Clear Lake was performed. The shoreline areas selected for study were those least affected by individuals. Public access areas and/or gradually sloping beaches provide the best OHWM indicators.

INVESTIGATION

Location

Clear Lake is located in Marshall County within Sections 18 and 19 of T126N, R53W and Sections 12, 13, 14, 23 and 24 of T126N, R54W (refer to Appendix A).

Lake Characteristics

Clear Lake is of glacial origin, positioned centrally in the Coteau lakes outwash deposit. Its glacial origin provided a watershed of 11,960 acres and a surface area of 1,087 acres. The contributing watershed and extensive aquifer connection provide the lake with adequate recharge. Appendix A provides a summary of Clear Lake's data.

Elevation Reference

Elevations in this report are referred to a United States Coast and Geodetic Survey Bench Mark. This bench mark is located in the NE corner of the SW 1/4 of Section 18, T126N, R53W, on the SW handrail of a concrete bridge on State Highway 10, on the east end of Clear Lake. It is stamped "P62 RESET 1950", set at an elevation of 1832.460 feet msl.

OHWM Indicators

A. Shoreline Trees

Trees, which are the largest and most permanent expression of upland growth, are used to determine a relationship between the growth characteristics of the trees at various elevations and the OHWM elevation. Records of the ordinary high water levels are reflected in the well established trees along a lake's shoreline. Cottonwood, ash, and willow are the most predominant trees that grow along the shores of South Dakota's lakes. Experimentation and research have shown that most trees will not survive if water levels exceed one-half to one tree diameter below the base elevation of the tree for more than 25% of the growing season. Consideration must be given to the characteristics of the soil, slope of the ground, and the effects of water and ice on the shoreline and banks.

B. Tree Categories

Trees along the shoreline of Clear Lake are divided into three categories:

1. The first category of trees are those where their lakeside base elevation (the elevation where the soil meets the trunk on the lakeside of the tree) is below the OHWM (see Appendix B). This causes erosion of the soil and destruction and decay of the tree. The destruction and decay of the tree is caused by the zone of soil saturation smothering part of the root system. These trees survive because part of their root system is above the zone of saturation.
2. The second category of trees are those where their lakeside base elevation is from zero to one-half of a foot above the OHWM (see Appendix C). These trees show signs of butt swell and lesser degrees of erosion and destruction. Their root system is surfacely exposed and growing away from the lake.
3. The third category of trees are those with a lakeside base elevation approximately one foot above the OHWM (see Appendix D). These trees show lesser degrees of butt swell, little or no root erosion, and some surface roots.

C. Erosion Marks

Soil erosion marks on Clear Lake were found between elevations of 1823.6 and 1824.0 feet msl.

Outlet Structure

The outlet structure is a concrete weir located in the NE 1/4 of the NE 1/4 of Section 23 T126N, R54W. This structure is approximately 30 feet wide and set at an elevation of 1821.8 feet msl. On an average, the OHWM is 0.5 feet above the outlet with the usual range being from 0.3 feet to 0.8 feet. The OHWM for Clear Lake is 1.9 feet above the outlet structure.

The OHWM, being 1.9 feet above the outlet, indicates that at some point in time the water level of Clear Lake was maintained at an elevation higher than

the present outlet elevation. This appears to be attributed to changes in the natural outlet channel.

Examination of the downstream channel shows considerable trenching for about a mile down stream from the existing structure. See USGS topographic map in Appendix A. The deepest trenching occurs about 3/4 of a mile down stream from the present outlet. At this point three to five feet of material has been removed from the natural channel.

Looking at the existing topography and soil characteristics, it appears that this point is the location of the natural outlet for Clear Lake. The soil changes from a relatively level marsh soil to a steep sloped clay, gravel, rocky, outwash material. See Appendix A Soils Map.

Water Level Elevations

The water level elevation for Clear Lake was 1819.63 feet msl on May 5, 1982, at the time of this investigation. The water level was 2.2 feet below the outlet structure.

Appendix A, Table 2, shows a record of water level record for Clear Lake.

Water Rights

There has been one Water Right issued relating to the waters of Clear Lake. It is a Vested Water Right claimed by the Department of Game, Fish and Parks.

This Vested Right, No. 917-3, is for the annual recharge of 3,300 acre feet or as required to fill to outlet elevation. The priority date for this Vested Right is 1889.

CONCLUSIONS

Based on the lakeside base elevations of trees and erosion lines, the OHWM has been determined to be at an elevation of 1823.7 feet msl.

The present outlet elevation of 1821.8 feet msl does not reflect the necessary water level required to establish an OHWM at 1823.7 feet msl. The water level for Clear Lake would have had to been maintained at approximately 1823.0 feet msl for a sufficient amount of time to establish the OHWM at 1823.7 feet msl.

RECOMMENDATIONS

Recommendations to the Water Management Board by the Water Rights staff.

1. That the Ordinary High Water Mark for Clear Lake be established at 1823.7 feet msl.

2. That Vested Water Right No. 917-3 be clarified to allow the water level at Clear Lake to be maintained at an elevation no higher than 1823.0 feet msl.

Jerry E. Steffen

Jerry E. Steffen, Natural Resource Engineer
Water Rights Division
Department of Water and Natural Resources

For information regarding OHWM bench marks established at Clear Lake, contact the Department of Water and Natural Resources, Water Rights Division, Pierre, South Dakota.

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) ss

Swore to, before me, this 7th day of December, 1982.

Louis L. Ries
Notary Public

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

APPENDICES

Appendix A.....	Clear Lake Data
	Table 1 Data Summary
	Table 2 Water Level Records
	County Map
	Watershed Map
	Bathymetric Map
	Topographic Map
	Soils Map
Appendix B.....	Photos of Trees Below OHWM
Appendix C.....	Photos of Trees At OHWM
Appendix D.....	Photos of Trees Above OHWM

Appendix A

Clear Lake Data

Table 1 Data Summary

Surface Area.....	1087 acres ¹
Watershed Area.....	11,960 acres ¹
Maximum Depth.....	20 feet ¹
Mean Depth.....	12 feet ¹
Volume.....	13,044 acre-feet ¹
Aquifer Connection.....	extensive ²
Outlet Elevation.....	1821.8 feet msl
Maximum Outlet Elevation.....	1823.0 feet msl
CHWM Elevation.....	1823.7 feet msl
Water Rights.....	917-3 for 3,300 acre-feet

GF&P for Annual recharge
priority date 1889

REPRODUCTION, REDUCTION 35% ROLL NO. 10 DATE MICROFILMED 1-1-76 OPERATOR

Table 2 Water Level Records

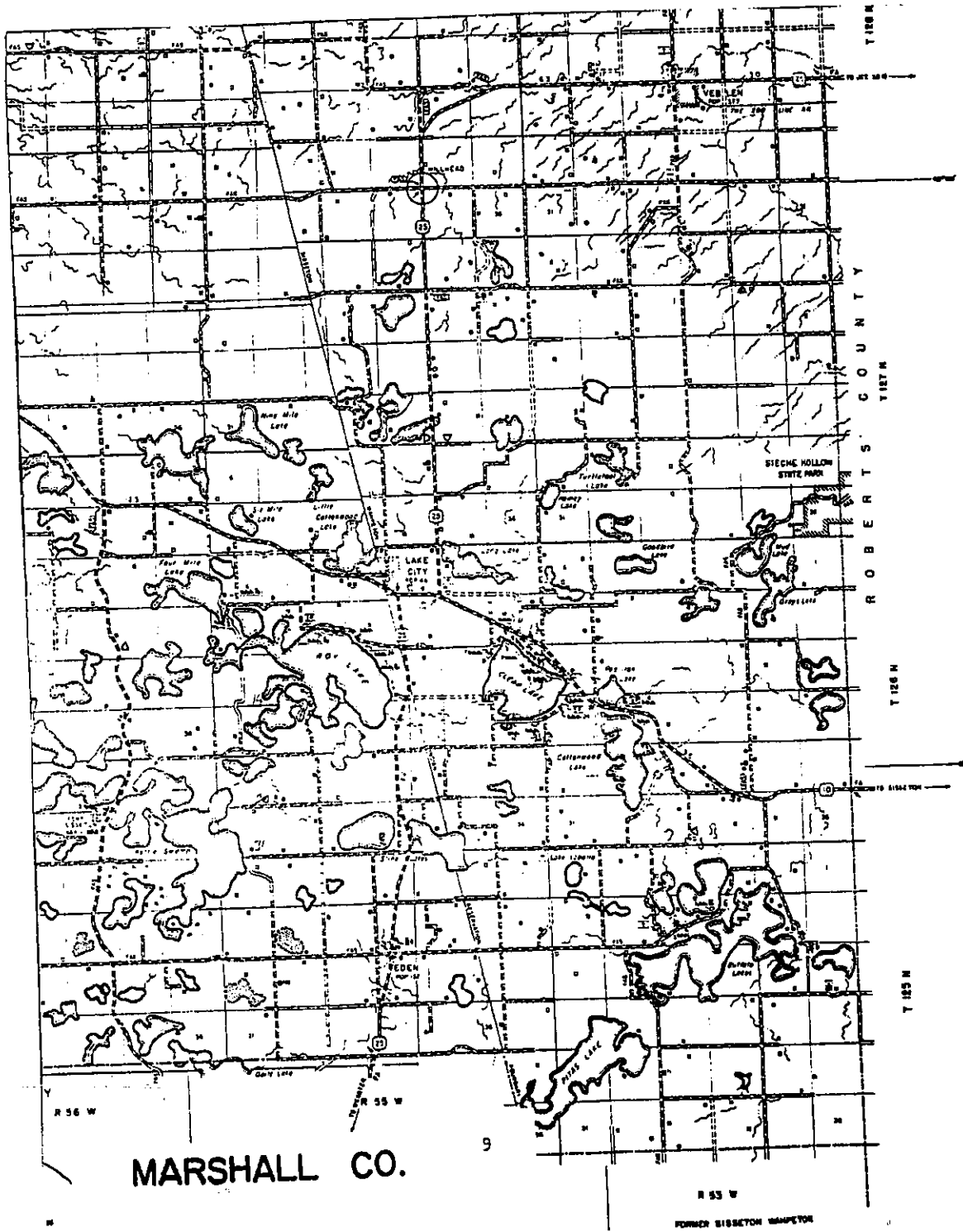
Clear Lake

<u>Year-Month</u>	<u>Water Level</u>	<u>Year-Month</u>	<u>Water Level</u>	<u>Year-Month</u>	<u>Water Level</u>
1936 May	1806.0	1946 May	1817.1	1960 Apr	1817.8
1936 Nov	1806.0	1946 Nov	1820.4	1962 F	1820.8
1937 May	1810.6	1947 May	1821.5	1963 S	1821.3
1937 Oct	1808.8	1948 May	1821.2	1964 F	1823.0
1938 June	1808.0	1949 May	1820.4	1965 F	1821.8
1938 Oct	1807.4	1949 Nov	1819.0	1966 S	1822.4
1939 May	1808.1	1950 May	1820.8	1966 F	1822.0
1939 Nov	1806.8	1951 Jan	1821.0	1967 F	1821.0
1940 May	1807.3	1951 May	1822.2	1968 S	1822.5
1940 Oct	1805.0	1952 Feb	1821.7	1968 F	1821.2
1941 June	1807.5	1952 May	1823.6	1969 S	1823.3
1941 Nov	1806.8	1952 Oct	1821.1	1969 F	1820.9
1942 May	1807.5	1953 Nov	1820.9	1970 S	1821.2
1942 Nov	1809.1	1954 Apr	1821.3	1970 F	1820.6
1943 June	1816.5	1954 Sep	1820.9	1971 S	1822.4
1943 Nov	1817.9	1955 May	1820.2	1972 S	1822.5
1944 Jul	1815.6	1956 May	1819.7	1973 S	1821.74
1944 Nov	1820.6	1956 Nov	1818.4	1973 F	1820.81
1945 May	1822.0	1957 Sep	1818.8	1975 S	1819.85
1945 Oct	1820.2	1959 Apr	1818.3	1975 F	1818.94
				1976 F	1816.91
				1982 S	1819.6
				1982 F	1818.8

S - Spring
F - Fall

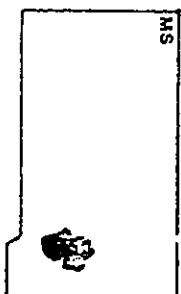
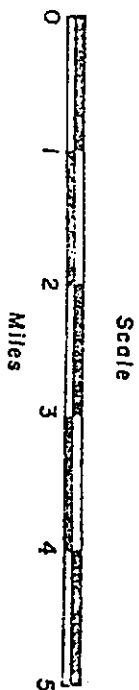
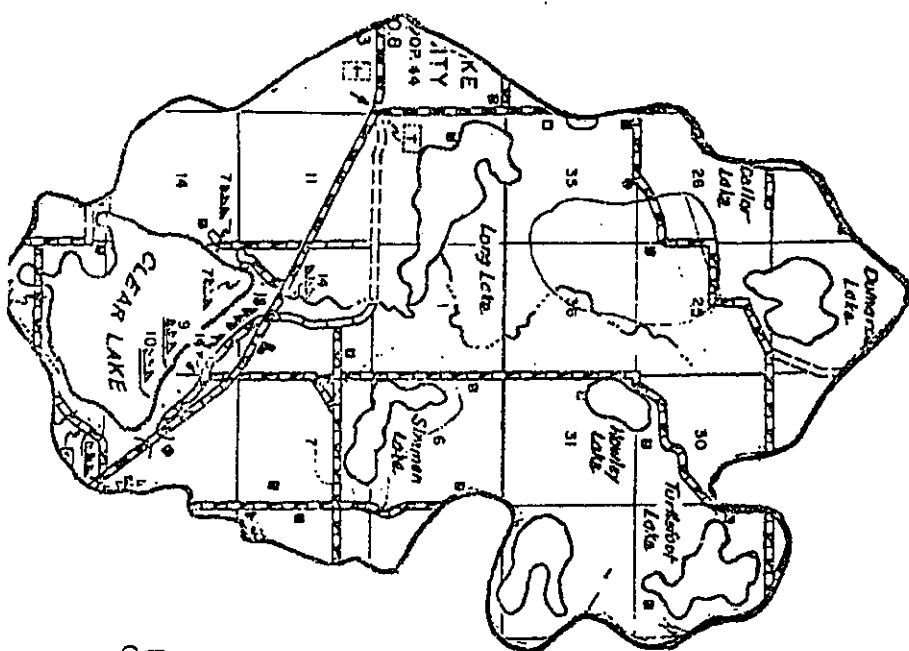
"A Plan for the Classification, Preservation, and Restoration of lakes in Northeast South Dakota"

REDUCTIONS: REDUCTION 25.1 ROLL NO 10 DATE MICROFILMED 2-22-90



Clear Lake

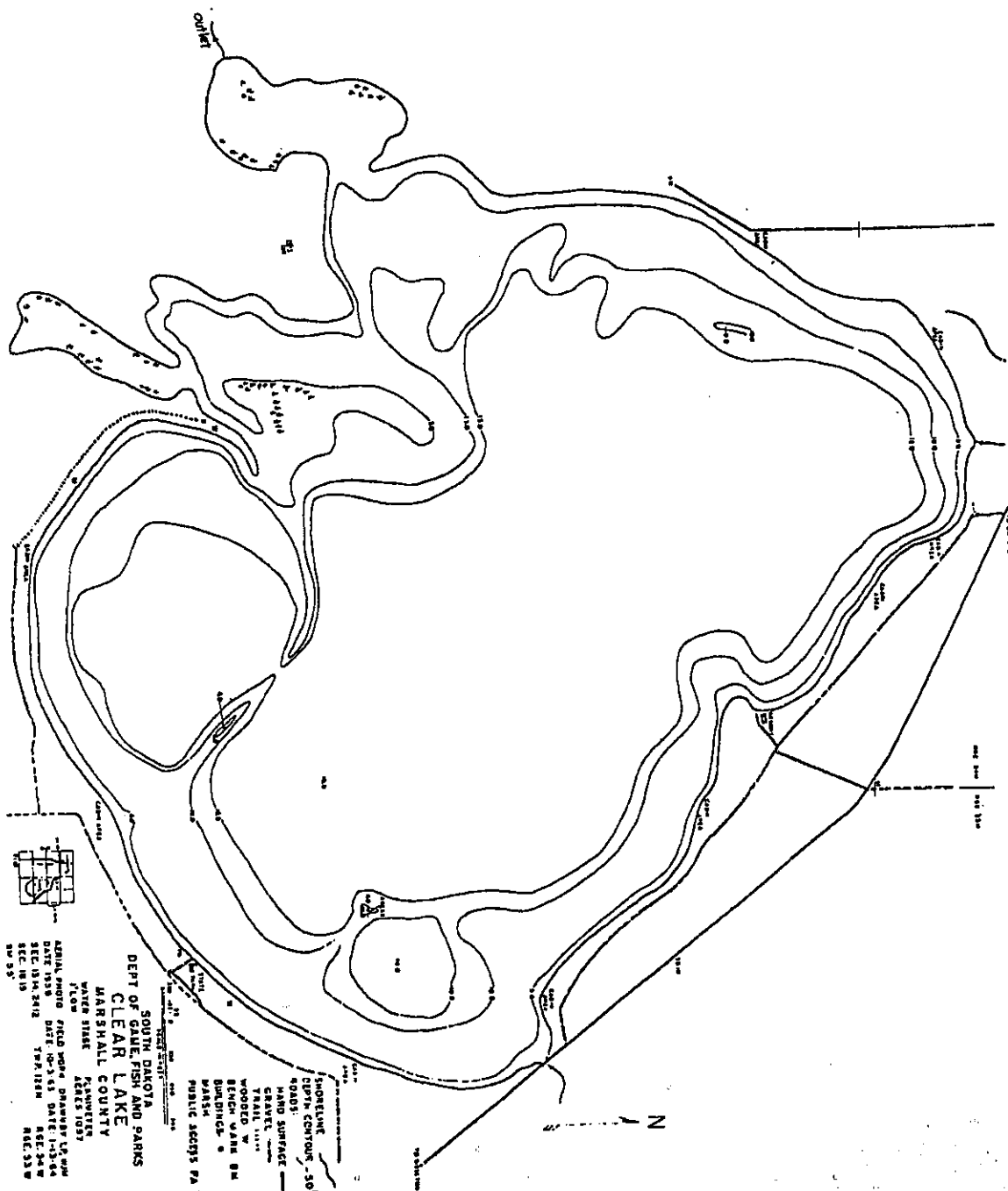
Surface area 1087 acres
Watershed 11682 acres



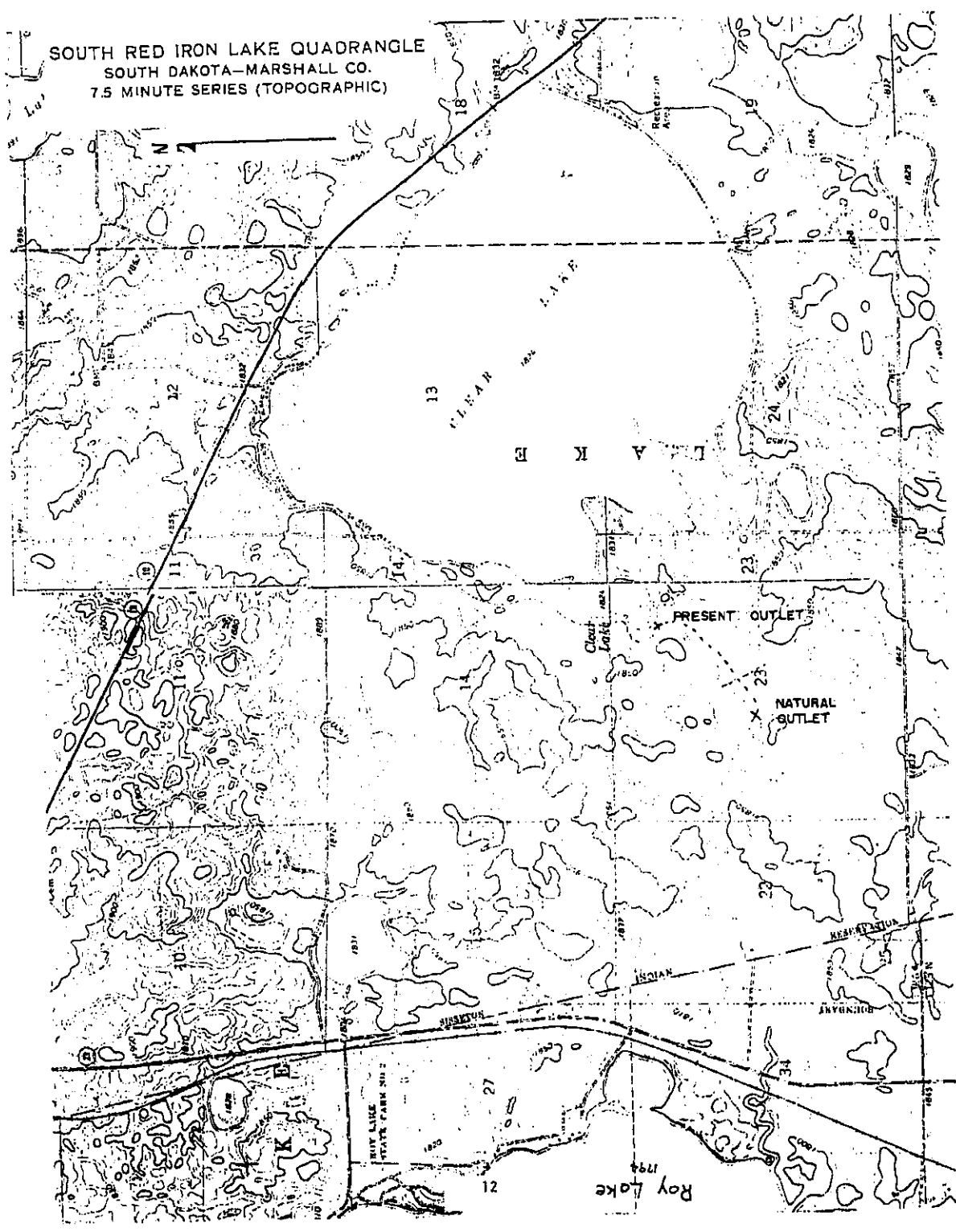
REPRODUCTIONS: REDUCTION 45:1 ROLL NO. 10 DATE MICROFILMED 2-22-70

CAMERA OPERATOR

BATHYMETRIC MAP



11



SOUTH RED IRON LAKE QUADRANGLE
SOUTH DAKOTA-MARSHALL CO.
7.5 MINUTE SERIES (TOPOGRAPHIC)

REPRODUCTION, REDUCTION 25% / ROLL NO 10 / DATE MICROFILMED 11-10-64 / OPERATOR

APPENDIX B
TREES BELOW THE OHWM

The photographs that follow are a few of the trees which fall below the OHWM, respectively.



PHOTO NO. 1 Description: Cottonwood, Dia. 2.0 ft., Age 70 years
Base Elevations: Lakeside----1823.2
Landside----1824.1

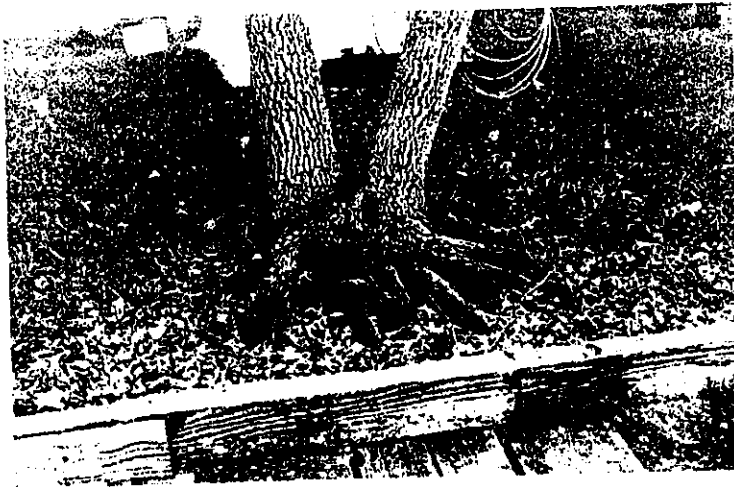


PHOTO NO. 2 Description: Ash, Dia's. 0.6 ft & 0.7 ft, Age 40 years
Base Elevations: Lakeside----1823.6
Landside----1824.1

REPRODUCTIONS.

REDUCTION

ROLL NO.

DATE MICROFILMED

CAMERA OPERATOR



PHOTO NO. 3

(tree in background)

Description: Cottonwood, Dia. 2.5 ft, Age 80 years
 Base Elevations: Lakeside----1823.6
 Landside----1824.9

(trees in foreground)

Description: Elm, 0.7 ft and 0.6 ft, Age 35 years
 Base Elevations: Lakeside----1823.6
 Landside----1824.8

REPRODUCTIONS,

REDUCTION

35:1

ROLL NO

6

2-22-90
 DATE MICROFILMED

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 CAMERA OPERATOR

APPENDIX C

The following photos are a sample of indicators which are at or close to the OHWM.



PHOTO NO. 4

(trees in background)

Description: Cottonwood, Dia's. 1.2 & 1.0 ft, Age 35 years

Base Elevations: Lakeside----1823.8

Landside----1825.2

(tree in foreground)

Description: Cottonwood, Dia. 1.3 ft, Age 45 years

Base Elevation: Lakeside----1823.7

Landside----1824.9



PHOTO NO. 5

Description: Elm, Dia. 0.5 ft, Age 25 years

Base Elevation: Lakeside----1823.8

Landside----1824.8

RETRIBUTION

REDUCTION

KILL NO

DATE MODIFIED

CAMERA OPERATOR



PHOTO NO. 6

(foreground)

Description: Cottonwood Stump, Dia. 2.9 ft, Age 70 years
 Base Elevation: Lakeside----1823.5
 Landside----1824.6

(trees in background)

Description: Elm, Dia's. 0.5, 0.6, 0.7 & 0.8 ft, Age 35-40 years
 Base Elevation: Lakeside----1823.8
 Landside----1825.3

REPRODUCTIONS.

REDUCTION

28:1

ROLL NO

10

DATE MICROFILMED

CAMERA OPERATOR

APPENDIX D

The remaining photo's are of trees which fall above the OHWM.



PHOTO NO. 7 Description: Cottonwood, Dia. 1.5 ft, Age 60 years
 Base Elevation: Lakeside----1824.0
 Landside----1824.6



PHOTO NO. 8 (foreground)
 Description: Cottonwood, Dia. 1.1 ft, Age 45 years
 Base Elevation: Lakeside----1823.8
 Landside----1824.4
 (middle) Description: Elm stump, Dia 0.9 ft, Age 55 years
 Base Elevation: Lakeside----1824.0
 Landside----1825.4
 (background) Description: Cottonwood, Dia. 1.5 ft, Age 60 years
 Base Elevation: Lakeside----1825.1
 Landside----1826.1

REPRODUCTIONS.

REDUCTION

ROLL NO

DATE MICROFILMED

CAMERA OPERATOR

CAMERA OPERATOR



PHOTO NO. 9 (stump in foreground)
Description: Cottonwood, Dia. 1.2 ft, Age 45 years
Base Elevation: Lakeside----1823.6
Landside----1824.5
(middle trees) Description: Cottonwood, Dia's 1.7 ft, Age 65 years
Base Elevation: Lakeside----1823.9
Landside----1825.9
(background) Description: Cottonwood, Dia 1.7 ft, Age 65 years
Base Elevation: Lakeside----1824.9
Landside----1826.4



PHOTO NO. 10
Description: Cottonwood
Dia. 1.9 ft, Age 55 years
Base Elevation:
Lakeside---1823.9

BIBLIOGRAPHY

- ¹ Ronald M. Koth, South Dakota Lakes Classification and Inventory. South Dakota Department of Water and Natural Resources, Office of Water Quality, July 1, 1981; pp 533-539.
- ² States Lakes Preservation Committee, A Plan for the Classification, Preservation, and Restoration of Lakes in Northeast South Dakota, July, 1977; pp 104. 178.
- ³ Loren D. Schultz, "Soil Survey of Marshall County, South Dakota", United States Department of Agriculture, Soil Conservation Service and United States Department of Interior Bureau of Indian Affairs, in cooperation with South Dakota Agricultural Experiment Station; issued June, 1975, sheet #47.

B82702JS.wr

AGENDA

Water Management Board Meeting

December 9 & 10, 1982

PLACE: Dakota Room, Sheraton Inn, 1400 NW 8th Ave, Aberdeen, South Dakota

THURSDAY, December 9, 1982

- 8:30 am Call to Order
- Approval of October 7 & 8, 1982 Minutes
- Set April Meeting Time & Date April 14 & 15 in Sioux Falls suggested
- Status & Review of Water Rights Litigation
- 9:00 am Administer Oath to Water Rights Staff
- Cancellation Considerations (see attached list)
- "Vested Right" Considerations
- Requests for Extension of Time
- 9:45 am Break
- 10:00 am Introduction of Board, Legislative Oversight Committee and Water Rights Staff
- Requirements before Water Permit Applications can be Advertised and at the Time of the Hearing
- Water Permit Application Hearings (see attached list)
- 12:00 noon Lunch
- 1:00 pm Conclusions of Law, Findings of Fact & Final Decision
- 1767-2 Billy Joe & Vlasta Kirk
- Water Right Application Hearings (continued)
- 1:30 pm Hearing on Order by Chief Engineer to Remove Rock Dam located south of Freeman in NW 1/4 Section 36, R56W, T98N
- 2:30 pm Break
- 2:45 pm Consideration of Motion for Order Compelling Discovery with regard to Proposed Cancellation of Bernard Bruch, Antonette Pelkey and Truman Quail Water Right Filings
- 3:00 pm Hearing on Proposed Amendments to General Rules 74:02:01
- 4:30 pm Whitewood Creek Discussion (Water Quality Division)
- Recess for Day

FRIDAY, December 10, 1982

- 9:00 am Reconvene
- Establishment of Ordinary High Water Marks & Clarify Department of Game, Fish & Parks and other Water Rights
- 917-3 Clear Lake - Marshall County
- 946-3 Buffalo Lakes & Almos Lake - Marshall County
- 915-3 Roy Lake - Marshall County
- 930-3 Enemy Swim Lake & Campbell Slough - Day County
- 926-3 Pickerel Lake - Day County
- 639-3 Waubay Lakes (North & South) - Day County
- 636-3 Spring Lake - Day County
- 635-3 Hillebrands Lake & Swan Pond - Day County
- Other Business
- Adjourn

Mr. Harms MOVED, SECONDED by Mr. Walter that on page 37, Section 74:02:01:43.02 the second sentence the word "driller" should be changed to "driller's". MOTION CARRIED.

Mr. Seidel further commented he felt the regulation in 74:02:01:08:01 which states that the driller has 30 days after the completion of the well to submit the well construction report was tough for him. Mr. Seidel stated that he does that type of bookkeeping during his slack time of the year which is usually around this time of the year and not during the summer months when he is the busiest.

Mr. Rylance stated he attended a committee meeting of the South Dakota Irrigators Association the previous day. At that meeting the committee suggested proposing to the Legislature some sort of bonding for well drillers in the future.

Mr. Harms MOVED, SECONDED by Mr. Arend to ADOPT Chapter 74:02:01 General Rules as AMENDED. MOTION CARRIED.

Meeting recessed at 4:45 pm. Meeting reconvened at 9:15 am, December 10, 1982.

HEARINGS TO ESTABLISH ORDINARY HIGH WATER MARKS & CLARIFY DEPARTMENT OF GAME, FISH & PARKS WATER RIGHTS

Bob Timm gave a brief legal explanation of what the Board is required to do to establish an Ordinary High Water Mark. The purpose of the meeting is not to take away any property right of the citizens of the State nor is the Board present to adjudicate property rights. The Board will establish the elevation of a line which by Law is already there.

CLEAR LAKE

Jerry Steffen presented the report on Clear Lake (copy on file). Mr. Steffen read the recommendations by the staff on Clear Lake.

Vice-chairman Rylance administered the oath to Jack Opitz.

Mr. Opitz stated he worked with the Department of Game, Fish and Parks. Mr. Opitz read a statement by the Department Secretary into the record (copy on file). The statement concurred with the recommendation of the staff.

Wallace R. Brantseg stated he was an attorney representing the South Clear Inc. and the Clear Lake Association.

Mr. Brantseg stated Clear Lake Association was organized on November 30, 1982.

A group of over 40 people assembled at the meeting. They thought for the best interest of Clear Lake they should form an association. That group of people wanted Mr. Brantseg to convey that they unanimously agree with the findings in the report of the staff. They also recommended to the Board that the outlet elevation be moved upwards 1.2 feet to maintain the ordinary high

RECORDS: REDUCTION 25.1
ROLL NO. 10
DATE MICROFILMED 1-26-79

OPEN OPERATION

water marka 1823.7 feet above sea level. The group felt that was the best elevation for the lake. It has only been at that elevation a few times. They disagree with the statement by Game, Fish & Parks that the water will assist Roy Lake down the line that much. If it is a legal mark established by this Board as determined by the Legislature, then the Board should do everything to implement the water level. They are asking as a group that the Board raise the outlet elevation in order to maintain the 1823.7 feet recommended by the study.

Mr. Steffen stated in order to maintain the present OHWM the Game, Fish and Parks Water Right must be clarified. They are charged with managing the bed of the lake. The Board should set the maximum level for an outlet. The water level cannot be raised above the maximum outlet elevation because it will take property from the riparian owners.

Mr. Doyle stated Mr. Steffen's recommendation is that the outlet be no higher than 1823.0. The Game, Fish and Parks Department does have a water right which has been recognized by the Board. If Game, Fish and Parks wanted to leave the level lower than that, it would be up to Game, Fish and Parks. If the people wanted the outlet structure raised they would have to go to Game, Fish and Parks to get the level changed. The staff is concerned that the outlet structure not be set higher than the elevation Mr. Steffen has determined.

Mr. Brantseg stated he disagreed with counsels position. If the Board has any teeth in the law, his interpretation is if the Board sets a level at 1823.0, then to carry that mandate out, the Board must do something to implement it. This Board should tell Game, Fish and Parks that the outlet level must be raised by the recommended 1.2 feet. This Board has the power and mandate from the Legislature to see that the water level is set and maintained.

Mr. Opitz gave the Board a little background on Clear Lake which took place about 6 years back. There was a problem on the lake at that time. Mr. Opitz stated he thought the water level was too high. At that time, a hearing was held at Britton, South Dakota. There were people present from both sides. Some wanted the water level raised, others wanted it lowered. It was decided the structure should be left where it was in the 40's or 50's which is at the level 1821.9.

Vice-chairman Rylance administered the oath to Jerry Siegel.

Mr. Siegel stated that his sub-district was involved in the establishment of the Ordinary High Water Marks program. The question of the relative elevations of the outlet structure and the OHWM may be explained by the following comment. If the Board's findings are typically through the hydrology that you have out flow from the lake, then essentially the outlet structure elevation has to be below the OHWM or in effect they would be flooding and taking private property. If there is no outflow from the lake then it does not make that much difference.

Dave Gilbertson stated he was an attorney representing his wife who owns property on Clear Lake. Mr. Gilbertson questioned if the Ordinary Low Water Mark was going to be established. It is the mandate of the law that the

Board has authority to establish the OHWM. If Game, Fish and Parks has the authority to operate within the limits of the maximum set, why not set a bottom too? Why not put a limit on the thing?

Vice-chairman Rylance administered the oath to Albert Eberhart.

Mr. Eberhart stated he was representing Clear Lake as chairman of the South Clear Lake Association. Mr. Eberhart stated he has owned property around the lake for several years. The lake level is really low making it difficult for boats to motivate. There are cuts of sand. When the lake drops appreciably, which right now is 5 feet, it can cause accidents. In reference to the comment made on the Britton meeting, the night of the meeting there was present Game, Fish and Parks, Indian Bureau and the Engineers from Pierre and the people representing South Clear Lake. The bank was raised approximately 6 inches which brought up the water level very nicely. To confirm the fact that there was considerable agreement to the raising of the lake, there was a petition brought around. The petition was signed by people who have property. There were approximately 200 signatures that stated that they were in favor. After this thing took hold, some Game, Fish and Parks authorities took it upon themselves to circulate a petition and did a lot of talking. They went around and asked some of the very people who first wanted to raise it to reverse their opinion. That evening there was a lot of feeling that by raising the lake they would cause too much erosion. Now the very people who asked to have the decision reversed and have it lowered are now coming and asking to get the lake level where it was. They worked hard to get the level raised and then they came in there and took it out. Now they are begging to have it put back in. Since 1972 when Game, Fish and Parks went in and tore out the six inches, the water level has been down ever since. The Lake does not seem to want to replenish itself. As a group they would like to advocate to keep the people and residents happy by bringing the lake level back to where it was then.

Jerry Siegel stated when they establish an OHWM they are trying to establish how mother nature operates the lake. If there are parties that are interested in raising the lake and establishing an outlet elevation whereby during certain ordinary periods that lake elevation will exceed that mark, that can be done. However, whomever effects those works to make the lake operate above that level must secure easements from all the property owners around the lake otherwise it would constitute taking private property around the lake.

Mr. Harms stated he did not feel that anybody is implying that if the lake elevation is at 1823.0 that it will raise the OHWM above 1823.7.

Meeting recessed at 10:10 am.

Meeting reconvened at 10:15 am.

Mr. Arend MOVED, SECONDED by Mr. Walter that the Ordinary High Water Mark for Clear Lake be established at 1823.7 feet msl. That Veated Water Right No. 917-3 be clarified to require the outlet at Clear Lake to be at an elevation of 1823.0 feet msl.

Mr. Harms stated he agreed with the elevation of the recommendation of the ORWM. He agreed with the maximum elevation of the outlet structure. Mr. Harms stated he did not believe the Board has authority to direct the Game, Fish & Parks Department to maintain it at that elevation. When an irrigation permit is granted, the Board may allow the applicant to put 10 acre feet of water on the crops, but they do not require him to do that. They allow him to manage that water resource according to his own business. If the citizens want to approach Game, Fish and Parks to raise the outlet structure, then that is an issue between the two of them.

Mr. Arend commented as to what authority Game, Fish & Parks would have to raise the outlet, if this Board did not establish at least the maximum level that they can set it at.

Mr. Harms stated he agreed with setting a maximum level, what he did not agree with was the portion of the motion which states they have to maintain the water at that level.

Mr. Arend stated by establishing the level of the weir that would mean that it cannot be any higher. They cannot control the rain and the runoff. That is done by nature. Mr. Arend stated he would like to maintain the high level.

Mr. Timm stated the Board does have the authority to set the outlet weir level.

In answer to a question from Mr. Harms, Mr. Ryland stated they would have to maintain the weir level, not the water level.

Mr. Arend called the question. MOTION CARRIED with Mr. Harms voting NO.

Mr. Ryland stated for clarification purposes that the Board set the ORWM at 1823.7 and the weir level was set at 1823.0. By weir they mean outlet structure.

BUFFALO AND ALMOS LAKES

Jerry Steffen presented the report on Buffalo and Almos Lakes (copy on file). Mr. Steffen read the recommendations by the staff on the lakes.

Mr. Opitz read a statement by the Department of Game, Fish and Parks Secretary into the record (copy on file). The statement concurred with the recommendations of the staff.

In reference to the hydrology of the lakes Mr. Steffen stated that North and South Buffalo are connected by a culvert through the road. The culvert is approximately one half foot below the outlet structure elevation on Almos Lakes. This is not the controlling structure of this lake system. It is just a waterway between the two so that a road could be put in between the lakes. Probably before the road was put in, the lakes when they were full were connected surficially in that area. Between North Buffalo and Almos Lakes there is a channel that drains high waters when the two lakes are surficially connected.

RECOMMENDATIONS: REDUCTION 25.7
ROL NO. 10
DATE MICROFILMED
CHINA OPERATOR



DENR
SOUTH DAKOTA

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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Memo to File

Clear Lake in Marshall County

VWR No. 917-3

The OHWM was set by the Water Management Board on December 9 & 10, 1982.

OHWM elevation 1823.7 fmsl NGVD29

The outlet elevation was set by the Water Management Board on December 9 & 10, 1982.

Outlet elevation 1823.0 fmsl NGVD29. The outlet elevation was revised to 1822.5 fmsl by the Water Management Board on July 11, 2007.

Vested Water Right No. 917-3 was validated by the Water Management Board on July 11, 2007.