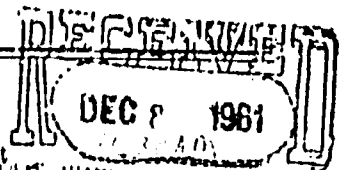


No. 924-3Water Division No. 3 Big Sioux River District
(Blanks to be Filled by the Engineer for the W. R. C.)

VESTED RIGHT **APPLICATION FOR PERMIT**

To Appropriate Water within the State of South Dakota

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

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

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

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

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

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

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

2. Name of diversion work BIRKE LAKE - Marshall County
As required To fill lake to outlet level - approximately 390
 3. Amount of water claimed acre feet per year cubic feet per second
 4. Source of water supply DRY DRAW
 5. Location of point of diversion None indicated
 _____ 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. 6, 7, R., T. 125, 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, flum, pumping plant, etc.)

II. Dimensions of works. Information requested not applicable. Birke Lake is a

(a) Dam: Height meandered lake. Maximum depth is approximately 15 feet

feet; length at bottomfeet; length at top

.....feet; thickness at bottomfeet; thickness at top

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

material used in construction

(b) Reservoir: Capacity when filledacre feet. Surface area at highwater mark 130acres.

DEPTH AT OUTLET-Feet	SURFACE AREA AT EACH DEPTH AT OUTLET—ACRES	ACRE-Feet CAPACITY

(c)* Head gate: Widthfeet; heightfeet;

Material

(d) Canal: Total lengthmiles.

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

(Give dimensions where reductions in size are made.)

10. Time required for completion of workyears. Not applicable - a meandered lake

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

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

STATE OF SOUTH DAKOTA

County 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 7 day of December 1961

Notary Public (or other qualified officer.)

Remarks by State Water Resources Commission:

"Vested right" claimed

STATE OF SOUTH DAKOTA
County of HUGHES ss.

Pierre, South Dakota,

JANUARY 25, 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:

Quinn Jones
Chief Engineer, Executive Officer

Number of permit

924.3

Date of first receipt of application

DECEMBER 8, 1961

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

19

Date of receipt of corrected application

19

Date from which applicant may claim right

JANUARY 25, 1889, 1963

Approved

JANUARY 25, 1963

Recorded in Book

8

Page 12

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~~

 , 19

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

 , 19

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

completed

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 390 acre feet annually ~~cubic feet per second; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually~~

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

25th

day of

JANUARY

1963

State Water Resources Commission

By:

Quinn Jones

Chief Engineer, Executive Officer

Certificate of Construction issued

JANUARY 25, 1963

Water License issued

JANUARY 25, 1963

STATE OF SOUTH DAKOTA

WATER LICENSE No. . . . 924-3 . . .

WHEREAS, On the 8th day of December A. D. 1961
~~the Department of Game, Fish and Parks~~
 of Pierre County of Hughes and State of
 South Dakota Vested Right duly made application (No. 924-3) to us for a permit to use 390 acre feet
~~cubic feet~~ of the waters of a dry draw annually
 County of Marshall, State of South Dakota, for public recreation
 purposes; and

WHEREAS, On the 25th day of January A. D. 1963
Vested Right Permit No. 924-3 was issued to said applicant for the diversion of said water, recognizing
 the completion of the works of diversion therein described ~~xxxxxx~~ xxxxxx
~~xxxxxx~~ and for ~~xxxxxx~~ application to beneficial use of said
 water ~~on or before the~~ xxxxxx ~~xxxxxx~~
 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 390 acre feet
annually ~~xxxxxx~~ of said waters, as evidenced by our Certificate No. 924-3
 dated January 25, 1963 confirming the completion of works of sufficient capacity for
 diverting and conveying to the place of intended use 390 acre feet annually
~~xxxxxx~~ of water, with date of
 priority of 1889 ~~xxxx~~ and,

WHEREAS, On the 8th day of December A. D. 1961
 proof was duly made of the application to beneficial use of 390 acre feet annually
~~public use~~ of said water;
to be used in place for public recreation

NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota,
We hereby grant and confirm to -----The Department of Game, Fish and Parks-----
of -----Pierre----- the holder----- and owner----- Vested Right
of said Permit No. -----924-3-----
a water right, dating from -----1889----- to the use of -----320 acre feet
of ~~the waters of~~ -----A dry draw----- annually
in the County of -----Marshall----- and State of South Dakota, or so much thereof as may be
necessray for the purposes hereibelow mentioned, to be diverted at -----point in the NE 1/4 NW 1/4, Section 6,
-----T 125N, R 53W-----
and ~~and be stored in place~~ -----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 -----21th----- day of -----January----- A. D. Nineteen
Hundred and -----Sixty-Three-----

State Water Resources Commission

By:

J.W. GRIES, 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. 924-3Water Division No. 3 BIG STOUX Water District
RIVER**Certificate of Completion of Works**

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That the Department of Game, Fish and Parksof Pierre, County of Hughes, and State of
South Dakota, the holder Vested RightNo. 924-3, bearing date of priority of 1839, authorizing the diversion of390 acre feet annually of the waters of a dry drawCounty of Marshall, State of South Dakota, at point in theNE 1/4, Section 6, T. 12N, R. 5Wfor Public recreation

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

completion of the works of diversion set out and described in said Permit; that said works are recognized ascondition for diverting and conveying to the place of intended use 390 acre feet annually ft.per second of water; and that the lands proposed to be irrigated by the use of said water are described as follows,to-wit: to be used in place for public recreationWitness my hand this 25th day of January A. D. 19 63

State Water Resources Commission

By:

J.W. GRIMES

Chief Engineer, Executive Officer

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, S. Dak.

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 - None indicated

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

Ans. A meandered lake - depth 15 feet - 130 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 390 acre feet per year

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

Ans.

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

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

(Sign) *E. Johnson*

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Pierre, County of Hughes

State of South Dakota, on this 7 day of December A. D. 1961
E. Johnson
Witnesses. 11-6-65

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 _____

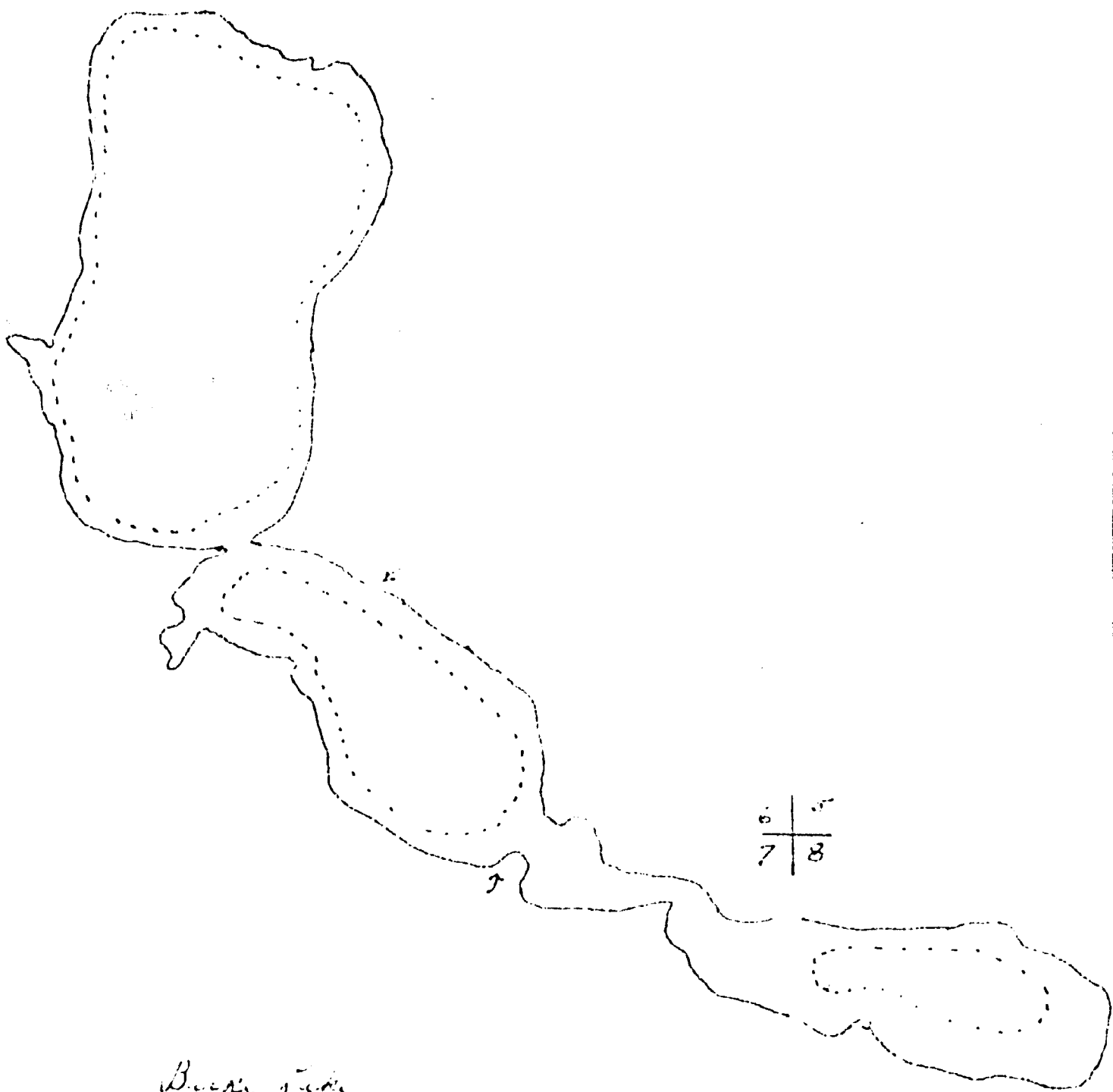
County _____

Purpose _____

Place of Use _____

Date of recording _____

Received and filed _____



Big Horn River

DEPT. GAME, FISH & PARKS
Pierre, South Dakota

**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.

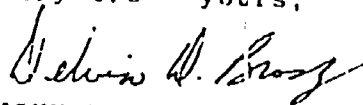


September 21, 1988
Richard Beringsen, Secretary
Page 2

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