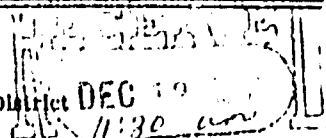


No. 944-3Water Division No. 3 Whetstone Creek
(Blanks to be filled by the Engineer for the W. R. C.)

APPLICATION FOR PERMIT

 VESTED RIGHT
 STATE WATER RESOURCES COMMISSION
 SIOUX FALLS, S.D.

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 ABEL LAKE - Marshall County
As required to fill lake to outlet level - approximately 165
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. 32, T. 127, R. 53 and Sec. 5, 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, \$-----
 (c) Fluming, \$----- (d) Canal-earth, \$----- (b) Pumping plant, \$-----
 (e) Other structures ----- Rock, \$-----
 ----- Total, \$-----

9. Description of diversion works:

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

II. Dimensions of works. Information requested not applicable. Abel Lake is a meandered lake. Maximum depth is approximately 8 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 ----- 55 ----- acres.

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

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

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

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

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 ----- 1966

Notary Public (or other qualified officer.)

*Each diversion must have a headgate or measuring device.

11-6-65

Remarks by State Water Resources Commission:

"VESTED RIGHT" CLAIMED

STATE OF SOUTH DAKOTA
County of HUGHES ss.

Pierre, South Dakota, JANUARY 28, 1963

This is to certify that the foregoing application was received by the Commission at 11:30 o'clock
2 m. upon the 12TH day of DECEMBER, 1961

State Water Resources Commission

By:

For Chief Engineer, Executive Officer

Number of permit

944-3

Date of first receipt of application

DECEMBER 12, 1961

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

Date of receipt of corrected application

Date from which applicant may claim right

1889

Approved

JANUARY 28, 1963

Recorded in Book

8

Page

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

USED FOR PUBLIC RECREATION

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

Witness my hand this

28TH

day of

JANUARY

1963

State Water Resources Commission

By:

Chief Engineer, Executive Officer

Certificate of Construction Issued

JANUARY 28, 1963

Water License issued

JANUARY 28, 1963

STATE OF SOUTH DAKOTA

WATER LICENSE ** 944-3

WHEREAS, On the 12th 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 duly made application (No. 944-3) to us for a Vested Right permit to use 165 acre feet annually of the waters of the local watershed

County of Marshall, State of South Dakota, for public recreation purposes; and

WHEREAS, On the 29th day of January A. D. 1963
 Vested Right / Permit No. 944-3 was issued to said applicant... recognizing
 for the diversion of said water, and providing for the
 completion of the works of diversion therein described...
 and... application to beneficial use of said
 water... and,

WHEREAS, On the 12th day of December A. D. 1961
 the holder... of said permit duly made proof of the completion of adequate works for the diversion of 165 acre feet
 annually... of said waters, as evidenced by our Certificate No. 944-3
 dated January 28, 1963 confirming the completion of works of sufficient capacity for
 diverting and conveying to the place of intended use 165 acre feet annually
 priority of 1889... and,

WHEREAS, On the 12th day of December A. D. 1961
 proof was duly made of the application to beneficial use of 165 acre feet annually
 to be used in place for public recreation

Permit No. 944-3

Water Division No. 3 Whetstone Creek Water District

Certificate of Completion of Works

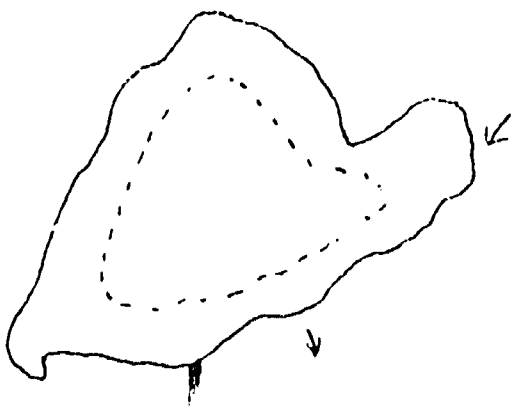
TO ALL WHOM IT MAY CONCERN:

This is to Certify, That the South Dakota Department of Game, Fish and Parks
of Pierre, County of Hughes, and State of South Dakota
Vested Right, the holder of Permit No. 944-3, Issued upon Application
No. 944-3, bearing date of priority of 1889, authorizing the diversion of
165 acre feet annually ~~xxxxxx per second~~ of the waters of the local watershed
County of Marshall, State of South Dakota, at a point in the
SW 1/4 SE 1/4, Section 32, T127N, R53W
for 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 as satisfactory
condition for diverting and conveying to the place of intended use 165 acre feet annually ~~xxxxxx~~
~~xxxxxx~~ of water; and that the ~~lands proposed to be reclaimed by the~~ use of said water are described as follows,
to-wit: to be used in place for public recreation

Witness my hand this 28th day of January A. D. 1963

State Water Resources Commission

By: J. W. CRIMES
Chief Engineer, Executive Officer



abel Lake

DEPT. GAME, FISH & PARKS
Pierre, South Dakota

$$\begin{array}{r} 5 \overline{) 4} \\ 8 \overline{) 9} \end{array}$$

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 position 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 8 feet - 55 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 165 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) J. McEnroe

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
Witnesses. Edward J. Jensen
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 _____

944-3

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.

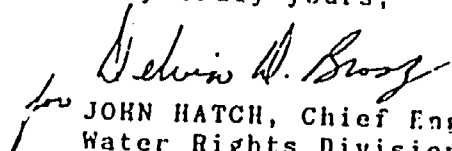


September 21, 1988
Richard Beringson, Secretary
Page 2

We will be working with your staff on these validations. We have already discussed setting out 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