

WATER PERMIT NO. FC-16

Phone: 605 352-7154

Name of Applicant: Lake Byron Watershed District

Post Office Address: PO Box 1363, Huron SD 57350

Amount of Water Claimed: _____ Total Acres: _____

Source of Water Supply: Foster Creek

Water to be used for: flood control County: Beadle

Location: 12 miles north of Huron

PRIORITY Date Received: 6/22/95 Fee: \$150.00

Corrected Application Received: _____ Period of Annual Use: _____

Remarks: _____

Location of Project: NE 1/4 Sec 21-T113N-R61W

Land to be Irrigated: _____

Well Log: Driller: _____ Licensed: YES _____ NO _____

Depth of Well: _____ REMARKS: _____

Type of Map: topo Prepared By: Elmer M. Ward, NRCS Reviewed and the Number

Assigned on: 6-22-95 By: Karen Schlaak

FORM 2: Application for flood control permit

(type or print)

Mail to:
Water Rights Division
Joe Foss Building
523 E Capitol
Pierre SD 57501-3181
605 773-3352

No. FC-116 Hydrologic Unit 1011600006
Basin James River
Newspaper The Plainsman

(office use only)



APPLICATION FOR A FLOOD CONTROL PERMIT WITHIN THE STATE OF SOUTH DAKOTA

1. Name of Applicant Lake Byron Watershed District
Address PO Box 1363
(Street, RR or Box)
Huron, SD 57350 Phone No. 605/352-7154
(City) (State) (Zip Code)
2. Name of watercourse Foster Creek
3. Location of project (legal description) NE 1/4 Of Section 21, Township 113, Range 61, Beadle County,
South Dakota.
4. County or counties where project is located Beadle
5. Give a brief description of the proposed project including the type of project (Dam, Dikes, Channel Modifications, etc.) and purpose for the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed.)

See Attached Sheet

Attachment: Attach map (see instruction)

STATE OF SOUTH DAKOTA)
County of BEADLE) SS

Watershed District

I, Ronald J. Wheeler, Chairman, Lake Byron the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Signed

Ronald J. Wheeler

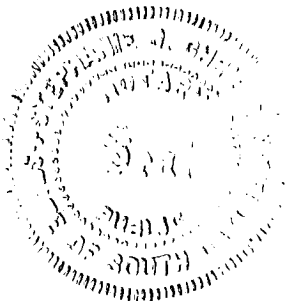
Lake Byron Watershed District by Ronald J. Wheeler, Chairman

Subscribed and sworn to before me this 21st day of June 1995

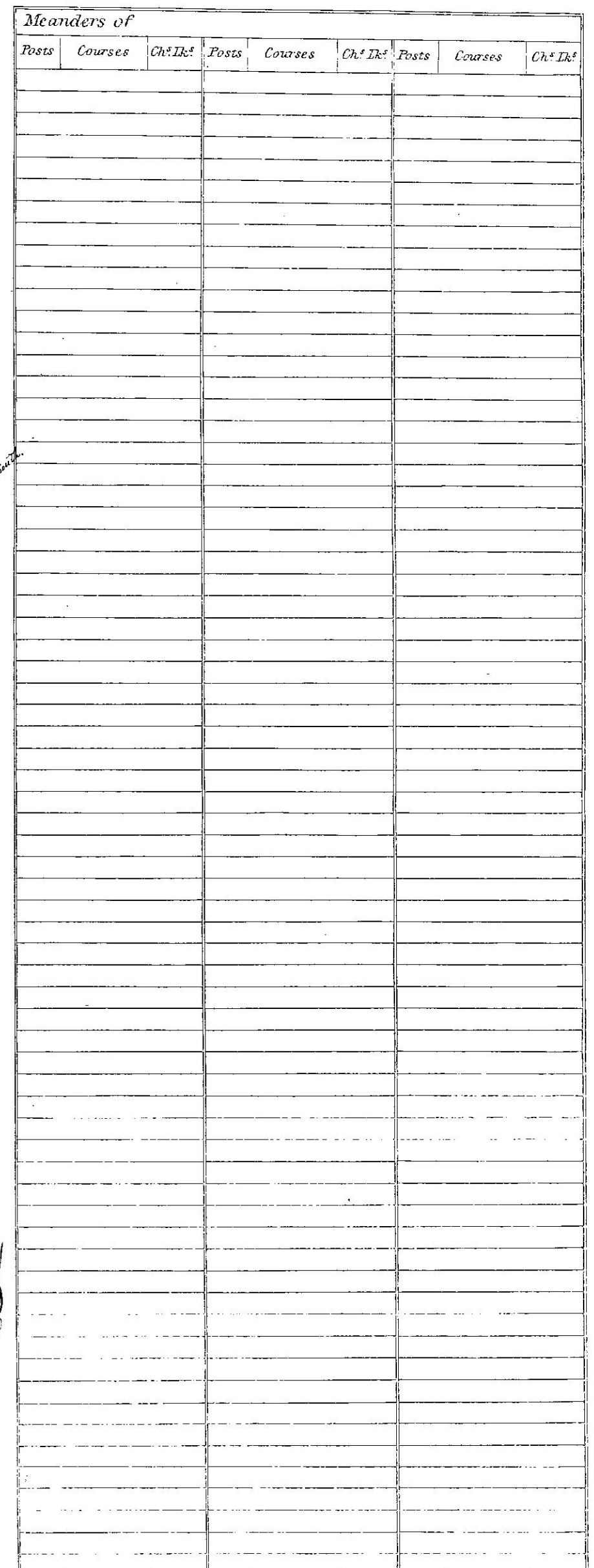
Stephanie J. Christ

Notary Public

com. exp 1/24/03



105.



The above, Map of Township N.^o 43 North of Range N.^o 60 West of the 5th Principal Meridian Dakota Territory is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

Surveyor General's Office,
Haukley D. T. November 20th 1875

Wm. F. Russell
Sur. Gen.

Jan 4. 1876

LAKE BYRON WATERSHED DISTRICT

QUESTION #5 OF FORM 2



There is presently a levee blocking the natural channel of Foster Creek and rerouting the water into Lake Byron. The water flows into Lake Byron, and then back out through Connors Lake and into Foster Creek. The proposed project would be to place three 48 inch in diameter culverts in the levee at the location where Foster Creek was originally closed off, thereby allowing some of the water to be routed back into the original Foster Creek channel during high run off periods. This would alleviate some of the flow into Lake Byron, thereby helping to reduce the flooding and damage done to property around the lake when it gets too high. It is proposed that the culverts would have 12 inch boards placed across the bottom, reinforced by stainless steel, and the height of the boards would be 1248 feet which is the same height as both the spillways running out of Lake Byron into Connors Lake, and running out of Connors Lake back into Foster Creek. At times of extremely high water, the boards could be removed to allow additional flow until the lake level is down to 1248 feet.

RECEIPT

414530

Division of Water Rights

South Dakota Department of Environment and Natural Resources

Pierre, _____

June 22, 19 95

RECEIVED OF Lake Byron Assoc, PO Box 1363, Huron, SD 57350

the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. <u>FC-16</u> to Appropriate Water, to construct and to put water to beneficial use _____	150	00
Fee for Application for Permit No. _____ to Appropriate Water, for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	150 00

By _____

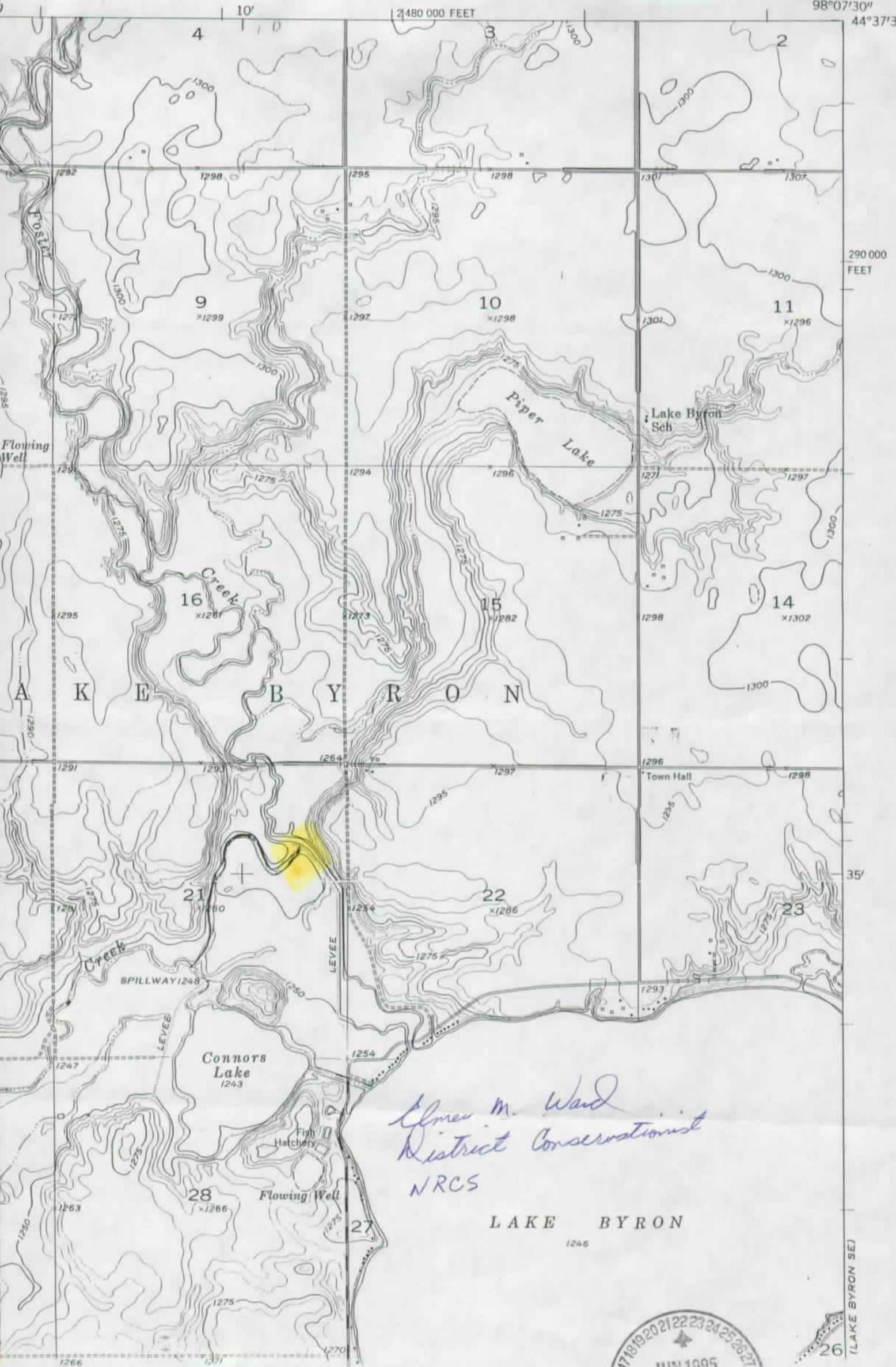
Chief Engineer

John Hatch

LAKE BYRON QUADRANGLE
SOUTH DAKOTA—BEADLE CO.
7.5 MINUTE SERIES (TOPOGRAPHIC)

(BYRON 1:1)

98°07'30"
44°37'30"



Lake
Bo

SE 21-11-62

Rock
Pool

28

43.3

14.7

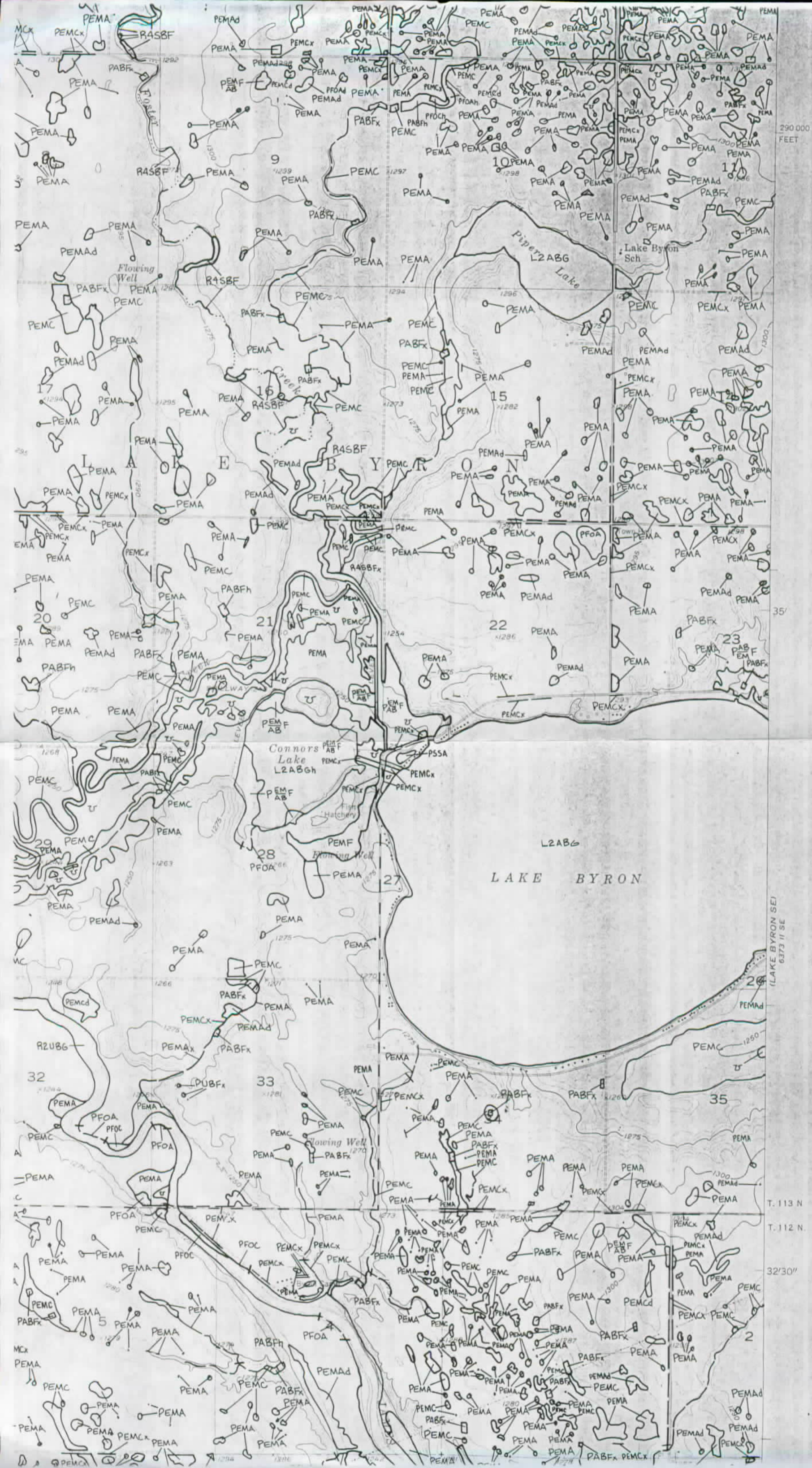
Chick
Creek

Foster

4

62

4



Conversation or File Documentation

NAME OF PERSON OR FILE: RON WHEELERADDRESS: Huron COUNTY BENDLEDATE: 8/21/94 TELEPHONE _____RE: FLOOD CONTROL PERMIT APPLICATION

COMMENTS:

I RECEIVED A RETURN CALL FROM RON WHEELER WITH THE LAKE BYRON WATERSHED DISTRICT. I TOLD HIM LYNN BELL AND MYSELF WERE AT LAKE BYRON ON AUG 14, 1995. WE LOOKED AT THE DIKE AND THE OUTLET. I TOLD HIM FROM AN EFFICIENCY STANDPOINT I WAS CONCERNED THAT THEIR PROPOSAL WOULD NOT WORK VERY WELL. I TOLD HIM THEY SHOULD GET AN ENGINEER TO LOOK AT THE DIFFERENT OPTIONS TO DETERMINE THE MOST EFFECTIVE SOLUTION. HE SAID THEY WOULD.

I TOLD HIM BASED UPON OUR VISIT, THE OUTLET ELEVATION WOULD NEED TO BE SET. I TOLD HIM IT WOULD TAKE A OHWM INVESTIGATION, BUT I COULD NOT GUARANTEE WHEN IT COULD BE SCHEDULED.

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.

NAME: Phil Peltz

WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157

June 21, 1995



Mr. Mark Rath
Division of Water Rights, DENR
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181

Re: Lake Byron Watershed District-Foster Creek Project

Dear Mr. Rath:

Enclosed please find 2 completed forms of Application for Flood Control Permit, along with a check for \$150.00 for the filing fee.

If there is any other information you would require, please let me know.

Thank you for your consideration.

Very truly yours,

WHEELER LAW OFFICE

Ronald J. Wheeler

RJW/sc

Enclosure

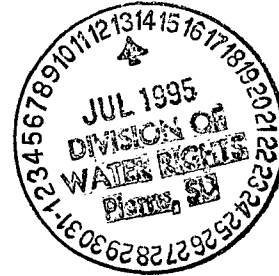
WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157

July 11, 1995



Mr. Mark Rath
Division of Water Rights, DENR
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181

Re: Lake Byron Watershed District - Foster Creek Project

Dear Mark:

Concerning the question of our application, and the issue of the capacity of the 3 culverts we propose to place in the dike, I would advise that they are 60 inch arched pipe with a flat bottom, with an opening of 17.6 square feet. Assuming water on both sides, as was the case with the high water we had this spring, the actual capacity of each pipe would be 37 cubic feet of water per second.

If you have any other questions about this, please let me know.

In the meantime, I will wait to hear from the Game, Fish and Parks on this issue.

Thank you very much.

Very truly yours,

WHEELER LAW OFFICE

Ronald J. Wheeler

RJW/sc

Water Rights Division - DENR

Conversation or File Documentation

Name of Person: Ron Wheeler, Lake Byron Watershed District

File No. FC-16

Address: Huron County: Beadle

Date: 8/3/95 Telephone: 605-352-7154

RE: Lake Byron flood control permit application.

Comments:

Ron Wheeler returned my telephone call. I asked him if the District and GF&P had come to some sort of an agreement concerning the proposed project. He said that they had not, but Tim Olson with GF&P had suggested that Mr. Wheeler contact Wayne Houtcooper with DENR, which he had. I told him I had also talked to Mr. Houtcooper who indicated that this proposal did not directly affect the work that he was doing. I told him because no agreement had been reached between the District and GF&P that if I were to continue with the application process that I would recommend deferral to the Chief Engineer. I suggested that the District request the application be placed on hold in order to allow time to negotiate an agreement with GF&P, Mr. Wheeler agreed with this.

I told Mr. Wheeler that during my review of the project I found that there had never been an official outlet elevation set on Lake Byron. I told him that Lynn Beck and myself were intending to visit the site within the next couple of weeks in order to determine what needed to be done in order to establish the outlet elevation. I told him I was also concerned with the effects of running the additional water down Foster Creek would do to road crossings and other landowners property.



Mark D Rath

Natural Resources Engineer

Conversation or File Documentation

NAME OF PERSON OR FILE: RON WHEELERADDRESS: Huron COUNTY BEADIEDATE: Sept 1, 1995 TELEPHONE _____RE: REQUEST for an Outlet Elevation Investigation

COMMENTS:

I CALLED MR WHEELER. TOLD HIM AS PART of FC-16 Application, the WATER RIGHTS PROGRAM would need a request from the LAND REFORM ASSOCIATION to do an Outlet Elevation Investigation as part of the Flood Control Permit Application. He asked if there was a potential that the outlet investigation would find that the ^{existing} outlet was at the wrong Elevation. I told him Yes. He said He was concerned about doing something that may cause them more problem than the Flood control project may take care of. He Asked If they would need a full Hydrology study of the area per a conversation He had with Connie Ulsung. I told him I would like to see a Hydrology study done, but no it was not required. I told him what they need is to have an engineers survey the area and find out if the proposed project will work prior to proceeding. He said they would get the engineering work done then decide if they would want to continue with the application at that time.

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.

NAME: Michael Smith

WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG



PHONE: 605/352-7154
FAX: 605/352-7157

September 5, 1995

Mr. Mark Rath
Division of Water Rights, DENR
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181

Re: Lake Byron Watershed District - Foster Creek Project

Dear Mark:

I am enclosing a copy of a map that has been provided me showing the various elevations around the lake, including the spillway at 1,248 feet. This map is different, in that it shows that the numbers were established by the U.S. Geological Survey, and gives a reference number. As a result, I fail to see how we need to reestablish the spillway levies at 1,248 feet with this information already in hand.

After you have had a chance to review this, please contact me to see if we cannot resolve this.

Thank you very much.

Very truly yours,

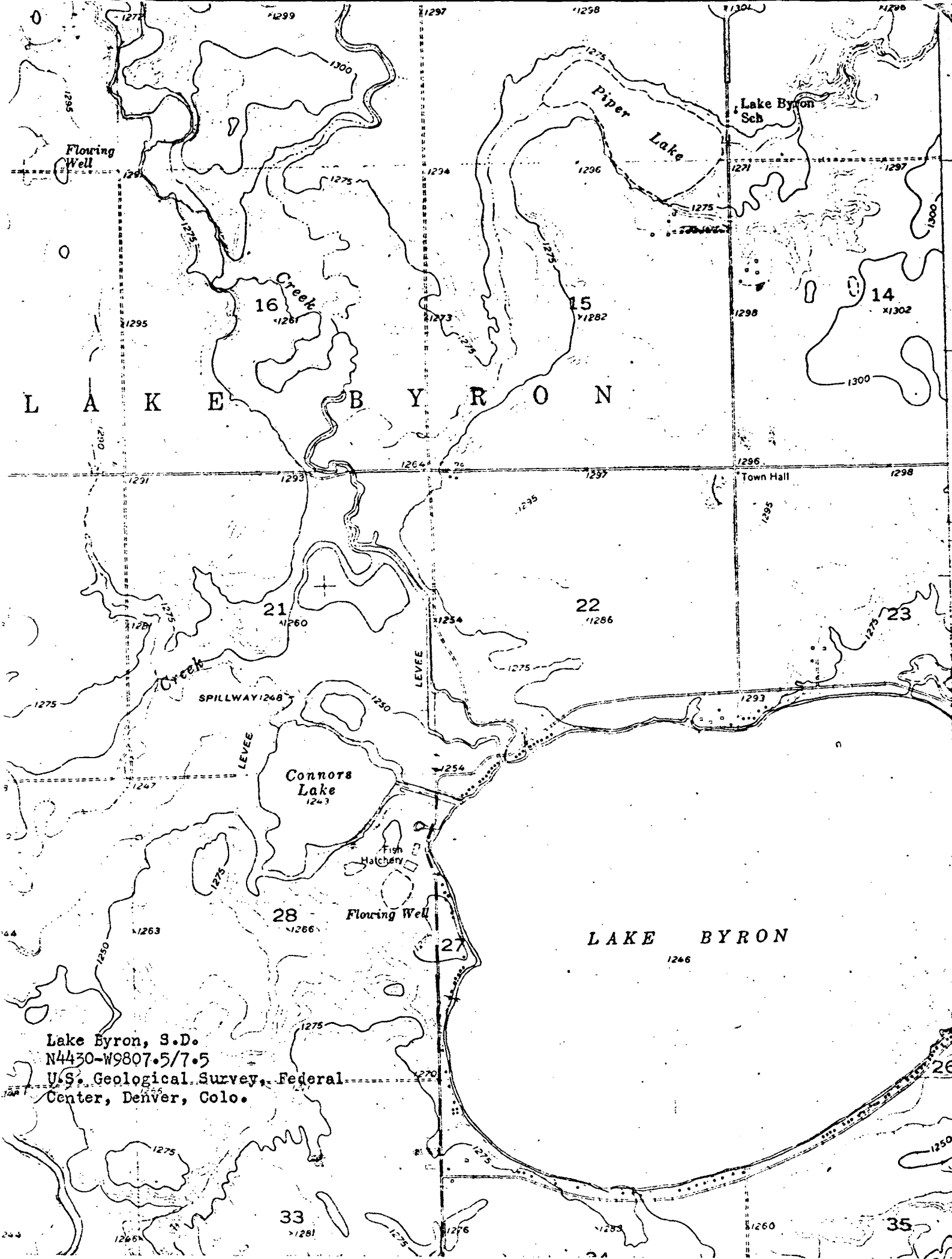
WHEELER LAW OFFICE

A handwritten signature in black ink, appearing to be "RJW", written over the typed name "Ronald J. Wheeler".

Ronald J. Wheeler

RJW/sc

Enclosure



Lake Byron, S.D.

N4430-W9807.5/7.5

U.S. Geological Survey, Federal
Center, Denver, Colo.

Water Rights Division - DENR
Conversation or File Documentation

Name of Person: Ron Wheeler File No.
Address: Wheeler Law Office, 1507 Dakota Ave. S., P.O. Box 1363,
Huron, SD 57350 County: Beadle
Date: 9-6-95 Telephone: (605) 352-7154
RE: Lake Byron Watershed District, Foster Creek.

Comments:

Reference Mr. Wheeler's September 5, 1995 letter.

I called Mr. Wheeler to explain the OHWM process. Also that just because an outlet elevation is mentioned on a USGS map does not mean that it is the elevation that would maintain an established OHWM.

Mr. Wheeler wanted to move ahead with the project using the elevation of 1248 fmsl printed on a USGS map. I explained that the outlet elevation needed to be established legally by the Board. Also, an OHWM investigation would be needed to relate the outlet elevation to the OHWM.

I recommended that the Watershed District hire an Engineer to do a feasibility study. The project may not bring about the relief they are looking for. If the study is favorable then look at starting an OHWM investigation.

Mr. Wheeler does not want an OHWM investigation. He is afraid it will open a can of worms and put people on opposite sides. Can't understand why the elevation that has been accepted by the people around the lake can't be used as the official outlet elevation. I tried to explain the statutes that we operate under but Mr. Wheeler did not change his opinion.



Lynn Beck
Natural Resources Engineer

WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157

December 6, 1995

Mark Rath
Division of Water Rights, DENR
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181



Re: Lake Byron Watershed District - Foster Creek Project

Dear Mark:

I am writing to advise that we are still going to continue with our application for the flood control permit, but we have been unsuccessful in getting an engineer out to the site to get the information you have requested. As a result, I am assuming that we will have to wait until next spring, but if I can get something done yet this winter, I will advise you.

Thank you very much.

Very truly yours,

WHEELER LAW OFFICE

Ronald J. Wheeler

RJW/sc

cc: Dennis Drake
Paul Flanagan
William Bell
Roger Kasa



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

December 14, 1995

MEMO

To: John Cooper, Secretary,
SD Dept. of Game Fish and Parks

From: John Hatch, Chief Engineer
Water Rights Program, DENR 

Subject: Flood control permit application at Lake Byron and GF&P's vested water
right claims for Foster Creek, Lake Byron and Mud Lake.

The Lake Byron Watershed District has submitted a flood control permit application to the Water Rights Program. The application proposes to install culverts through an existing dike to allow a portion of high water flow from Foster Creek to be redirected down the old Foster Creek channel. The flood control permit application is on hold pending the resolution of several issues. I have attached a copy of a letter that was sent to the Lake Byron Watershed District chairman, Mr. Ronald Wheeler, explaining these issues.

One issue that needs to be resolved involves the Department of Game Fish and Parks. Several years ago a ditch was dug and a dike was installed to redirect the Foster Creek drainage into Lake Byron and subsequently into Mud Lake. GF&P holds Vested Water Right Claim Nos. 587-3 and 807-3 for these lakes, including the ditch. Both of these claims have been advertised for validation but have not been brought before the Water Management Board for final action. This flood control permit application, if approved, has the potential to directly affect GF&P's vested water right claims. I have informed Mr. Wheeler that an agreement between GF&P and the Lake Byron Watershed District needs to be made prior to scheduling the flood control permit application for a Water Management Board hearing. I think that in conjunction with the flood control permit hearing, this would also be the appropriate time to bring these two vested water right claims before the Water Management Board for validation.

If you or your staff have any questions, please contact Mark Rath of the Water Rights Program.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

December 14, 1995

Ronald J. Wheeler
Wheeler Law Office
PO Box 1363
Huron, SD 57350

Dear Mr. Wheeler:

I am writing in reference to the Lake Byron Watershed District flood control permit application and your December 6, 1995 letter. There are three issues that need to be resolved prior to taking this application before the Water Management Board. The first issue is that the South Dakota Department of Game Fish and Parks (GF&P) hold Vested Water Right Claim Nos. 587-3 and 807-3 to divert Foster Creek water through the diversion ditch into Lake Byron and then to Mud Lake (a.k.a. Connors Lake). An important part of your flood control permit application would involve making changes to the Foster Creek diversion authorized by GF&P's vested water rights. An agreement between GF&P and the Lake Byron Watershed District concerning this matter needs to be made before a Water Management Board hearing is scheduled.

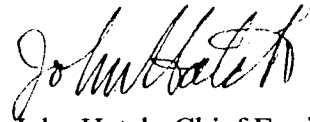
The second issue concerns an engineering study of your proposed project. South Dakota Codified Law (SDCL) 46-2A-11 requires that a flood control permit can only be issued if the project will reduce flooding in the area proposed to be benefitted and will not increase the likelihood or severity of flood damages in other areas. An engineering study is the proper means of determining if this application will meet the requirements of SDCL 46-2A-11. You stated in your December 6, 1995 letter that you have not been successful in getting an engineer on site but will keep trying.

The third issue concerns the setting of an outlet elevation for Lake Byron. The normal procedure would be to set an outlet elevation as part of an ordinary high water mark investigation. However, an inspection was recently made of Water Permit No. 5027-2 authorizing Lake Byron Watershed District to pump from the James River to Lake Byron. A review of this permit found that one of the qualifications for this permit referenced an outlet elevation of 1248.1 feet mean sea level (fmsl). Based upon this qualification I believe it will be appropriate to use the elevation of 1248.1 fmsl as the recognized outlet

elevation for Lake Byron. This will eliminate the need to make an ordinary high water mark investigation for this flood control permit application.

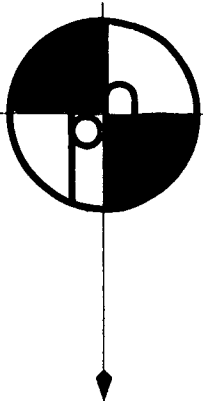
If you have any questions, please contact Mark Rath of the Water Rights Program at phone (605) 773-3352.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John Hatch".

John Hatch, Chief Engineer
Water Rights Program

c: John Cooper, Secretary, Department of Game Fish and Parks



PIERCE & HARRIS

CONSULTING ENGINEERS

SUITE 15 MASONIC BUILDING
TELEPHONE (605) 352-5382
POST OFFICE BOX 1384
HURON, SOUTH DAKOTA 57350

June 13, 1996

Mr. Ron Wheeler
Lake Byron Association
1507 Dakota Ave S.
Huron, SD 57350

Dear Mr. Wheeler:

Enclosed are channel and dike elevations, channel cross sections for the proposed overflow outlet to Foster Creek.

There are no improved down stream crossings between the dike and the James River.

The water diverted would have no effect on the quantity of the discharged flow since it ends up in the same channel at the outlet for Mud Lake.

The waterway is adequate since it was on the channel for the entire flow.

Sincerely,

PIERCE AND HARRIS ENGINEERING, CO.

Randall V. Hoscheid, P.E. & L.S.

RVH:pm

Enc.



WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157

June 18, 1996



Mr. Mark Rath
Division of Water Rights, DENR
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181

Re: Lake Byron Watershed District

Dear Mark:

Enclosed please find a report that I have now received from Randy Hoscheid of Pierce & Harris, along with a channel cross section drawing showing the survey they did, along with the elevations, and a copy of the aerial map, again showing the area that they have reviewed.

As you can see from his report of June 13, 1996, there appears to be no effect on downstream crossings, as well as the fact that the waterway is adequate to handle the flow.

I would hope that this satisfactorily meets your requirements concerning the information you needed so we can proceed with our application for flood control permit.

If you have any questions, please contact me.

Very truly yours,

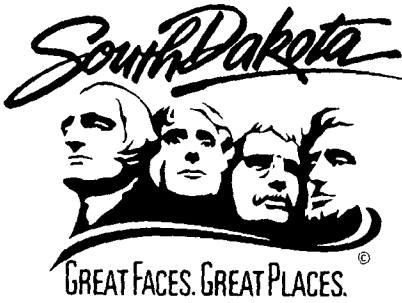
WHEELER LAW OFFICE

Ronald J. Wheeler

RJW/sk

Enclosure

cc: Dennis Drake
Bill Bell
Roger Kasa
Brad Tschetter
Doug Hanson



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

July 11, 1996

Ron Wheeler
Lake Byron Watershed District
PO Box 1363
Huron, SD 57350

Dear Mr. Wheeler:

I am writing in regard to the additional information you provided this office for flood control permit application No. FC-16 and our subsequent July 9, 1996 telephone conversation. As I indicated during our telephone conversation I have some concerns about the information that was provided for the proposed project.

First, the level survey cross-sections provided were not for the old Foster Creek channel applied for in the application. The submitted cross-sections are for a low area approximately one half mile south of the old channel (see attached map). A level survey along the old Foster Creek channel to the confluence with the channel running out of Mud Lake will need to be completed. The level survey is to primarily determine if the old channel, after 60 years of being bypassed, is physically capable of handling the proposed water flow.

Second, you indicated during our conversation that the three 48 inch culverts proposed to be installed will have either a weir elevation or bottom elevation set at 1248.1 feet mean sea level (fmsl). The intent is to match the outlet elevation of Lake Byron. The culverts will be equipped with some type of gated structure on these culverts to control the amount and timing of the flow into the old Foster Creek channel. We will need information concerning when and how these gated structures are to be operated. Please provide the flow capacity for the gated culverts along with the flow capacity of the old Foster Creek channel. This will allow a determination to be made on whether flooding along this channel will occur because of the proposed project.

Third, Mr. Hoescheids letter states "The water diverted would have no effect on the quantity of the discharged flow since it ends up in the same channel at the outlet for Mud Lake." The total quantity of water that will eventually get to the Foster Creek channel downstream from Mud Lake will be the same. Changing the flow path for a portion of the water and increasing the effective outlet area for the Foster Creek-Lake Byron system will affect the flow rate going down Foster Creek downstream from the Mud Lake outlet.

Please provide information concerning the rate of flow change that would occur due to the installation of the culverts. This information will be used to determine whether downstream flooding will occur.

Fourth, is the issue of downstream crossings. During our telephone conversation, I indicated that in July of 1993, I investigated a complaint concerning two crossings on Foster Creek downstream from Mud Lake. You said that a crossing downstream had been modified with the installation of culverts. This contradicts Mr. Hoescheid's statement "There are no improved down stream crossings between the dike and the James River." The conveyance capacity of these crossings must be considered when determining downstream flooding effects.

As I indicated to you, I have been in contact with Tim Olson from the Department of Game, Fish and Parks concerning this application. During the week of July 15-19 he told me he would try to contact you. If you do not hear from him you may want to contact him at phone (605)-773-3381 to discuss the project.

Finally, the issuance of a flood control permit does not grant an easement to run water across somebody else's land. You may need to check into whether running water in the old Foster Creek channel after 60 some years will require an easement.

If you have any questions, please contact me at phone (605) 773-3352.

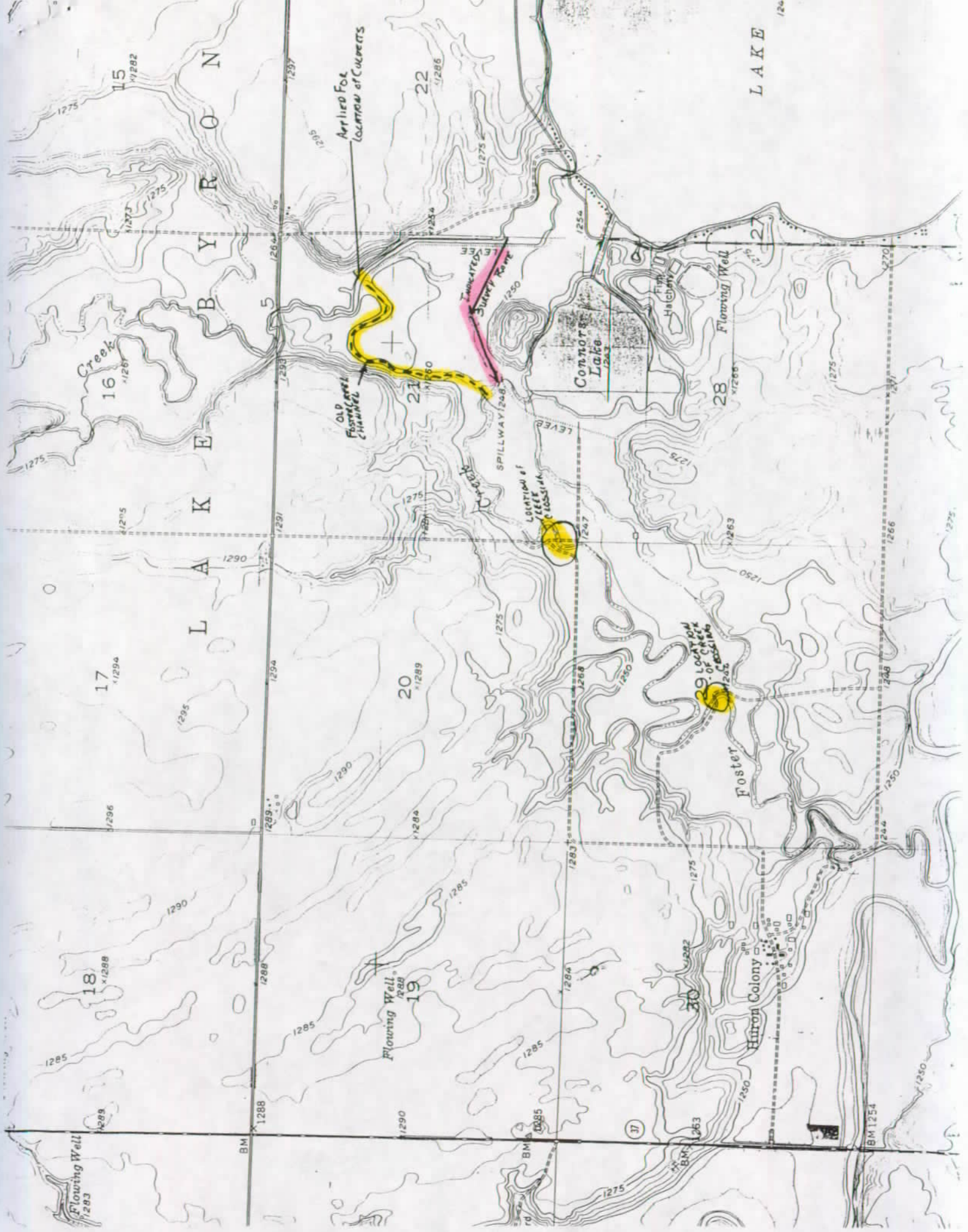
Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Rath". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark D. Rath
Natural Resources Engineer
Water Rights Program

enclosure

c: Tim Olson, SD GF&P



WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157



November 21, 1996

Mr. Randy Hoscheid
Pierce & Harris Engineering, Inc.
15 Masonic Temple Building
Huron, SD 57350

Re: Lake Byron

Dear Randy:

I would appreciate your advising me as to the status of the follow up that needed to be done that Mark Rath of the DENR requested in his July 11, 1996 letter.

Thank you very much.

Very truly yours,

WHEELER LAW OFFICE

Ronald J. Wheeler

RJW/sk

cc.  Mark Rath, DENR

WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157

March 24, 1997



Mr. Randy Hoscheid
Pierce & Harris Engineering, Inc.
15 Masonic Temple Building
Huron, SD 57350

Re: Lake Byron

Dear Randy:

I really would like to get this project off dead center,
and I need your updated report responding to the DENR letter of July 11, 1996.

Please provide me with this information as soon as
possible, since we are coming on another year with the potential for severe flooding in
Lake Byron.

Thank you very much.

Very truly yours,

WHEELER LAW OFFICE

Ronald J. Wheeler

RJW/sk

cc: Mark Rath

WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157

May 13, 1997



Mr. Doug Hanson
Division of Wildlife
South Dakota Game, Fish and Parks
Joe Foss Building
523 East Capitol
Pierre, SD 57501

Re: Lake Byron Watershed - Foster Creek Dike

Dear Doug:

As you will remember, I am the chairman of the Lake Byron Watershed District, and I am writing you again about the problems we have had with respect to the Game, Fish and Parks dike breaching at Lake Byron.

As you will remember, this problem first occurred because of high water in 1995. The water flowed over the top of the dike causing it to break open. At that time, because of our concerns and complaints of flooding on the adjacent property by the US Fish and Wildlife, and private land owners, an attempt was made to figure out a solution to the problem, by using culverts, which we are still trying to resolve with you and Mr. Mark Rath of the DENR.

At the time of the breach in 1995, the Lake Byron Watershed District eventually was able to temporarily fix the condition, and we also sought FEMA assistance in paying for some of the costs. The funding was initially granted us, but then terminated by virtue of statements made to FEMA by Game, Fish and Parks, because it was a "G, F & P Dike."

The problem has again arisen as a result of extremely high water in Foster Creek. This time, the breach is in the same location, but is more significant. We are presently getting quotes for FEMA to determine the cost to repair the dike properly, rather than a temporary fix that was done last time.

I would request Game, Fish and Parks cooperation with respect to the process of funding through FEMA to correctly and properly repair the dike, rather than your office rejecting the FEMA funding.

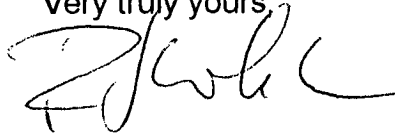
With Federal assistance, plus matching funds from the City of Huron and Beadle County, the Lake Byron Watershed District has gone through significant expense in the past to put in a pumping system so that we can pump water into the Lake in the usual 8 out of 10 years when we are crying for water. A principal source of that water supply is Foster Creek, and we desperately need that dike repaired, not only for future water control, but also because of the pending problem that once the lake reaches its normal level, water will start backflowing out of the lake through the opening in the dike.

I am expecting that we will have FEMA representatives here to review the project within the next two to three weeks, based upon my conversations with their office in Sioux Falls.

I would appreciate your earliest response to the position that your office is going to take concerning the FEMA funding, as well as the repair of the dike.

Thank you for your consideration.

Very truly yours,



Ronald J. Wheeler
Chairman
Lake Byron Watershed District

RJW/sk

cc: Hon. William J. Janklow
Timothy J. Olson, GF&P
✓ Mark D. Rath, DENR
✓ Roger Strom, GF&P
Lake Byron Watershed Board Members
Bill Ford, Lake Byron Association President
Beadle County Auditor, Connie Muth
Steve Gubbrud, Mayor
Brad Davis, land owner
Mark Heisinger, Fish & Wildlife



DEPARTMENT OF GAME, FISH AND PARKS

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



WILDLIFE RESTORATION
P R O G R A M

May 29, 1997



Mr. Ronald J. Wheeler
Wheeler Law Office
1507 Dakota Avenue, South
P.O. Box 1363
Huron, SD 57350

Dear Mr. Wheeler:

Thank you for your May 13th letter regarding the recent breach of the diversion dike at Lake Byron. Unfortunately this spring has proven to be quite a challenge for all of us due to extensive flooding problems, damage to dam structures and problems like those at Lake Byron. I appreciate your concern regarding this matter, as well as your interest in working with us to solve this reoccurring problem.

We have been aware of your desire to obtain a flood control permit from DENR to construct a control structure at the upper end of the diversion ditch in order to address flooding problems and stabilize lake levels. As DENR has previously pointed out, GF&P holds water rights for the lake and the diversion, so we do need to prepare a formal agreement between the Lake Byron Watershed District and GF&P. I believe that we will be able to accomplish this when the additional information that DENR requested in its July 11, 1996 letter is provided for our review.

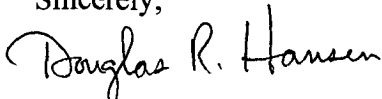
It is important to recognize that as the public agency with management responsibilities in this area, we need to very carefully consider the benefits and potential downstream impacts that may result from construction of a new control structure. We also remain very concerned about the sediment and nutrient load that the Foster Creek diversion contributes to the lake and how it affects lake water quality and the long term health of the lake. We will be seeking the advice of the DENR lakes program staff regarding how the diversion should best be managed to address water quality issues.

In regard to the more immediate problem with the breach in the diversion dike system, we are certainly interested in working with you and other cooperators such as the U.S. Fish and Wildlife Service in completing the necessary repairs. I encourage you to pursue working with the local conservation officer (Roger Strom) and regional staff in obtaining FEMA funding to complete the repairs. Alternatively, if other funding mechanisms appear to be more appropriate, we are committed to working with your group to solve the problem.

Lastly, I am not, nor is my staff, aware of any statements made by GF&P personnel that would have affected approval of your 1995 request for FEMA funding. It is possible that during the project ranking process, the project did not make the funding priority list as guided by the State Hazard Mitigation Plan. Unfortunately, when limited hazard mitigation funds are available, many projects do not get funded.

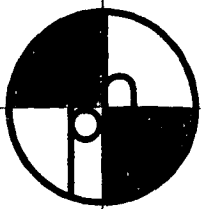
Thank you for continued interest in this matter and if you have any questions, please do not hesitate to call me.

Sincerely,

A handwritten signature in cursive script that reads "Douglas R. Hansen".

Douglas R. Hansen
Director, Wildlife Division

cc: Honorable William J. Janklow
Arden Petersen, GFP Regional Supervisor
Roger Strom, GFP Wildlife Conservation Officer
Mark Rath, SDDENR ✓
Tim Bjork, SDDENR
Mark Heisenger, U.S. Fish and Wildlife Service



PIERCE & HARRIS

CONSULTING ENGINEERS

SUITE 15 MASONIC BUILDING
TELEPHONE (605) 352-5382
POST OFFICE BOX 1984
HURON, SOUTH DAKOTA 57350

August 28, 1997

Mr. Ron Wheeler
Lake Byron Association
1507 Dakota Ave S.
Huron, SD 57350

RE: Lake Byron Watershed Dist.

Dear Mr. Wheeler:

Reference the letter from Mark D. Rath of July 11, 1996.

Enclosed is a layout and typical cross sections for the original channel of Foster Creek.

The water depth for 111 cfs in this channel would be about 1.7 feet. The channel would easily handle these flows. The velocity would be approximately 1 fps. There should be very little if any erosion.

The capacity of the channel, assuming a depth of 4 feet a channel bottom of 40 ft. with 20 to 1 side slopes is 675 cfs.

The flow over the spillway is approximately 111 cfs with 1 foot of back water and approximately 300 cfs with 2 feet of backwater. A 0.6 foot change in lake elevation increases the flow over the spillway 111 cfs. In my opinion the outlet is variable and increasing now so there is only a timing difference in the flows. With 1 foot of backwater each new culvert discharge volume is about the same as a 0.2 foot increase in backwater.

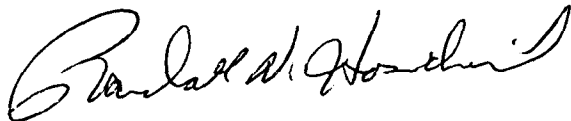


Page 2
Wheeler
August 28, 1997

We looked again for the down stream crossings. We could now only find the one shown on the drawing. It was probably under water before, since it nearly was at the time of this survey. The capacity of this crossing is approximately 118 cfs total. I would still class this as an unimproved crossing since it is on an unimproved trail with no real access to any road.

Sincerely,

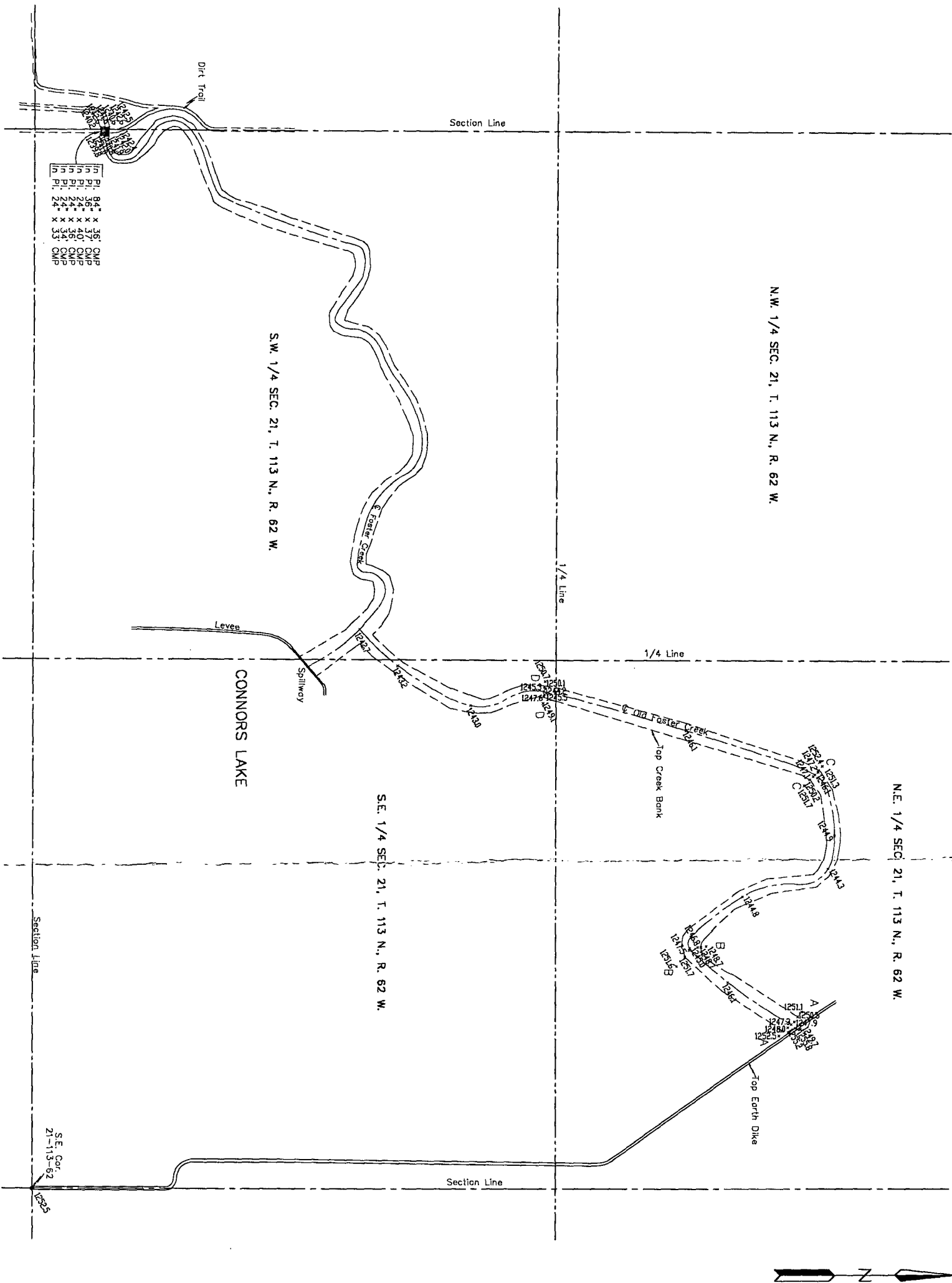
PIERCE AND HARRIS ENGINEERING, CO.

A handwritten signature in cursive script, reading "Randall V. Hoscheid".

Randall V. Hoscheid, P.E. & L.S.

RVH:pm

Enc.



84' x 36' CMP
36' x 37' CMP
24' x 40' CMP
24' x 36' CMP
24' x 37' CMP

LAKE BYRON

PIERCE & HARRIS ENGINEERING
SUITE 15 MASONIC BLDG. HURON, SOUTH DAKOTA

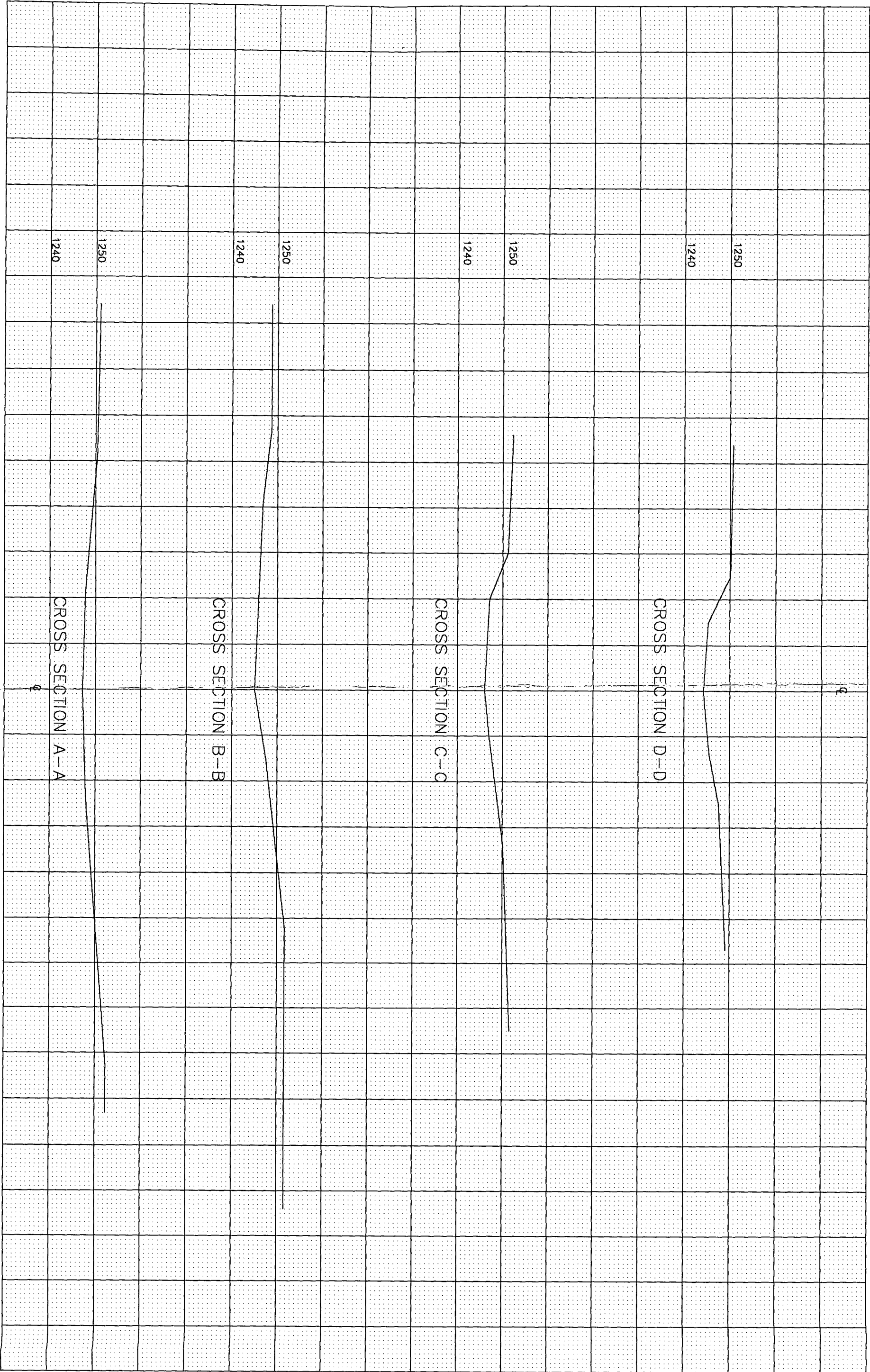
DRAINAGE SURVEY FOR
OLD FOSTER CREEK

NORTHWEST CORNER OF
LAKE BYRON

Scale: 1" = 600' Date: Aug. 1997 Drawn By: DAC/CAD Sheet: 1 of 2

HORIZ. SCALE: 1" = 40'
VERT. SCALE: 1" = 20'

PROJECT		SHEET	TOTAL
Old Foster Creek		NO.	SHEETS
Cross Sections		2	2



WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157



September 2, 1997

Mr. Mark Rath
Division of Water Rights DENR
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Re: Lake Byron Watershed Foster Creek Project

Dear Mark:

Enclosed please find a follow-up report that I have now received from Pierce & Harris Engineering, dated August 28, 1997 concerning the question of the capacity of the old Foster Creek channel, as well as the issue of downstream culverts. In addition, there is a layout of typical cross-section of the original channel.

I believe this should adequately address the concerns you have had on this project and we would like to move forward with the same at this time.

If there are other questions, please contact me as soon as possible, since I am sure you are aware we are trying to get some things done this fall at the location.

Thank you for your consideration.

Very truly yours,

WHEELER LAW OFFICE

A handwritten signature in black ink, appearing to be "RJW", written over the typed name of Ronald J. Wheeler.

Ronald J. Wheeler

RJW/sr

Enclosure

cc: Roger Strom
Mark Heisnger
Beadle County Commissioners
Doug Hanson

WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157

September 4, 1997



Mr. Corny Waldner
Huron Colony
Route 2 Box 185
Huron, SD 57350

Re: Lake Byron Watershed District / Foster Creek Bypass

Dear Mr. Waldner:

This will confirm our telephone conversation, wherein we discussed the fact that the Lake Byron Watershed District and the Lake Byron Association were working with the South Dakota Game, Fish and Parks, and the US Fish and Wildlife to repair a breach in the Foster Creek dike.

Also, we discussed with you the fact that we were seeking permission from the State Department of Environment and Natural Resources to put in three 48" culverts, at a location where the existing dike routes water from Foster Creek into Lake Byron. This would allow for us to then reroute the water, at high levels in the spring, to the old Foster Creek channel. Hopefully, this will get the water through Foster Creek sooner, thereby allowing for downstream properties to dry up quicker.

This will confirm your approval, on behalf of Huron Colony of the diversion of water through the culvert system, and across your land.

If you have any questions about any of this, please feel free to contact me.

On behalf of the Lake Byron Watershed District and the Lake Byron Association, I want to thank you for your consideration and your cooperation in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "R. Wheeler".

Ronald Wheeler
Chairman Lake Byron Watershed District

cc: X Mark Rath, DENR
Mark Heisinger, US Fish & Wildlife
Roger Strom, SD Game, Fish & Parks
Doug Hanson, SD Game, Fish & Parks
Brad Davis



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

Ron Wheeler
Lake Byron Watershed District
PO Box 1363
Huron, SD 57350

Dear Mr. Wheeler:

This letter is in regards to flood control permit application No. FC-16. Thank you for the information you provided from Pierce & Harris Consulting Engineering concerning the old Foster Creek channel cross-sections and capacities. In reference to our July 11, 1996, letter, you still need to provide us with a written plan on how the Lake Byron Watershed District intends to operate the proposed gated structures on the three 48 inch culverts to be installed through the dike. Also, would you provide us with a written copy of the easement between the District and the Huron Colony that you referred to in your September 4, 1997 letter to Mr. Waldner.

Finally, as has been discussed before, the Department of Game, Fish, and Parks (GF&P) holds the water rights for the Foster Creek diversion and for Lake Byron and Connors Lake (Mud Lake). We discussed this matter with GF&P last week. GF&P has indicated that they have received the same correspondence from you concerning the channel capacities that we have, but have not discussed the effects this proposed project would have on their water rights. GF&P has indicated to us that they are concerned about how the Lake Byron Watershed District intends to operate the gated structures during high flow events. A formal agreement needs to be completed between the Lake Byron Watershed District and the Department of Game, Fish, and Parks.

A copy of the agreement between the District and GF&P, a copy of the easement and the plan concerning the operation of the gates need to be submitted before this application can proceed. No construction on this project can occur until a permit has been issued. If you have any questions, please contact Mark Rath at phone (605) 773-3352.

Very Truly Yours,

John Hatch, Chief Engineer
Water Rights Program

c: Tim Olson, SD GF&P
Roger Strom, Conservation Officer, SD GF&P

MEMORANDUM OF UNDERSTANDING

This memorandum being entered into by and between the Lake Byron Watershed District, Lake Byron Township, Beadle County, South Dakota hereinafter referred to as Watershed District, and Huron Colony, of Route 2, Box 187, Huron, South Dakota, hereinafter referred to as Huron Colony;

WHEREAS, Lake Byron Watershed District, along with the South Dakota Game, Fish and Parks is receiving permission from the State of South Dakota to put in three, forty-eight inch culverts on a dike located north of Lake Byron, Beadle County, South Dakota, and

WHEREAS, such culverts will be for the purposes of diverting water from Foster Creek passed Lake Byron, and into the old Foster Creek channel, and

WHEREAS, such water through the Foster Creek channel flows across certain real property hereinafter described belonging to Huron Colony,

IT IS THEREFORE agreed as follows:

1) That the Watershed District can divert the water into the old Foster Creek channel through the culvert system, pursuant to a plan of operation, a copy of which is attached hereto.

2) That Huron Colony owns real estate in "Sections 29, 30, 31, and 32, Township 113, Range 61, Beadle County, South Dakota", and agrees to the diversion of the water through Foster Creek, across such property from time to time as necessary under the operation plan for the culverts.

3) That this agreement remain in force and effect as long as the culverts are in place.

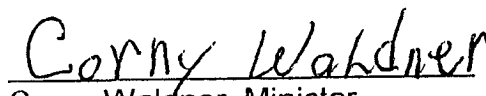
IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 23 day of October, 1997.

LAKE BYRON WATERSHED DISTRICT



Ronald J. Wheeler, Chairman

HURON COLONY



Corny Waldner, Minister

OPERATION PLAN FOR GATE ON FOSTER CREEK DIVERSION

SEPTEMBER 30, 1997

DRAFT

Operations committee will consist of four members, one representative of each of these organizations:

Lake Byron Lake Association
Lake Byron Watershed District
South Dakota Game, Fish and Parks
Lake Byron Township Board

Any action to open the gate require 100 % agreement of this committee.

Guideline for operations:

DATE	LAKE ELEVATION	SNOW PACK	STATUS OF GATE
Oct. 1 - Mar. 30*	greater than 1248.1	any snow	100 % open March 1 - till lake level is at 1248.6, than close.
Mar. 1*	1247.6 - 1248.1	No snow	closed
Mar. 1*	1247.6 - 1248.1	2 ft. or greater snow	open gate 100 % to allow first flows 50 % till lake level is at 1241.
Mar. 1*	lower than 1248.1		closed

* or as needed.

Gate will be locked at all times and only the committee or its designated representatives can alter the position of the gate.

Maintenance of structure will be the responsibility of the Lake Byron Watershed District and the Lake Byron Lake Association.

Operational plan will be reviewed in one year and any changes must be agreed by each Organization prior to revoking this plan.

WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157

October 28, 1997



Mark Rath
Division of Water Rights DENR
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Re: Lake Byron Watershed

Dear Mark:

Enclosed please find a copy of the signed Memorandum of Understanding, on behalf of the Huron Colony and Lake Byron Watershed District, with respect to the issue of the culverts.

This is what was requested by John Hatch, in his September 24 letter to me.

It is my understanding that you would have already received a copy of the signed agreement with the Watershed District and South Dakota Game, Fish and Parks, as well as a copy of the Operational Agreement. I believe this is all of what has been requested, so that we may now proceed with getting the formal permit. However, if this is not correct, please advise right away.

Thank you very much.

Very truly yours,

WHEELER LAW OFFICE

A handwritten signature in black ink, appearing to be "RJW", written over a horizontal line.

Ronald J. Wheeler

RJW/sr

Enclosure

cc: Doug Hanson
Roger Strom

WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157



January 14, 1998

Mark Rath
Division of Water Rights DENR
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

Re: Lake Byron Watershed

Dear Mark:

I called your office, and left a message for you to call me on Friday when you return. However, since I will be out of the office all next week, I thought I should send you a letter in the event we were not able to talk on Friday.

We are moving ahead with the agreements with the South Dakota Game, Fish, and Parks, and I am sending those signed agreements to Tim Olson.

In conversation with Tim, he indicated that you had some questions about the placement of the culverts. I know that you and I had talked about this earlier, but I thought I would advise our thoughts on this question, and perhaps we can discuss it further after I get back.

Our plan calls for the culverts to be placed below the 1248.1 foot lake outlet elevation, so that the middle of the culvert is at that level. We would then have a cover for the outlets that could be divided in half. The bottom half would be controlled by a pulley system, and the top half would be gates that could be removed by hand.

Our thoughts were that when we are diverting water through the culverts, we would want as much capacity through the culverts as they can take. If we had the bottom of the culverts just at the 1248.1 foot level, then we would only be able to divert water above that level and as a consequence, probably not be able to move as much water as quickly.

Under our proposed design, once the water level started to drop and got nearer to the lake outlet level, we could then lower the bottom

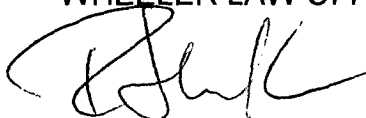
half of the gate and allow the water to continue to flow out of the culverts, over the top of that portion until it reached the same level. We could then close the top half of the gates, sealing off the culverts entirely.

After you have had a chance to review this information, I would appreciate your calling me so that we could discuss this in more detail.

Thank you very much.

Very truly yours,

WHEELER LAW OFFICE

A handwritten signature in black ink, appearing to read 'R. Wheeler', written over the typed name.

Ronald J. Wheeler

RJW/sr

cc: Tim Olson - Game, Fish and Parks
Leif Andol

OPERATION PLAN FOR GATES ON FOSTER CREEK DIVERSION

Operations committee will consist of three members, one representative of each of these organizations:

- Lake Byron Watershed District
- Lake Byron Lake Association
- Lake Byron Township Board

Any action to open or close gates requires consensus of this committee. The elevation of the outlet control structure on Lake Byron is 1248.1 ft msl. At this elevation the lake is considered full. This plan addresses operation of gates to be constructed on the Foster Creek diversion dike.

General Operation Guidelines:

- If lake water elevations are greater than or equal to 1248.1 ft. msl (lake outlet elevation), gates will remain open to allow excess flows to bypass the lake.
- If lake water elevations are less than 1248.1 ft. msl, gates will be closed to allow flows to enter lake. During spring runoff, or immediately following large rainfall events, gates should remain open to allow flows carrying excessive sediment and nutrient loads to bypass the lake. Depending on lake water elevations, flow rates in the diversion and anticipated runoff conditions, gates may be adjusted to allow some flows to bypass lake.
- Gates will be locked at all times and only the committee or its designated representative(s) can alter the position of the gates.

Guidelines for seasonal operation of the gate system will remain flexible in order to take into account variability in lake water elevations, snowpack and/or soil moisture conditions in the watershed, as well as sediment and nutrient loads carried by runoff from the Foster Creek watershed.

Information regarding general soil moisture conditions and anticipated runoff conditions may be obtained from agencies such as the Natural Resources Conservation Service and the U.S. Geological Survey in Huron.

Maintenance of structure will be the responsibility of the Lake Byron Watershed District and the Lake Byron Lake Association.

This operational plan may be reviewed in one year and any changes must be agreed upon by each organization prior to revision of the plan.

Dated this 14th day of January, 1998.

LAKE BYRON WATERSHED DISTRICT

By: [Signature]
Its Chairman

LAKE BYRON ASSOCIATION

By: [Signature]
Its Chairman

LAKE BYRON TOWNSHIP BOARD

By: [Signature]
Its Chairman



AGREEMENT

This agreement made and entered into by and between the South Dakota Department of Game, Fish, and Parks, hereinafter referred to as the first party and the Lake Byron Watershed District, hereinafter referred to as the second party.

WHEREAS the first party holds the water right (Water License No. 587-3) for Lake Byron and the Foster Creek diversion into Lake Byron in Beadle County, South Dakota, and

WHEREAS the second party wishes to place culverts in a dike located north of Lake Byron for the purposes of diverting water from the Foster Creek diversion away from the lake at certain times each year, and

WHEREAS the second party and other local cooperators agree to maintain the diversion structure culverts, gates and dike in the immediate vicinity of the diversion structure, and

WHEREAS an operational plan for the control of the culverts, and the gates across the culverts has been entered into between the second party, the Lake Byron Association and the Lake Byron Township Board;

IT IS THEREFORE agreed as follows:

That following the operational plan for gates on the Foster Creek diversion, a copy of which is attached, and by reference made apart hereof, water may be diverted away from Lake Byron through the culvert system from time to time, as may be necessary, provided that all necessary state and federal permits are obtained and consent of affected landowners is secured.

Dated this 15th day of January, 1998.



SOUTH DAKOTA GAME, FISH, AND PARKS

By: [Signature]
Its Secretary

LAKE BYRON WATERSHED DISTRICT

By: [Signature]
Its Chairman



PO Box 52
Frankfort, SD 57440
January 6, 1998

Dave McGuigan
Department of Fish, Game & Parks
Foss Bldg.
523 E. capitol
Pierre, SD 57501-3182

Dear Mr. McGuigan:

The Secretary has requested that I direct to you any further inquiries regarding the State's interest in the NE1/4 Section 21, 113-61 in Beadle County. My personal knowledge of this property and its past ownership, and my examination of the facts of record suggest to me that the document granting an "easement" to this property from C.S. Betts to the State of South Dakota is either fraudulent or in error.

Betts neither owned nor had any authority to grant any rights or privileges to anyone for the possession or use of any property within the NE1/4 Sec 21-113-61 on or around the date the "easement" was executed or recorded.

According to the record there is no Lot 2 in the NE1/4, and further, no portion of the natural shoreline of Mud Lake (also called Connors Lake) is within the NE1/4, and is some distance from the boundaries of this property. There is however a Lot 2 in the SE1/4 as well as the shoreline of Mud Lake. This property was, I believe, owned by Betts at the time the "easement" was granted.

The reference to the NE1/4 in the "easement" is in my opinion in error. Since this document was recorded some time ago reference to it appears on my abstract for the NE1/4.

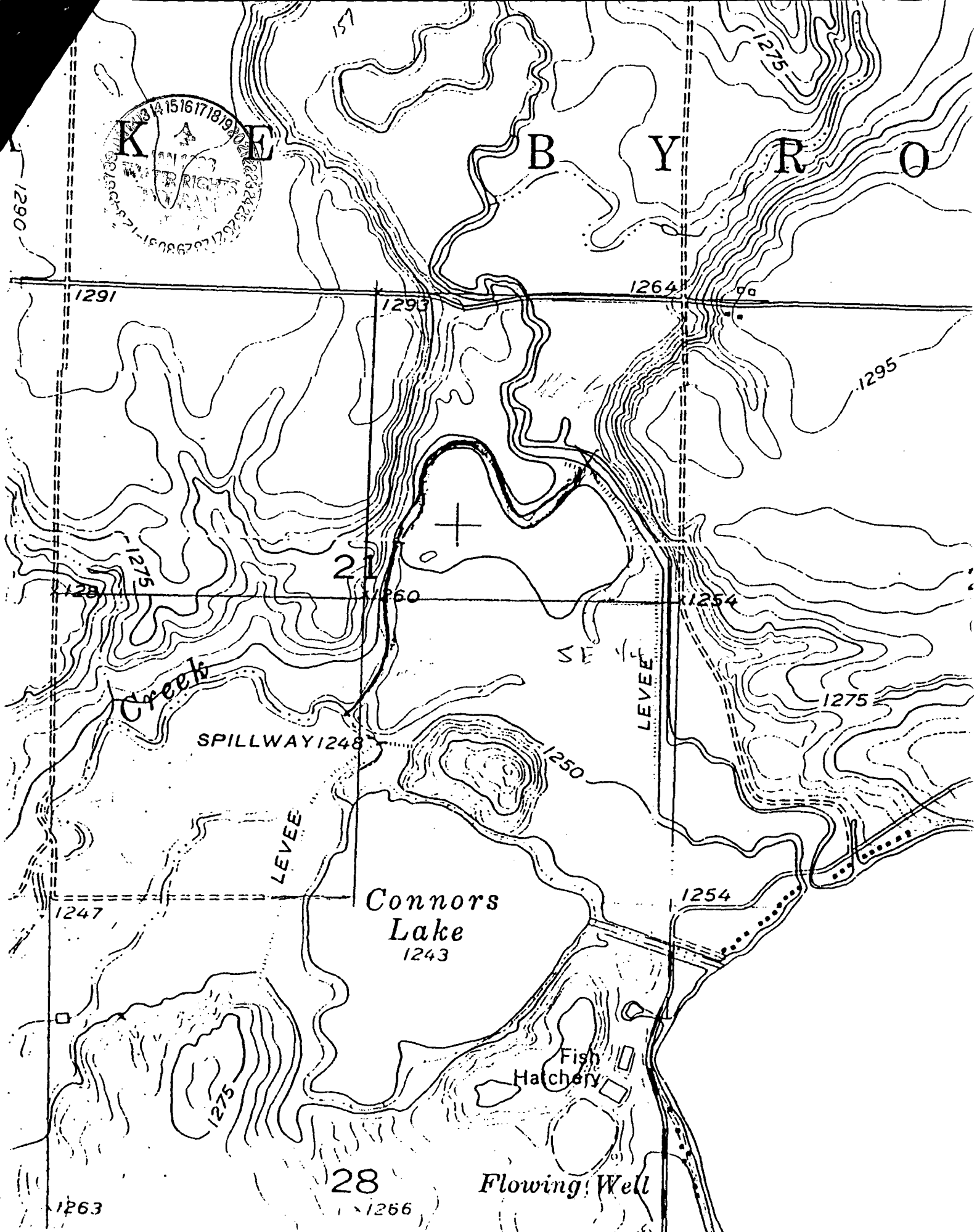
I would like to request that the State of South Dakota research, compare, and examine the facts of record to determine if you agree there is error in the "easement", and if so, please pursue efforts to make the record correct. I believe it is in both our interests to make clean the record of these properties. I would be happy to cooperate.

Sincerely yours,

Macy Davis

Enclosure

cc Ronald Wheeler



EASEMENT CONTRACT

THIS AGREEMENT made and entered into this 30 day of June, 1943, by and between C. S. Betts of Huron, Beadle County, South Dakota, party of the first part, and the State of South Dakota, Pierre, South Dakota, party of the second part, WITNESSETH:

That for and in consideration of the sum of one Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, party of the first part hereby grants, bargains and sells unto the party of the second part the easement and right to construct and maintain a water diversion ditch upon the following described land in Beadle County, South Dakota, to-wit:

Following the West line of Lot Two (2), between the shore line of Mud Lake and the natural channel of Foster Creek, a strip of land one hundred feet (100 ft.) wide in Lot two (2) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Twenty-one (21), Township One Hundred Thirteen (113) North, Range Sixty-One (61) West of the Fifth Principal Meridian, Beadle County, South Dakota.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this 30 day of June, 1943.

C. S. Betts

STATE OF SOUTH DAKOTA)
COUNTY OF BEADLE) SS

On this 30 day of June, 1943, before me, a notary public within and for said county and state, personally appeared C. S. Betts known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same.

H. E. Bowers
Notary Public, South Dakota.

(SEAL)

Filed for record in the office of the Register of Deeds, Beadle County, South Dakota, July 7, 1943, at 10:00 o'clock A. M. in Book 291 on page 129.

Hazel Arnold, Deputy

Blanche B. Hoy, Register of Deeds.



Report on Flood Control Permit Application No. FC-16
Lake Byron Watershed District
January 21, 1998

Application No. FC-16, Lake Byron Watershed District, proposes to install three 48 inch culverts through an existing dike with a gated weir installed in each of the culverts at a crest elevation of 1248.1 feet, mean sea level (fmsl), the outlet elevation of both Lake Byron and Mud Lake. It is proposed that to facilitate water flow during times of high water, the invert elevation of the culverts be installed at elevation 1246.1 fmsl and the gated weir be opened to allow full flow in the culverts to the original Foster Creek channel (a.k.a Old Foster Creek) to alleviate flooding around Lake Byron. The culverts through the dike are to be located in the NE ¼ Section 21-T113N-R61W. The applicant also proposes to install removable stop logs on top of the weir in each of the culverts to block any flow in the Old Foster Creek channel when Lake Byron is low.

Review of the Proposed Project and Existing Water Rights

South Dakota Department of Game Fish and Parks (GF&P) hold Recognized Vested Water Claim Nos. 587-3 and 807-3 for the diversion of Foster Creek flow for storage in Lake Byron and Mud Lake (a.k.a Connors Lake). In 1931, a diversion ditch was constructed to reroute all of the runoff from the Foster Creek watershed to provide extra water to Lake Byron. The ditch diverted Foster Creek flow to Lake Byron and a dike was constructed blocking any flow to the Old Foster Creek channel downstream from the intersection with the ditch. Excess water in Lake Byron spills through the Lake Byron outlet to Mud Lake and subsequently through the Mud Lake outlet into the downstream Foster Creek channel then on to the James River. Approximately ¾ of a mile of the Old Foster Creek channel was bypassed due to this modification. The applicant has obtained a written agreement with GF&P allowing for a portion of the Foster Creek diversion ditch flow, authorized by Vested Water Right Claim Nos. 587-3 and 807-3, to be rerouted through the culvert system into Old Foster Creek and on to a point where it joins the downstream Foster Creek channel.

Due to the recent wet cycle of the past five years, Lake Byron has experienced high water levels and localized flooding problems. The applicant is proposing to install three gated culverts through a dike for the purpose of allowing a portion of the high flows from Foster Creek to flow in the Old Foster Creek channel. The gates are to consist of two parts. First, the lower part is to be a gated weir that is to be normally left in the closed position. The crest of the weir is to be set at elevation 1248.1 fmsl, the outlet elevation of Lake Byron. To maximize the water movement through the culverts during time of high water levels and high flows in Lake Byron and Foster Creek respectively, the weir gates are to be opened allowing for full flow through the culverts. The culverts are to have an invert elevation of 1246.1 fmsl, or two feet lower than the outlet elevation. During normal to dry times the weir gate will be closed allowing for flow only at the outlet elevation of 1248.1 fmsl. Second, the upper part of the individual gate is to consist of a

stoplog type structure. Stoplogs are to be inserted in the gates to eliminate flow through the culverts to Old Foster Creek at times when lake levels are low and flow in the Foster Creek diversion ditch is high. This project is an attempt to reduce the effects of the high inflows from Foster Creek during extremely wet periods and allow for the capture of runoff water in Lake Byron during dry times.

A proposed operation plan for the gates on these culverts, culvert capacity, and a registered professional engineer's estimate of channel capacity based upon a channel cross-sections have been submitted with this application. Full flow culvert capacity for the three culverts is 111 cfs and the estimated channel capacity is 675 cfs. Also submitted with this application was a Memorandum of Understanding between the Lake Byron Watershed District and Huron Colony, the downstream landowner. This memorandum of understanding allows for the flow of water through the downstream property owners land due to the operation of the gated culverts.

The operation plan allows for the formation of an operations committee consisting of one representative from each of the following organizations: the Lake Byron Watershed District, the Lake Byron Lake Association, and the Lake Byron Township Board. Any action to open or close the gates on the culverts would require a consensus of this committee. The elevation of the outlet control structure for Lake Byron as specified in Water Right No. 5027-3 is 1248.1 feet mean sea level (fmsl). The proposed general guidelines for the operation of the gates on the culverts are as follows:

If lake water elevations are greater than or equal to 1248.1 fmsl, gates will remain open to allow excess flows to bypass the lake.

If lake water elevations are less than 1248.1 fmsl, gates will be closed to allow flows to enter the lake. During spring runoff, or immediately following large rainfall events, gates may remain open to allow flows carrying excessive sediment and nutrient loads to bypass the lake. Depending on lake water elevations, flow rates in the diversion, and anticipated runoff conditions, gates may be adjusted to allow some flows to bypass the lake.

Gates will be locked at all times and only the committee or its designated representative(s) can alter the position of the gates.

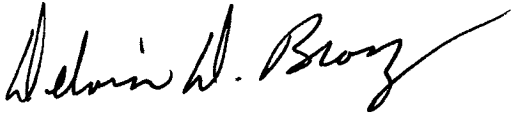
There has been an issue raised by the owner of the property, Macy Davis, on which the Old Foster Creek channel is located and the 1931 dike was constructed, concerning the validity of existing easements. Macy Davis claims that the individual who granted the easement to the State of South Dakota did not own the property on which an easement was granted. Macy Davis has requested that South Dakota Department of Game, Fish, and Parks make an effort to correct the record. The Lake Byron Watershed District is also attempting to get a written agreement from Macy Davis concerning this project.

Conclusions

1. Application No. FC-16 proposes to install three 48 inch gated culverts to allow excess water to bypass Lake Byron and flow down the Old Foster Creek channel.
2. The applicant has submitted culvert and channel flow capacities indicating they have the ability to pass the flow.
3. The applicant has submitted signed agreements with GF&P and the downstream property owner allowing for the project.
4. A proposed gate operation plan has been submitted requiring the formation of an operations committee comprised of one member each from the Lake Byron Watershed District, the Lake Byron Association, and the Lake Byron Township Board. The operation plan lays out the criteria as to how the gates shall be operated.
5. An issue has been raised by the adjacent property owner concerning the validity of existing easements. This application should be deferred until all easements and agreements have been submitted.



Mark D. Rath
Natural Resources Engineer III



Approved by:
Delvin D. Brosz, P.E.
Natural Resources Engineer IV

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. FC-16, Lake Byron Watershed District**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Flood Control Permit Application No. FC-16, Lake Byron Watershed District, %Ronald Wheeler, Wheeler Law Office, P.O. Box 1363, Huron, SD 57350.

The Chief Engineer is recommending DEFERRAL of Application No. FC-16 until the applicant obtains any necessary easements or agreements from adjacent landowners.

See report on application for additional information.


JOHN HATCH, Chief Engineer
January 21, 1998



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

January 22, 1998

Macy Davis
P.O. Box 52
Frankfort, SD 57440

Dear Mr. Davis:

Please find enclosed the notice of hearing, report and Chief Engineer's recommendation for Flood Control Application No. FC-16, Lake Byron Watershed District. This notice is scheduled to be published in the Huron Daily Plainsman on January 29 and February 5, 1998. If you want to be a participant in this hearing before the Water Management Board, a petition to intervene must be submitted by February 16, 1998.

If you have any questions, please contact Mark Rath at (605) 773-3352.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

January 27, 1998

Macy Davis
P.O. Box 52
Frankfort, SD 57440

Dear Ms. Davis:

As per your request, please find enclosed a copy of Recognized Vested Water Right Claim Nos. 587-3 and 807-3, Department of Game, Fish and Parks. I have also enclosed a copy of the Memorandum of Understanding with Huron Colony and the Agreement with the Dept. of Game, Fish and Parks.

If you have any questions, please contact Mark Rath at (605) 773-3352.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure

Instruction to Newspaper - Publish first Notice on January 29, 1998 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. FC - 16 for a Flood Control Permit

Notice is given Lake Byron Watershed District, c/o Ronald Wheeler, PO Box 1363, Huron, SD 57350 has filed an application for a flood control permit to install three 48 inch culverts through an existing dike to facilitate water flow through Lake Byron during times of high water. The South Dakota Department of Game, Fish and Parks currently holds Recognized Vested Water Right Claim Nos. 587-3 and 807-3 for diversion of Foster Creek flow for storage in Lake Byron and Mud Lake. In 1931, a diversion ditch was constructed to reroute runoff water from the Foster Creek watershed to Lake Byron and a dike was constructed blocking any flow to the Old Foster Creek channel. Excess water in Lake Byron spills to Mud Lake and subsequently back into the Foster Creek channel and then on to the James River. Approximately 3/4 of a mile of the Old Foster Creek channel was bypassed due to this modification.

This application proposes three 48 inch culverts through the dike located in the NE1/4 Section 21, T113N, R61W. A gated weir will be installed in each culvert at a crest elevation of 1248.1 feet mean sea level (fmsl). To facilitate water flow during time of high water, the invert elevation of the culverts will be installed at elevation 1246.1 fmsl and the gated weirs opened to allow flow into the original Foster Creek channel. The purpose of this project is to alleviate flooding around Lake Byron. The applicant also proposes to install removable stop logs on top of the weir in each culvert to block flow into the Old Foster Creek channel when Lake Byron is low.

A committee composed of a representative of the Lake Byron Watershed District, Lake Byron Lake Association and Lake Byron Township Board will make decisions on the operation of the structure. The operating plan for the gates on the Foster Creek diversion is as follows:

- If Lake Byron's water level is above 1248.1 fmsl, the gates will remain open.
- If Lake Byron's water level is less than 1248.1 fmsl, gates will be closed to allow flow to enter the lake. During spring runoff, or immediately following a large rainfall event, gates may remain open to allow flows carrying excessive sediment and nutrient loads to bypass the lake. Depending on water elevations, flow rates in the diversion and anticipated runoff conditions, gates may be adjusted to allow some flows to bypass the lake.
- Gates will be locked at all times.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. FC - 16 until the applicant obtains necessary easements or agreements from adjacent landowners.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 16, 1998. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider this application at 2:00 p.m. (cst), February 25, 1998, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD 57501. The Chief Engineer's recommendation is not final or binding upon the Board. If the applicant secures property easements, the recommendation may be revised to reflect this new information. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public

hearing. The hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by February 16, 1998.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. This 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. Contact Eric Gronlund by February 16, 1998, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

This application are made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-47, 46-5-48 and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Nettie Myers, Secretary, Department of Environment and Natural Resources.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

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

January 22, 1998

Lake Byron Watershed District
%Ronald Wheeler
P.O. Box 1363
Huron, SD 57350

Dear Mr. Wheeler:

Flood Control Permit Application No. FC-16 for flood control use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of the Plainsman printed at Huron, SD (Ph # (605) 352-6401). For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. 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 your Notice of Hearing and to arrange for payment. Early contact with the paper can eliminate delays. The publisher has been instructed to publish your notice once each week for two consecutive weeks with the last publication to occur twenty days before the board meeting. The newspaper has been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the application.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

January 22, 1998

The Plainsman
P.O. Box 1278
Huron, SD 57350-1278

ATTENTION: Legal Department

Enclosed is a Notice of Hearing on Application No. FC-16 to be published twice. Please publish the first notice on January 29, 1998, with the second publication 7 days later.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make the first publication. Please BILL the APPLICANT for the cost of publication. The APPLICANT is Lake Byron Watershed District, %Ronald Wheeler, P.O. Box 1363, Huron, SD 57350 (Ph # (605) 352-7154).

A copy of BOTH publications must be SENT to the WATER RIGHTS PROGRAM. IMMEDIATELY return the FIRST publication with the FIRST Transmittal form on the bottom of this page. The first copy is needed to check the publication for errors so any corrections can be made in the second publication. Publication errors can invalidate the public notice and cause the applicant costly delays.

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. No action may be taken on the permit application until proof of publication has been received.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

FIRST TRANSMITTAL NOTICE

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

No. _____

Date _____

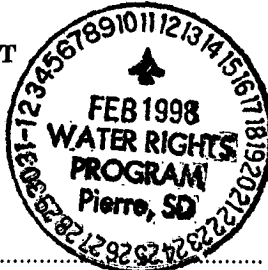
We are in receipt of your letter of _____ enclosing Notice of Hearing to Appropriate Water by Application No. _____ which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper

PRINTER'S AFFIDAVIT

STATE OF SOUTH DAKOTA,
COUNTY OF BEADLE: ss.



I, Leslie Fraser
being duly sworn on oath, say that THE PLAINSMAN is a daily paper published at Huron, Beadle County, South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date; that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I

am bookkeeper.....
..... of said newspaper
and know the facts herein state. The annexed notice headed

Notice of Hearing on Application No. FC-16

for a Flood Control Permit

Lake Byron Watershed District

was published for..... two successive weeks
the same day each week, in said newspaper, and not in any supplement
of the said newspaper, the first publication on the..... 29th day of
..... January 19..... 98, and the last publication on the..... 5th
day of..... February 19..... 98. That the full amount of the fee
charged for publishing the same, to-wit:

one hundred sixty-eight and 70/100 Dollars
inures to the benefit of the publisher of said newspaper; that no
agreement or understanding for the division thereof has been made
with any other person, and that no part thereof has been agreed to be
paid to any person whomsoever.

Leslie Fraser

Subscribed and sworn to before me this..... 5th day of..... February.....
19..... 98.

May B. Walz

Notary Public, South Dakota

My term expires..... 6/1/2000.....

F.P. 1-29-98 L.P. 2-5-98

NOTICE OF HEARING on
Application No. FC-16 for a
Flood Control Permit

Notice is given Lake Byron Watershed District, c/o Ronald Wheeler, PO Box 1363, Huron SD 57350 has filed an application for a flood control permit to install three 48 inch culverts through an existing dike to facilitate water flow through Lake Byron during times of high water. The South Dakota Department of Game, Fish and Parks currently holds Recognized Vested Water Right Claim Nos. 587-3 and 807-3 for diversion of Foster Creek flow for storage in Lake Byron and Mud Lake. In 1931, a diversion ditch was constructed to reroute runoff water from the Foster Creek watershed to Lake Byron and a dike was constructed blocking any flow to the Old Foster Creek channel. Excess water in Lake Byron spills to Mud Lake and subsequently back into the Foster Creek channel and then on to the James River. Approximately 3/4 of a mile of the Old Foster Creek channel was bypassed due to this modification.

This application proposes three 48 inch culverts through the dike located in the NE 1/4 Section 21, T11N, R61W. A gated weir will be installed in each culvert at a crest elevation of 1248.1 feet mean sea level (fmsl). To facilitate water flow during time of high water, the invert elevation of the culverts will be installed at elevation 1246.1 fmsl

and the gated weirs opened to allow flow into the original Foster Creek channel. The purpose of this project is to alleviate flooding around Lake Byron. The applicant also proposes to install removable stop logs on top the weir in each culvert to block flow into the Old Foster Creek channel when Lake Byron is low.

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- Gates will be locked at all times.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application No. FC-16 until the applicant obtains necessary easements or agreements from adjacent landowners.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address as given above. A petition filed by either an interested person or the applicant must be filed by February 16, 1998. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, of legal counsel is obtained.

The Water Management Board will consider this application at 2:00 p.m. (cst), February 25, 1998, in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre, SD 57501. The Chief Engineer's recommendation is not final or binding upon the Board. If the applicant secures property easements, the recommendation may be revised to reflect this new information. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The hearing date will be automatically delayed for at

least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by February 16, 1998.

Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. This 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. Contact Eric Gronlund by February 16, 1998, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-47, 46-5-48 and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Nettie Myers, Secretary, Department of Environment and Natural Resources. No. 41 (adv.)

176 442 168 70

STATE OF SOUTH DAKOTA

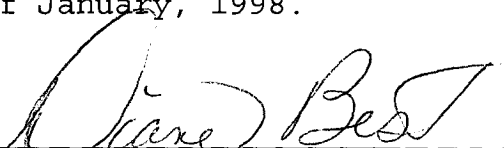
SOUTH DAKOTA WATER MANAGEMENT BOARD

IN THE MATTER OF FLOOD)
CONTROL APPLICATION NO. 16,) SUBPOENA
LAKE BYRON WATERSHED DISTRICT)

TO: MARK RATH, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,
FOSS BUILDING, 523 EAST CAPITOL AVENUE, PIERRE, SOUTH DAKOTA
57501-3182

You are hereby commanded to appear in the above-entitled matter on February 25, 1998, at 2 p.m. at the Matthews Training Center, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota, and then and there give testimony for the South Dakota Department of Environment and Natural Resources in the above-entitled action. This subpoena is issued pursuant to SDCL 1-26-19.1. The above-entitled matter is expected to continue through February 26, 1998; your appearance is required for the duration of this proceeding.

Dated this 23rd day of January, 1998.


Diane Best
Assistant Attorney General
500 E. Capitol Avenue
Pierre, South Dakota 57501-5070
Telephone: (605) 773-3215

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) : SS. ADMISSION OF
SERVICE

I, Mark Rath, do hereby certify that the above Subpoena came into my possession on the 26 day of January, 1998. I hereby admit service of the same.

Dated this 26 day of January, 1998, at Pierre,
South Dakota.


Mark Rath

January 31, 1998

John Hatch, Chief Engineer
Water Rights Program
Department of Environment & Natural Resources
Foss Bldg. 523 E. capitol
Pierre, SD 57501-3181



RE: Flood Control Application No. FC-16, Lake Byron Watershed District

I am the owner of the NE 1/4 Sec. 21-113-61 Beadle County, the property identified in the application upon which the facilities of the proposed project are to be placed.

I was first presented a "Memorandum of Understanding" (attachment #1) on October 7, 1997, supposedly for my approval that the project be constructed and operated at this location.

As I had no prior information of the plans of the Watershed District, I requested from their representative, Ronald Wheeler, information to identify the owner of the property where the project was to be constructed. I was told by Mr. Wheeler that the South Dakota Department of Game Fish and Parks owned the property (attachment #2). This claim has of course been shown to be incorrect. Game Fish and Parks has confirmed to me that they own no property within the NE 1/4 Sec. 21-113-61 (attachment #3).

Subsequently Mr. Wheeler presented me a document indicating the SD Department of Game Fish & Parks held an "easement" to the property granted by one C. S. Betts in 1943 (attachment #4). After examining the property records for the NE 1/4 Sec 21-113-61, I find no information that anyone identified as C. S. Betts owned or had any authority to grant any rights or privileges to anyone to this property on or around 1943, nor for that matter before or since. I believe this document is in error, and I have requested that the State investigate the matter and if indeed error is established, they proceed to make the record correct (attachment #5). As of this date I have had no response to my request. I have concluded that Game Fish & Parks holds no legitimate easement on any property within the NE 1/4 Sec 21-113-61.

If there are errors in the property records and confusions on the part of any of the parties participating in the development of this project they must be corrected and clarified first.

It is still unclear to me whether or not the NE 1/4 Sec. 21-113-61 is within the boundaries of the Lake Byron Watershed District.

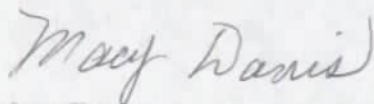
Even with these issues unresolved, I have been repeatedly urged by Mr. Wheeler that I sign the "memorandum of understanding". I also find inappropriate his assumption that verbal conversation with a third party constitutes adequate procedure in providing me information and securing my approval.

At this time I have little confidence in the information and assurances that I have been presented by the watershed district's representative.

As owner of the property whereon the facilities of the project are to be developed and operated, I find the "memorandum of understanding" inadequate as an instrument granting the privilege to develop the project. I believe there are important responsibilities and assurance to both parties, those who assume the construction and operation, and myself as the property owner that must be agreed upon.

I support the Chief Engineers recommendation that the application be deferred.

This statement and attachments are sent to Lake Byron Watershed District, c/o Ronald Wheeler, PO Box 1363, Huron, SD 57350.

A handwritten signature in cursive script that reads "Macy Davis".

Macy Davis
PO Box 52
Frankfort, SD 57440

Attachment #1

WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157

October 7, 1997

Brad and Macy Marie Davis
RR 1 Box 70
Carpenter, SD 57322

Re: Lake Byron

Dear Brad and Macy Marie:

I am at this time enclosing an original and copy of a Memorandum of Understanding that I have prepared involving the culverts we are going to be putting in near Lake Byron on the Foster Creek channel.

If it meets with your approval, would you please sign the original and return it to me in the enclosed envelope. You may keep the copy for your information.

I would appreciate your handling this as soon as convenient for you, since we are trying to get this project done in the next two or three weeks.

If you have any questions, please give me a call.

Thank you for your consideration.

Very truly yours,



Ronald J. Wheeler

RJW/sr

Enclosure

MEMORANDUM OF UNDERSTANDING

This memorandum being entered into by and between the Lake Byron Watershed District, Lake Byron Township, Beadle County, South Dakota hereinafter referred to as Watershed District, and Brad Davis and Macy Marie Davis, of PO Box 52, Frankfort, South Dakota, hereinafter referred to as Davis':

WHEREAS, Lake Byron Watershed District, along with the South Dakota Game, Fish and Parks is receiving permission from the State of South Dakota to put in three, forty-eight inch culverts on a dike located north of Lake Byron, Beadle County, South Dakota, and

WHEREAS, such culverts will be for the purposes of diverting water from Foster Creek passed Lake Byron, and into the old Foster Creek channel, and

WHEREAS, such water through the Foster Creek channel flows across certain real property hereinafter described belonging to Davis',

IT IS THEREFORE agreed as follows:

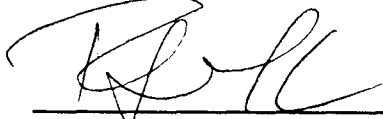
1) That the Watershed District can divert the water into the old Foster Creek channel through the culvert system, pursuant to a plan of operation, a copy of which is attached hereto.

2) That Davis' own real estate in "Sections 21, Township 113, Range 61, Beadle County, South Dakota", and agree to the diversion of the water through Foster Creek, across such property from time to time as necessary under the operation plan for the culverts.

3) That this agreement remain in force and effect as long as the culverts are in place.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this ____ day of October, 1997.

LAKE BYRON WATERSHED DISTRICT



Ronald J. Wheeler, Chairman

Brad Davis

Macy Marie Davis

WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157

November 5, 1997

Macy Davis
PO Box 52
Frankfort, SD 57440

Re: Lake Byron Watershed

Dear Mrs. Davis:

I have your letter, and at this time I am enclosing the two maps that you requested. I have marked the levee or dike on both of the maps and on the blow-up one, I have placed a red X showing where the culverts are to be placed.

The levee or dike is actually owned by the South Dakota Game, Fish and Parks, and we would be placing the culverts on their property and not on your property, even though it is within the Northeast Quarter of Section 21-113-61.

We will need to access the dike by coming on your property from the north side. We previously discussed this with Brad, and had received his permissions to come on the property, in return for our efforts to get the breach in the dike sealed.

The pathway that we would take is the same pathway that is already in place, from the north side of the property over to the dike.

I hope this is the information that you desired, but if there is any thing else, please advise.

Thank you very much.

Very truly yours,

WHEELER LAW OFFICE



Ronald J. Wheeler

RJW/sr

Enclosure

cc: Brad Davis

Attachment #4

WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157

December 8, 1997

Macy Davis
PO Box 52
Frankfort, SD 57440

Re: Lake Byron Watershed

Dear Mrs. Davis:

I have a copy of your letter of November 20, addressed to Mr. Cooper, of the Game, Fish and Parks, concerning my November 5 letter to you about the ownership of the dike by the Game, Fish and Parks.

I had been under the impression from the very beginning that South Dakota Game, Fish and Parks owned the entire dike, but have now been advised that they only own the part of the dike, in the SE 1/4 of section 21. They only have an easement to construct and maintain the dike in the NE 1/4 of section 21, which is your land. I am enclosing a copy of that easement given to them in June of 1943 by C. S. Betts.

I hope this clears up any misunderstanding, and I apologize for the confusion on this question. If there is any additional information you would require, please contact me.

Otherwise, I would appreciate your consideration with respect to the Memorandum of Understanding that we have prepared, since we are attempting to move forward with the project. Hopefully, we can prevent further flooding of your land in the future, by taking pressure off the areas of the dike that have breached in the past.

Very truly yours,

WHEELER LAW OFFICE



Ronald J. Wheeler

RJW/sr

Enclosure

cc: Brad Davis
John Cooper, Sec. SD Game, Fish and Parks
Roger Strom

EASEMENT CONTRACT

THIS AGREEMENT made and entered into this 30 day of June, 1943, by and between C. S. Betts of Huron, Beadle County, South Dakota, party of the first part, and the State of South Dakota, Pierre, South Dakota, party of the second part, WITNESSETH:

That for and in consideration of the sum of one Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, party of the first part hereby grants, bargains and sells unto the party of the second part the easement and right to construct and maintain a water diversion ditch upon the following described land in Beadle County, South Dakota, to-wit:

Following the West line of Lot Two (2), between the shore line of Mud Lake and the natural channel of Foster Creek, a strip of land one hundred feet (100 ft.) wide in Lot two (2) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Twenty-one (21), Township One Hundred Thirteen (113) North, Range Sixty-One (61) West of the Fifth Principal Meridian, Beadle County, South Dakota.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this 30 day of June, 1943.

C. S. Betts

STATE OF SOUTH DAKOTA)
COUNTY OF BEADLE) SS

On this 30 day of June, 1943, before me, a notary public within and for said county and state, personally appeared C. S. Betts known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same.

(SEAL) H. E. Bowers
Notary Public, South Dakota.

Filed for record in the office of the Register of Deeds, Beadle County, South Dakota, July 7, 1943, at 10:00 o'clock A. M. in Book 291 on page 129.

Hazel Arnold, Deputy
Blanche B. Hoy, Register of Deeds.



December 8, 1997

DEPARTMENT OF GAME, FISH AND PARKS

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



WILDLIFE RESTORATION
P R O G R A M

Mrs. Macy Davis
PO Box 52
Frankfort, South Dakota 57440

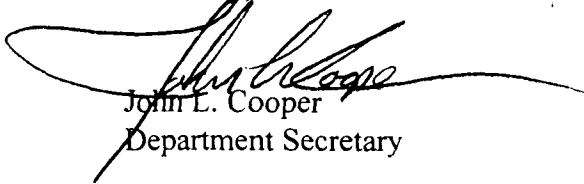
Dear Mrs. Davis:

This letter is in response to your request of November 20, 1997, concerning property ownership in the Lake Byron watershed.

We do not own any property in the Northeast One-Quarter of Section 21, Township 113, Range 61. We do however own land in the Southeast One-Quarter of the same section, township and range. The north border of our property shares a common boundary with the Northeast quarter so perhaps the Watershed District Chairman confused the two properties.

If you have any additional questions, please feel free to contact Dave McGuigan of my staff at 773-4194. Dave is our land management specialist and should be able to help you out.

Sincerely,



John E. Cooper
Department Secretary

cc: Roger Strom
Dave McGuigan

PO Box 52
Frankfort, SD 57440
January 6, 1998

Dave McGuigan
Department of Fish, Game & Parks
Foss Bldg.
523 E. capitol
Pierre, SD 57501-3182

Dear Mr. McGuigan:

The Secretary has requested that I direct to you any further inquiries regarding the State's interest in the NE1/4 Section 21, 113-61 in Beadle County. My personal knowledge of this property and its past ownership, and my examination of the facts of record suggest to me that the document granting an "easement" to this property from C.S. Betts to the State of South Dakota is either fraudulent or in error.

Betts neither owned nor had any authority to grant any rights or privileges to anyone for the possession or use of any property within the NE1/4 Sec 21-113-61 on or around the date the "easement" was executed or recorded.

According to the record there is no Lot 2 in the NE1/4, and further, no portion of the natural shoreline of Mud Lake (also called Connors Lake) is within the NE1/4, and is some distance from the boundaries of this property. There is however a Lot 2 in the SE1/4 as well as the shoreline of Mud Lake. This property was, I believe, owned by Betts at the time the "easement" was granted.

The reference to the NE1/4 in the "easement" is in my opinion in error. Since this document was recorded some time ago reference to it appears on my abstract for the NE1/4.

I would like to request that the State of South Dakota research, compare, and examine the facts of record to determine if you agree there is error in the "easement", and if so, please pursue efforts to make the record correct. I believe it is in both our interests to make clean the record of these properties. I would be happy to cooperate.

Sincerely yours,

Macy Davis

Enclosure

cc Ronald Wheeler

WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157

February 5, 1998



John Hatch, Chief Engineer
Water Rights Program
Department of Environment & Natural Resources
Foss Bldg. 523 E Capitol
Pierre, SD 57501-3181

Re: Flood Control Application No. FC-16,
Lake Byron Watershed District

Dear John:

I have Macy Davis' letter of January 31, addressed to you.

I thought I should write to give you a little background on this matter.

Brad Davis came to me about three years ago, concerned with the problem of the dike having been breached, and flooding his land. He wanted something done about sealing the breach. I then met with people from GF&P, as well as the US Fish and Wildlife, and other agencies to discuss the problem, and ultimately got the breach sealed.

At the same time, Brad indicated that he was interested in seeing if something could be done about eliminating future problems, and we came up with the idea of the culverts. He advised that he would have no objection to us traveling on his property, for purposes of accessing the dike and doing the work.

As a result, I have been working on this matter for three years, under the assumption that permission from the landowner was not an issue.

Now, it turns out that Brad does not own the land, but rather his mother, Macy Davis does, and you have seen the results of that situation.

I have talked to Brad, but I wanted you to be aware that I was not trying to do some "end run" around Mrs. Davis, when dealing with her son. Brad has advised me that he is going to talk to his mother about this, and see if something can be resolved, but I thought I should write you.

Thank you for your consideration.

Very truly yours,

WHEELER LAW OFFICE

A handwritten signature in black ink, appearing to read "R. Wheeler", written over the printed name.

Ronald J. Wheeler

RJW/sr

RONALD J. WHEELER
KAARIN LONG



WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

PHONE: 605/352-7154
FAX: 605/352-7157

February 10, 1998

Mr. Eric Gronlund
Department of Environment & Natural Resources
Joe Foss Building
523 E Capitol
Pierre, SD 57501-3181

Re: Lake Byron Watershed District

Dear Eric:

Pursuant to my telephone conversation with your office, at this time I am enclosing the original Printer's Affidavit, in connection with our application for flood control permit.

Also, in light of the fact that Mr. Hatch has recommended deferral of the application, I am not certain that there is any reason for us to be present at the hearing. However, I would appreciate hearing from you or someone from your office, concerning that issue.

Thank you very much.

Very truly yours,

WHEELER LAW OFFICE

Ronald J. Wheeler

RJW/sr

Enclosure

WHEELER LAW OFFICE

1507 DAKOTA AVE. SOUTH
P.O. BOX 1363
HURON, SOUTH DAKOTA 57350

RONALD J. WHEELER
KAARIN LONG

PHONE: 605/352-7154
FAX: 605/352-7157

February 12, 1998



Mr. John Hatch, Chief Engineer
Water Rights Program
Department of Environment & Natural Resources
Foss Bldg. 523 E Capitol
Pierre, SD 57501-3181

Re: Lake Byron Watershed District

Dear John:

In light of the concerns raised by Macy Davis in connection with this matter, we would agree to a deferral of the permit application, at this time.

We are hoping that the issues raised by Mrs. Davis can be resolved, so that this project can go forward in the future.

Thank you for your consideration.

Very truly yours,

WHEELER LAW OFFICE

Ronald J. Wheeler

RJW/sr

cc: Macy Davis
Brad Davis
Tim Olson, Game, Fish and Parks



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

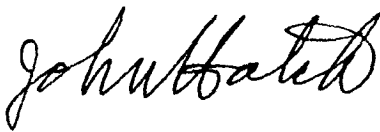
February 27, 1998

NOTICE

TO: Ronald Wheeler
P.O. Box 1363
Huron, SD 57350

Macy Davis
P.O. Box 52
Frankfort, SD 57440

FROM: John Hatch, Chief Engineer
Water Rights Program
(605) 773-3352



SUBJECT: Deferral of Flood Control Application No. FC-16, Lake Byron Watershed District

On February 25, 1998, the Water Management Board deferred consideration of Lake Byron Watershed District's Flood Control Application No. FC-16. The deferral was granted to allow the District to obtain any necessary easement or agreements. A Board hearing will be scheduled for reconsideration of the application upon request by the District.

Please contact Eric Gronlund at (605) 773-3352 if you have any questions.

c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on February 27, 1998, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 27, 1998, regarding Deferral of Flood Control Application No. FC-16, Lake Byron Watershed District, addressed as stated below:

Ronald Wheeler, P.O. Box 1363, Huron, SD 57350.

Macy Davis, P.O. Box 52, Frankfort, SD 57440.

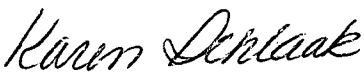
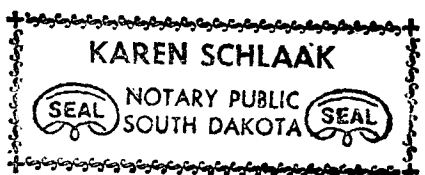
A copy of the above described Notice was sent Inter-office to:

Diane Best, Assistant Attorney General, Capitol Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 3rd day of March, 1998


Notary Public


KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001

PARTIES OF RECORD

FLOOD CONTROL PERMIT APPLICATION NO. FC-16, Lake Byron Watershed District

APPLICANT

Lake Byron Watershed District

c/o Ronald Wheeler, attorney
PO Box 1363
Huron, SD 57350

PETITIONERS

Macy Davis
P.O. Box 52
Frankfort, SD 57440

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

500 EAST CAPITOL
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX# (605) 773-4106



MARK W. BARNETT
ATTORNEY GENERAL

LAWRENCE E. LONG
CHIEF DEPUTY ATTORNEY GENERAL

August 6, 1998

Ron J. Wheeler
Wheeler Law Office
P.O. Box 1363
Huron, SD 57350

Re: Lake Byron Easements

Dear Mr. Wheeler:

This letter responds to your request of July 23, 1998, regarding easements held by the State of South Dakota or the Department of Game, Fish and Parks at the NE 1/4, Section 21, T113N, R61W, Beadle County. As we discussed during our telephone conversation, I am not in a position to undertake title search or develop a legal analysis regarding state ownership in any particular parcel of property unless requested by a state agency.

Following our discussion, I did contact the Department of Game, Fish and Parks and the Office of School and Public Lands regarding this issue. Neither of those offices has requested a formal opinion from the Office of Attorney General for the parcels in question. Based upon my conversations with those offices, however, I offer the following comments regarding this situation.

Betts Easement. In June 1943 the State of South Dakota and an individual named C. S. Betts entered into an easement contract allowing the State to construct and maintain a water diversion ditch along Mud Lake. Though the legal description contained in the easement contract lists the NE 1/4 of section 21, the legal description appears to be an error. The proper legal description for this easement contract is likely the SE 1/4 of section 21. A portion of the water diversion ditch and shoreline of Mud Lake are in the SE 1/4 of section 21, (not the NE 1/4). I have consulted with the Office of School and Public Lands and that office is in agreement that the Betts contract is not a valid easement insofar as the NE 1/4 of section 21.

Other Written Easements. Other than the Betts Easement, there are no other easements recorded in the Office of School and

Public Lands for the NE 1/4 of Section 21. If such other easements do exist, you will need to check with the Beadle County Register of Deeds. Based upon the information you provided as well as that available from the State Agencies consulted, it is my understanding that the diversion ditch was constructed and maintained as a Game, Fish and Parks project. As such, it is likely that any recorded easement at the Beadle County Register of Deeds may be in the name of the State of South Dakota, Game, Fish and Parks.

Prescriptive Easement. If there are no written easements for the NE 1/4 of section 21, and no other documents indicating that the land owner consented, then it is likely that a prescriptive easement does exist. The prescriptive easement would be an easement in favor of the South Dakota Department of Game, Fish and Parks. Prescriptive rights may apply for ingress and egress, surface water flow, and/or maintenance of the dike. The Department of Game, Fish and Parks has not asked me to review the extent or scope of such a prescriptive easement. I cannot speculate as to whether such an easement would accommodate the project proposed by the Lake Byron Watershed District. Indeed, a question exists as to whether the proposed easement, by installation of the culverts, would serve to, relinquish a portion of the prescriptive right or whether the water control structures would be considered as expanding upon the scope of a prescriptive easement. A further question would be whether there was any type of written or verbal consent which operated to defeat the prescriptive easement. In summary, the easement question raises several issues. Given the situation, I cannot give you any clear opinion on the nature of the State's interest in this parcel.

The foregoing is not intended as an opinion of the Office of Attorney General or the Department of Game, Fish and Parks. This letter is the opinion of the undersigned and was prepared in consultation with the South Dakota Office of School and Public Lands.

Sincerely,



Diane Best
Assistant Attorney General

DB:sk

cc: Dave McGuigan
Mike Cornelison
Mark Rath



**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 19, 2009

Ronald Wheeler, Attorney at Law
PO Box 1363
Huron SD 57350

Dear Mr. Wheeler:

The Lake Byron Watershed District has a flood control permit application pending that has been deferred since 1998.

Application No. FC-16 proposes to install three 48 inch culverts through an existing dike with a gated weir installed in each of the culverts at a crest elevation of 1248.1 feet mean sea level (fmsl). They are to facilitate water flow during times of high water. The invert elevation of the culverts is proposed to be elevation 1246.1 fmsl and the gated weir be opened to allow full flow in the culverts to the original Foster Creek channel (aka Old Foster Creek). The culverts through the dike are to be located in the NE ¼ Section 21, T113N, R61W. In addition, the application included installation of removable stop logs on top of the weir in each culvert to block flow in the Old Foster Creek channel when Lake Byron is low.

The Water Management Board deferred consideration of the District's application to allow the District to work towards obtaining any necessary easement or agreements. Since this application has been dormant for over 10 years, this letter is intended to determine whether District is working towards obtaining the necessary easement or agreement with the landowner. Please respond by July 31, 2009 on whether the District is still pursuing this project. If the District is not proceeding with the project, withdrawal of the application may be in order.

If you have any questions on the flood control permit application, please feel free to contact me.

Sincerely,

Eric Gronlund
Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us