

Considered: _____

WATER PERMIT NO. VR 2213-2

Phone: 805 487-2979

Name of Applicant: Ronald Vincent

Post Office Address: 2210 Lassen St., Oxnard CA 93033

Amount of Water Claimed: 240 Total Acres: NA

Source of Water Supply: Little White River

Water to be used for: hydroelectric power County: Mellette

About _____ miles near of White River

PROOF OF PUBLICATION: Received _____ Not Received _____

APPLICATION: Approved _____ Subject to _____

F.F. & C/.L. Adopted _____ Not Approved _____ Deferred _____

PRIORITY Date Received: 1-24-92 Fee: \$15.00 Remarks priority date

of January 1, 1925

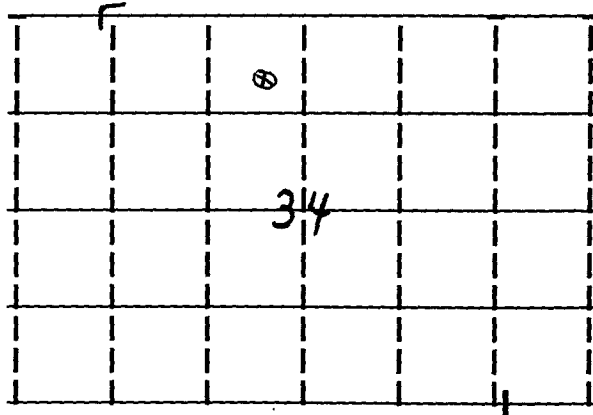
Corrected Application Received _____ Period of Annual Use Jan 1 - Dec 31

WATER QUALITY APPROVAL RECEIVED NA APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as Application YES _____ NO _____ REMARKS _____

Diversion Point: NE 1/4 NW 1/4 Sec 34-T42N-R29W

Land to be Irrigated: _____



Well Log: Driller: NA Licensed YES _____ NO _____

Depth of Well: _____ REMARKS _____

Type of Map: aerial PREPARED BY: Tim Schaal Reviewed and the Number

Assigned on 1-24-92 By Karen Schlaak

No. _____ Hydrologic Unit _____
 Map No. _____ Basin _____
 Newspaper _____

Application For Permit To Appropriate Water Within The State Of South Dakota

Check use of water: Industrial ☐ Commercial ☐ Municipal ☐ Other Common Distribution System ☐
 Rural Water System ☐ Suburban Housing ☐ Geothermal Heat ☐ Institutional ☐ Recreational ☐
 Domestic ☐ (above 18gpm) Other ☒

Type of Application: Check one or more of the following

New ☐ Vested Right ☒ Future Use ☐ Change Use ☐

☐ Amend Permit No. _____ with old priority date retained

Change diversion point(s) ☐ Add diversion point(s) ☐ Other ☐ _____

☐ Application to: Change diversion point(s) ☐ Add diversion point(s) ☐ on Permit No. _____

☐ Construction to use water reserved by Future Use Permit No. _____

1. Name of Applicant Ronald Vincent Phone No. 982-1367 Work 805 487-2979 Home

Post Office Address 2210 Lassen Street Oxnard State Calif. 93033
(Street, RR or Box) (City) Zip Code

2. Amount of water claimed (c.f.s.) 240

3. Source of water supply Little White River

4. Location of point of diversion 1950 ft. North & 300 ft. West of the center of
Section 34-T42N-R29W (NE⁴ NW⁴)

County Mellette

5. Counties where water will be used Mellette

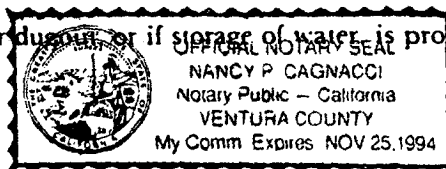
6. Annual period during which water is to be used January 1 thru December 31

7. Give a brief description of proposed 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)

Water Right No. 253-2 was issued on April 18, 1930 for the purpose of generating hydro-electric power at the Little White River Hydroelectric Dam. Water Right No. 253-2 was limited to a 50 year period by R. Pol. C. 8262, which was repealed in 1955. This Vested Right Claim is being filed to clarify the Water Right for the Hydroelectric Dam.

Attachments: Attach Form 2A if diversion from a well or duct or if storage of water is proposed. Attach map (see instruction)

STATE OF ~~SOUTH DAKOTA~~ California
 County of Ventura

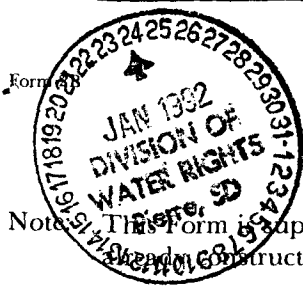


I, Ronald Vincent the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Signed Ronald Vincent

Subscribed and sworn to before me this 20th day of January 1992

Nancy P. Cagnacci
 Notary Public



Affidavit of Water Use

No. _____

(Type or Print in Ink)

Note: This Form is supplemental to Form 2 and is to be used when an affidavit pertaining to construction and water use is needed, primarily with vested right claims.

Affidavit Of Construction Of Water Use System And Application Of Water To Beneficial Use

Name of Applicant (Same as Form 2) Ronald Vincent

Post Office Address 2210 Lassen Street Oxnard, Calif. 93033
(Street, RR or Box) (State) (Zip Code)

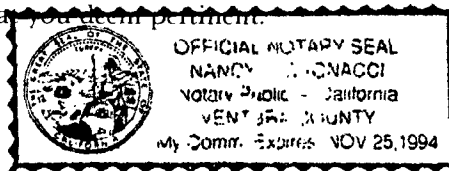
- A. Notice of Appropriation November 14, 1929 Date of Posting _____
Date of recording November 15, 1929 Recording date South Dakota State Engineers Office
Where Book Page
- B. Date of start of construction of water supply system 1924
- C. Date that water was first applied to beneficial use 1925
- D. Name of owner of original water supply system Municipality of White River
- E. Amount of water originally applied to beneficial use 400 cfs
- F. Present Use of Water - Amount of water now being used 240 cfs (Maximum use)

Date that this water was first used 1925

- G. Chronological History of Water Use Original owner installed and operated a 115 Hp. water turbine in 1924 to provide electricity for the local village. Central West Public Service Co. acquired the property and added a 240 Hp. water turbine in 1929. Since 1929 both turbines used the maximum available river flow to generate electricity for the local community power grid. Production was interrupted for a period of 19 months between Nov 1978 and May 1980 when a fire damaged the power house control equipment. Present owner acquired the property in June 1979. Repairs were performed and electricity production resumed in May 1980. The system operates continuously as a run-of-river operation that generates the maximum power possible with all available CFS.

Attach to this Form 2B any copies of notices, postings, filings, publications, affidavits, or other records that apply. You may also attach any written statement by you, or by others, that you deem pertinent.

State of ~~South Dakota~~ California) SS
County of Ventura)



I, Ronald Vincent the applicant, certify that I have read the foregoing
(print or type)
and that the matters therein stated are true.

Signed Ronald Vincent

Subscribed and sworn to before me on January 20th, 19 92

Nancy P. Cagnacci
Notary Public or other qualified officer

I, the undersigned do hereby certify that I know about the water use system described above, that I have read the foregoing, and that the matters therein stated are true.

See attached affidavit

(Print name) _____ 19____

(Print name) _____ 19____

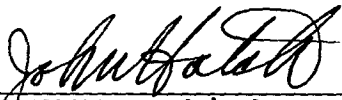
STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 2213-2

(1) Ronald Vincent of 2210 Lassen Street, Oxnard, CA 93033 made Application No. 2213-2, January 24, 1992 for validation of a vested right claim to appropriate 240 cubic feet of water per second from the Little White River, Mellette County, South Dakota for industrial purposes (generating hydroelectric power). Vested Water Right No. 2213-2 was validated May 6, 1992 with a priority date of November 15, 1929. Construction of the described water supply system and application of water to beneficial use has been completed and complies with applicable provisions of South Dakota State Law.

(2) The applicant is entitled to divert 240 cubic feet of water per second for beneficial use. The location of the hydroelectric dam is: in the NE 1/4 NW 1/4 Section 34, T42N, R29W. The dam impounds approximately 40 acre-feet of water.

(3) Pursuant to Section 46-5-30.1 Ronald Vincent of 2210 Lassen Street, Oxnard, CA 93033 the holder(s) and/or owners(s) of Vested Water Right No. 2213-2 is issued a license to appropriate 240 cubic feet of water per second from the Little White River with a priority date of November 15, 1929 from the location specified in (2) of this license. The water is to be used for the purpose of generating hydroelectric power. This license is subject to any limitations, conditions or qualifications listed in Vested Water Right No. 2213-2 and subject to South Dakota State Law.


JOHN HATCH, Chief Engineer
Water Rights Division
Department of Water and Natural
Resources

JUN 25 1992

SOUTH DAKOTA

VESTED WATER RIGHT NO. 2213-2

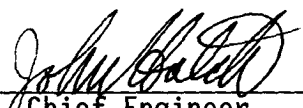
Date of Receipt of Claim January 24, 1992.

Date of Validation May 6, 1992.

The Water Management Board validated Vested Water Right Claim No. 2213-2 for Ronald Vincent, 2210 Lassen Street, Oxnard CA 93033 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 2213-2 appropriates 240 cubic feet of water per second from the Little White River for operation of a hydroelectric dam located in the NE 1/4 NW 1/4 Section 34-T42N-R29W. The dam impounds approximately 40 acre-feet of water.
2. The appropriated water is used for generating hydroelectric power at the Little White River Hydroelectric Dam and may not exceed the amount of water needed for beneficial use for industrial use.
3. The water is to be used during the following annual period: January 1 - December 31.
4. The priority date of the Vested Water Right is November 15, 1929.
5. The water use system has been constructed and water has been applied to beneficial use.
6. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

WATER MANAGEMENT BOARD

By: 
Chief Engineer
Division of Water Rights
Dept. of Environment and Natural Resources

JUN 25 1992

date

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

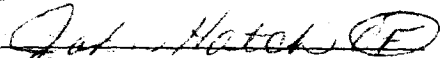
413033

Pierre, _____, January 24, 19 92

RECEIVED OF Ron Vincent, 2210 Lassen St., Oxnard, CA 93033

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

Fee for Application for Permit No. <u>2213-2</u> to Appropriate Water, to construct works and to put water to beneficial use _____	15	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 Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for _____		
(Any Other Work Provided by Law)	Total	25 00

By John Hatch 
Chief Engineer

NOT TO SCALE



Timothy G. Schaaf
November 6, 1991

2213-2

City of White River

WHITE RIVER, SOUTH DAKOTA 57579 · (605) 259-3242

Send
3-10-89

March 9, 1989

Ron Vincent
2210 Lassen St.
Oxnard, Cal. 93033

Mr. Vincent:

The White River City Council has authorized me to contact you in regards to your purchase price of land that the city diked and which we pump water onto. This land being in T 42 R 29W 6th P.M. Section 34: W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.

The Board would appreciate this information to see if it is feasible to purchase said land at this time.

Sincerely,


Ray Bartlett, Mayor

April 17, 1989
Ron Vincent
2210 Lassen St.
Oxnard, Ca. 93033

Mayor Ray Bartlett
City of White River
White River, SD. 57579

Mayor Bartlett:

Re your letter of March 9, 1989 in which you inquired as to the purchase price of the land which the city diked and which you pump water onto. The land being in T 42 R 29W 6th P.M. Section 34: W1/2 W1/4 SE1/4 NW1/4.

I am really not interested in selling the land. However my calculations indicate that with the added expense of Federal and California State income tax I would need to sell the property for \$35,000 in order to replace the income lost from owning the land.

Therefore I would sell it for \$35,000 with a restriction added to the sale as to the amount of construction or environmental changes that could be performed on the land. My main concern being that the property not be altered so as to prevent its use as a safety valve outlet to protect the Power Plant, in the event of a very large amount of water coming down the Little White River.

In addition I would retain mineral rights to the property.

If the City is interested in saving money on the water pumping contract, I have an alternative proposal to the contract renewal sent to you a couple months ago. I would be willing to sign a 5 year contract to allow the City of White River to pump water on to the land in question, at any time, and as often as you wish, for a flat fee per year. The flat fee would be \$600 per year payable on May 1st of each year. This agreement would be for a total of 5 years at 600 dollars per year. Based on the past requirements of the City to pump water, I feel this would reduce your expenditures in this area about in half.

Sincerely,

Ron Vincent

Ron Vincent

CONTRACT

THIS CONTRACT, Made and entered into the 21 day of April, 1989 by and between Ronald D. Vincent, hereinafter called First Party and the City of White River, a municipal corporation, White River, South Dakota, hereinafter called Second Party, witnesseth:

I.

That First Party is owner of the following described premises:

Township 42 North Range 29 West 6th P.M.
Section 34: W 1/2 W 1/4 SE 1/4 NW 1/4

and owns the water right in the Little White River abutting the described property.

II.

That Second Party has an Easement on the described property wherein it has installed an infiltration gallery for the purpose of supplying the City of White River with municipal water.

III.

That for the consideration hereinafter specified, First Party agrees to permit Second Party to put up a three foot dike commencing 100 feet west of the City infiltration gallery on the old Highway 44 right of way; thence south 300 feet; the dike elevated 3 feet at point of commencement to zero elevation; and First Party does herein authorize Second Party to pump water on top of the diked area commencing May 1, 1989 and terminating on Dec 31, 1991.

IV.

That the purpose of the dike and water pumping is to increase the supply of water at the infiltration gallery to meet the required needs of the City.

V.

That the consideration to First Party shall be as follows:

The sum of \$300.00 per month for each month or partial month in which water is pumped onto property of First Party. With a minimum payment of \$300.00 per year whether or not Second Party pumps water. Payment shall be made at the conclusion of each month in which Second Party has pumped water onto property of First Party. In the event Second Party does not pump water at any time during a given calendar year, the minimum shall be paid by November 1st. of said given year.

VI.

It is further understood and agreed between the parties hereto that Payment made at the conclusion of each month shall be delivered to the following address by the fifteenth day following the end of the month in which pumping of water has occurred:

Ron Vincent
2210 Lassen St.
Oxnard, Cal. 93033

R.V.

In the event the payment has not arrived at the above address by the fifteenth day following the end of the month then interest and late charges shall apply in the following amounts:

Late charge of 5% of amount due
Interest on past due amounts at
the rate of 12% per year

A \$25 credit may be taken if payment is postmarked by the 3rd day following the end of the month due date.

VII.

It is further understood and agreed between the parties hereto that in the event Second Party does not renew this contract, Second Party shall level the dike so that the area is restored to its former appearance and use.

VIII.

First Party agrees that any construction material, primarily dirt, used for fill on building the dike, shall come from City property.

IX.

It is further understood and agreed between the parties hereto that said dike and associated pumping constitutes a potential hazard to people and livestock. Second Party agrees to assume all liability for the operation and safety of the impounded water and dike.

X.

THIS CONTRACT shall be binding upon the parties hereto, their successors in office, their heirs and legal assigns.

Dated the 21 day of April 1989.

CITY OF WHITE RIVER,

BY: Ray W. Bartlett
Ray W. Bartlett, Mayor

ATTEST:

Donna Harris
Finance Officer

Ronald D. Vincent 5/12/89
Ronald D. Vincent

WITNESSES:

R.V.

CONTRACT

THIS CONTRACT Made and entered into this 6th day of August, 1985 by and between Ronald D. Vincent, hereinafter called First party, and the City of White River, a municipal corporation, White River, South Dakota, hereinafter called Second Party, witnesseth:

That First Party is owner of the following described premises:

Township 42 North Range 29 West 6th P.M.
Section 34, ~~W1/2SE1/4NW1/4~~

Hydro Electric Power Plant and associated cement dam located on the Little White River, and owns the water right in the Little White River flowing across described property.

That Second Party has an Easement on the described property wherein it has installed an infiltration gallery for the purpose of supplying the City of White River with municipal water.

That for the consideration hereinafter specified, First Party agrees to maintain the water level of the pond created behind the cement dam at a level suitable to aid Second Party in pumping water from the infiltration gallery.

It is understood and agreed between the parties that it is necessary from time to time to lower the water level of the pond in order to protect and perform maintenance on the Dam and Power Plant. The decision for these actions will be solely the responsibility of the First Party or designated representative.

It is further agreed that lowering the level of the pond for up to 7 consecutive days will be allowed without adjustment of the consideration herein agreed to.

It is understood and agreed that any time the spillway contains two twelve inch high boards across the top of the dam the obligation of the First Party shall be met. First Party may at his option raise the level above two boards high when and if in his opinion the safety of the Dam and equipment is not in jeopardy.

This agreement may be terminated at any time by either party, by providing written notification to the other party of the desire to void this agreement.

That the consideration to First Party shall be \$200.00 per month beginning July 1, 1985. Any adjustment to this consideration after 7 consecutive days of reduced level of the pond will be prorated at \$10.00 per day.

This Contract shall be binding upon the parties hereto, their successors in office, their heirs and legal assigns.

Dated this 6th day of August, 1985.

CITY OF WHITE RIVER

BY:

Ray Bartlett
Mayor, Ray Bartlett

ATTEST: Donna Bouman

Garhart a Becker
Garhart Becker, First Party Representative

EASEMENT CONTRACT

THIS EASEMENT-CONTRACT Made and entered into this 30 day of June, 1976 by and between Donald Jones, Sr. of White River, South Dakota, hereinafter called First Party and the City of White River, White River, South Dakota, a municipal corporation, hereinafter called Second Party, witnesseth:

WHEREAS, the First Party is the owner of the following described premises:

Township 42 North Range 29 West 6th Principal Meridian, South Dakota
Section 34: W₂W₂SE₄NW₄

WHEREAS, it is understood and agreed between the parties hereto that Second Party shall locate an infiltration gallery on the described property to provide a source of water supply to the City of White River.

WHEREAS, it is agreed between the parties that the infiltration gallery shall be located on the described property at a point mutually agreed upon between the parties.

First Party for the consideration hereinafter specified grants to Second Party the full and free right of way over the described property and thereon for the purpose of installation of said infiltration gallery at the site mutually agreed upon, and the maintenance thereof including the installation and maintenance of the pipelines leading to and from the infiltration gallery.

That the consideration to First Party for the above described easement shall be as follows:

(1) Easement upon property for gallery and pipeline	\$10.00
(2) Damages for gallery and pipeline construction, loss of crop and any other surface damage sustained by First Party	<u>\$4000.00</u>
Total consideration	<u>\$4010.00</u>

WHEREAS, it is agreed and understood between the parties hereto that the water level at the infiltration gallery site is maintained by the power dam located downriver from the infiltration gallery site, which power dam is owned by First Party. First Party has a lease to supply electrical power to Cherry Todd Electric Cooperative of Mission, South Dakota.

That First Party agrees to maintain the power dam for as long as he provides electrical power to Cherry Todd Electrical Cooperative.

It is agreed and understood between the parties that in the event Second Party saw fit to complete necessary maintenance to maintain the water level at the infiltration gallery, Second Party could do so with the express consent of First Party as to the work to be performed.

WHEREAS, in the event First Party decides to lease or sell the property on which the power dam is located, he herein grants to Second Party an option to lease or purchase, whichever First Party should decide, at the highest offer on the open market.

It is further agreed and understood between the parties hereto that Second Party shall be permitted to trench pipe lines to and from the infiltration gallery over the described premises and Second Party shall have the right of egress and ingress for the purpose of laying said pipe lines and the repair and maintenance thereof.

Second Party agrees to restore the land to its original status at the place where the infiltration gallery is installed and where any pipeline is layed, said restoration to include replacement of top soil, crop establishment and fences.

In reference to the power dam site, it is understood and agreed between the parties hereto that First Party shall have no obligation to Second Party and any repairs or maintenance by Second Party to maintain the water level at the infiltration gallery would be completely at the expense of Second Party and with the express approval of First Party.

This writing constitutes an easement on the described property for as long as Second Party shall operate and maintain an infiltration gallery for the purpose of supplying water to the City of White River and in the event this purpose is discontinued or abandoned, then this easement shall terminate and all right, title and ownership shall revert to the land owner.

Time shall be of the essence of this agreement.

First Party for the consideration above specified, receipt whereof is hereby acknowledged, grants to the Second Party and assigns a full and free right of way for the purpose above described over said real property.

Donald C. Jones
Donald Jones, Sr.

CITY OF WHITE RIVER

BY: Andy Harris
Andy Harris, Mayor

Attest: Edna Bartlett
Edna Bartlett, Finance Officer

WITNESSES:

[Signature]

STATE OF SOUTH DAKOTA } ss.
County of Mellatte

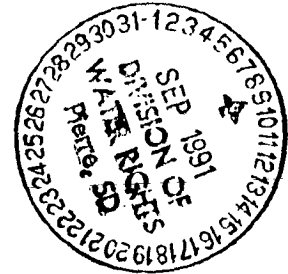
Filed for record this 3 day of
July 1977 at 1:15 o'clock
P M, and Recorded in book
65 of misc Page 511
Allen J. Fairbairn
Register of Deeds
Deputy

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

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



MARK W. BARNETT
ATTORNEY GENERAL

LAWRENCE E. LONG
CHIEF DEPUTY ATTORNEY GENERAL

September 6, 1991

Ron Vincent
2210 Lassen Street
Oxnard, CA 93033

RE: Little White River Hydroelectric Dam

Dear Mr. Vincent:

The South Dakota Department of Environment and Natural Resources, Water Rights Division, is in the process of reviewing permits for appropriation of water on the Little White River. As a result, questions have arisen concerning your hydroelectric facility near the City of White River, South Dakota. The questions are as follows:

1. According to Division files, water permit 253-2 for this dam was issued in 1930 with a November 15, 1929 priority date. The permit to appropriate water was granted pursuant to the 1913 Session Laws, Chapter 365 (statute attached). Under this statute, permits for the appropriation of water for power purposes (in excess of 25 horsepower) were not authorized for a greater period than fifty years. Because this statute existed at the time the water permit was issued for the Little White River facility, it is construed to be "a part and condition of the license." Abeln v. City of Shokapee, 28 N.W.2d 642, 645 (Minn. 1947); Phelps, Inc. v. City of Hastings, 152 Neb. 651, 42 N.W.2d 300, 303 (1950). Thus, based on the terms of the permit and the then existing law, it appears that the permit expired in 1979.

The statute in question, however, was repealed in 1955. The 1955 law does not include any provision which automatically converts the fifty year permits to perpetual permits. In other words, it appears that the water permit for the Little White River facility did, in fact, expire in 1979. Consistent with this analysis, you would need to either (1) apply for the validation of a vested water right or (2) file an

application for a new permit to appropriate water from the Little White River.

Please review this situation and inform us of your position.

2. It is the Division's understanding that the hydroelectric dam ceased production for a period of time. Because the water permit for the hydroelectric facility provides that the water may be used only for generation of hydroelectric power, any non-use of the hydroelectric facility would also constitute a failure to beneficially use the water for the purpose for which it was appropriated. If this situation existed for a period of three or more years, the unused water would be considered unappropriated public water under SDCL 46-5-37. Consistent with the chief engineer's authority under SDCL 46-5-37.1, please provide us with information which would show that no abandonment or forfeiture occurred. Presumably your hydroelectric sales records would suit this purpose.
3. The Division has solicited information from the City of White River pertaining to your contracts with the city. They are apparently designed to increase the supply of water at the city's infiltration gallery in order to meet the city's water needs. Please advise the Division of the basis for these contracts.

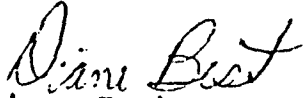
Presumably you will want to review your records and consult with your attorney regarding the questions set forth above. I believe that an informal but thorough review of these questions by both yourself and the Division of Water Rights would be in the interest of both parties. Hopefully, an informal agreement can be reached regarding the necessity for additional permit applications. In the event, however, that you and the Division cannot agree on the necessary permits or permit amendments to be made, the Division would be inclined to initiate a declaratory ruling before either the South Dakota Water Management Board or the State Circuit Court.

Although I recognize that your response will take some time, I am hopeful that you will reply within the next forty-five days. In the event that you fail to respond within that time period, the Division will construe your non-response as a rejection of our offer to initiate an informal dialogue concerning the questions addressed above.

Ron Vincent
September 6, 1991
Page 3

Thank you in advance for your prompt and thorough review of these issues.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane Best".

Diane Best
Assistant Attorney General
Counsel for the Division
of Water Rights

DB:sks
Enc.

cc: Ray Bartlett, Mayor of White River
Michael Strain, City Attorney for White River

STATE OF SOUTH DAKOTA
OFFICE OF STATE ENGINEER
PIERRE
May 29, 1940

Re: Water Right No. 253-2
Central West Public Service Co.
Fred W. Schwarz
Emily Schwarz
Central Electric & Telephone Co.

Donald J. Chaney
Assistant Solicitor
U. S. Department of Interior
Washington, D. C.

Dear Mr. Chaney:

We have received in this office, a deed which conveys a portion of the above water right, No. 253-2, from the present owner, Emily Schwarz, who is the executrix under the last will and testament of Fred W. Schwarz, and to whom the Water License was assigned by the Trustees of the Central West Public Service Company to which it was originally issued; to the United States of America, Department of the Interior.

The deed conveys the right to appropriate, withhold or otherwise divert out of the waters covered by Water License No. 253-2, any or all of the waters covered by said water license that are flowing in the South Fork of White River sometimes known as Little White River, above its convergence with Lacreek or that are flowing in Lacreek above the United States Department of Interior's Dam known as Dam No. 10 located on Lacreek in Section 25, Twp. 37N., Rge. 36W., 6th P.M.

The United States Department of Interior through their solicitor has also indicated that they wish to change the point of diversion of that portion of the water right above described to their works on the Lacreek Migratory Waterfowl Refuge, and above the points herein described, and that they request the approval of the State Engineer of such change and its effect upon any other water users along Little White River and Lacreek. As the deed conveys only a part of the right as held under Water Right No. 253-2 and since the amount and the original permit of the right is in no way changed and since the only change of the right is a change of point of diversion of part of the water under the right, it is the opinion of the State Engineer that none of the water rights between the above new points of diversion and the point of diversion of the original right No. 253-2 would be adversely affected and the approval of the change of point of diversion is hereby granted.

Very truly yours,

/s/ Dean W. Loucks
State Engineer

C O P Y

DB.
Attorney General
Sept. 9, 1991

Ron Vincent
2210 Lassen Street
Oxnard, Ca. 93033

SEP 13 1991

State of South Dakota
Office of Attorney General
500 East Capitol
Pierre, South Dakota 57501-5070

RE: Your letter of September 6, 1991, Little White River
Hydroelectric Dam

Dear Ms. Diane Best,

I am in receipt of your letter in which you pose some questions regarding the water permit 253-2 to appropriate water for power purposes (in excess of 25 horsepower). Please consider this a response to your letter and an acceptance of your offer to initiate an informal dialogue concerning the questions addressed.

Before I address your questions I would like to offer some background information about my involvement with the Little White River Hydroelectric Dam. I purchased the Hydroelectric Dam, associated equipment and land under a Contract for Deed in the year 1979 from the previous owner Mr. Don Jones, Sr. At the time of purchase it was agreed that all water rights associated with the Plant were a part of the sale. I was not aware of the limitations on the Water Right nor do I believe Mr. Jones was aware of any reason why the water right would not be a perpetual permit as long as beneficial use was made of the water.

All of the information that I can provide to your office will only be for the period of time from May 1979 to the present. I do not have any factual evidence of the operation during the time Mr. Jones owned the property (a period of about 35 years). Prior to Mr. Jones ownership I understand that the property was owned by various individuals, a power company and the City of White River. Therefore I can only provide personal knowledge of the Plant operations for the last 12 years.

In response to your questions I hereby provide the following:

1. My position with respect to the water permit would be that since the permit was in effect for essentially the entire period the Hydroelectric Plant was in operation prior to repeal of the statute in 1955, a perpetual permit would be "grandfathered" to the Plant. During the entire period of operation of the Plant (as far as I can determine) it has been operated within the guidelines and rules of the permit. i.e. it has been used to generate hydroelectric power and has never ceased production for a period in excess of three years.

2. Your second question indicates that there is a concern the Plant may have been out of production for a period of time. The only period I am aware that no production took place (for any significant period) is when I first purchased the property. I was told that a fire partially damaged the Plant in November 1978 causing Mr. Jones to cease production at that time. I bought the Plant in May of 1979 and generated power for the first time in May of 1980. Full production capability was restored in August 1980. To my knowledge the period from Nov. 1978 to Aug. 1980 (22 months) is the longest time the Plant has ever been out of Production. Since that time I have generated power in every month except for two months in 1991. Enclosed is a listing of the power generated during the time I have had control of the operation of the Hydroelectric Plant. If further evidence is required I can send copies of the sales records which support these numbers. However it would require some time to recover the records and duplicate them at this time. All of the power produced has been sold to the Cherry-Todd Electric Company during the time I have been involved.

3. Your third question relates to the City of White River contract which increases the supply of water at the city's infiltration gallery. The agreement that we have is simply this: I allow the city to flood my property on top of the land where they have an easement for an installed infiltration gallery. In exchange for the disruption to the use of my property I am compensated \$300 for each month that they chose to flood the property. I do not stipulate to the City of White River where they should obtain the source of the water for flooding. I simply allow them to use my land in such a way that they can obtain a higher output from the Municipal Infiltration Gallery.

I agree that an informal review of these questions by the Division of Water Rights and myself would be in order. I look forward to working out an informal agreement regarding the necessity for any permit applications. If it is desired to discuss any of the above information via telephone I may be reached as follows:

My home telephone number is 805-487-2979

My telephone number where I am employed is 805-982-1367

If I am not in a travel status I can typically be reached at work between the hours of 9:00 A.M. and 6:00 P.M. (west coast time)

During non-work hours if I am not at home there is an answering machine available.

Sincerely,

A handwritten signature in cursive script that reads "Ron Vincent".

Ron Vincent

Enc.

cc: Ray Bartlett, Mayor of White River
Michael Strain, City Attorney for White River
Don Jones, Sr.

DEED TO WATER RIGHTS

THIS INDENTURE made and entered into this 27th day of May, 1940, by and between Emily Schwarz, individually and as executrix under the Last Will and Testament of Fred W. Schwarz, deceased, of White River, South Dakota, hereinafter known as the party of the First Part; the Central Electric and Telephone Company, a corporation of Sioux City, Iowa, hereinafter known as the party of the Second Part, and the UNITED STATES OF AMERICA, party of the Third Part.

WHEREAS, Fred W. Schwarz was the record owner of a certain water right known as White River #1, located on the northwest corner, Section 34, Township 42 North, Range 29 West, Sixth Principal Meridian, Mellette County, South Dakota, and which is of record in the office of the State Engineer of South Dakota, and known as Water Right #253-2, dated June 9, 1930, and

WHEREAS, Fred W. Schwarz died on September 25, 1939, testate, and

WHEREAS, Emily Schwarz, wife of Fred W. Schwarz, deceased, has been appointed executrix of the Last Will and Testament of Fred W. Schwarz by the County Court of Mellette County, South Dakota, and is now the qualified and acting executrix of said estate, and

WHEREAS, pursuant to a petition filed in the County Court by Emily Schwarz, executrix, said County Court has entered an order of record authorizing her to execute a conveyance for the purpose of carrying out the terms of a contract, dated April 21, 1939, and approved by the Secretary of Agriculture on June 30, 1939, by the terms of which the said Fred W. Schwarz and Emily, his wife, and the Central Electric and Telephone Company agreed to convey to the United States a portion of said Water Right #253-2, and

WHEREAS, the party of the second part is desirous of releasing the lien on a certain Mortgage or Indenture dated November 9, 1936, and recorded on February 12, 1937, in Book 40 at pages 318 and 319, in the Office of the Register of Deeds of Mellette County, insofar as said lien affects the property hereinafter described, and is desirous also of conveying any other right or interest claimed by it in the property hereinafter described.

NOW, THEREFORE, IN WITNESS WHEREOF, the parties of the first and second part, for and in consideration of the sum of Twenty Thousand Dollars (\$20,000.00) to them in hand, paid by the party of the third part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell, assign, release and convey to the party of the third part all that portion of said water right #253-2, described as follows, to wit:

The right to appropriate, withhold or otherwise divert out of the waters covered by Water License #253-2, dated June 9, 1930, and issued by Charles A. Trimmer, State Engineer, of South Dakota, to Central West Public Service Company, which Water License was assigned by the trustees of the Central West Public Service Company to Fred W. Schwarz by written assignment dated December 3, 1936, and filed in the office of the State Engineer on February 10, 1937, for the purposes of the Migratory Waterfowl Refuge constructed on said streams above the power plant owned by the party of the first part adjacent to her water right, any or all of the waters covered by said Water License #253-2 that are flowing in the south fork of White River, sometimes known as Little White River, above its convergence with Lake Creek or that are flowing in Lake Creek above said party of the third part's dam, known as Dam No. 10, situated on Lake Creek in Section 25 Township 37 North, Range 36 West, Sixth Principal Meridian.

TO HAVE AND TO HOLD, the aforesaid granted and bargained premises, with all the privileges and appurtenances thereto to the said United States of America and its assigns forever.

AND, the grantors, their heirs and assigns, and successors and assigns, do hereby release, satisfy and discharge any claim that they now have or may hereafter acquire against the United States of America for any shortage of water resulting from withholding or otherwise diverting by the United States of America any and all water carried in the South Fork of the White River above the point where Lake Creek converges therewith and also the water in Lake Creek above the point where the United States Dam No. 10 is located.

AND, the said party of the second part hereby releases the property herein conveyed and described above from the lien of said mortgage, dated November 9, 1936, and recorded February 12, 1937, in Book 40 at pages 318 and 319, in the office of the Register of Deeds of Mellette County, South Dakota.

IN WITNESS WHEREOF, the party of the first part and the party of the second part have hereunto set their hands and seals and the corporate seal of the Central Electric and Telephone Company attested by the signature of its Secretary-Treasurer the day and year first above written.

Witnesses:

/s/ Tom Donahue

Witnesses

K. L. Daltz

Lorena Eblers

CORPORATE SEAL

State of South Dakota

County of Hughes ss.

/s/ Emily Schwarz

Emily Schwarz, Individually and as Executrix under the Last Will and Testament of Fred W. Schwarz

CENTRAL ELECTRIC AND TELEPHONE COMPANY

By R. Phillips V. P.

ATTEST

H. Hanson

Asst. Secretary-Treasurer

On this 27th day of May in the year 1940 before me M. B. Stelaw /s/ a Notary Public within and for said County and State, personally appeared Emily Schwarz, known to me to be the person who is described in, and who executed the within instrument individually and as Executrix of the Last Will and Testament of Fred W. Schwarz, deceased, and acknowledges to me that she executed the same.

/s/ M. B. Stelaw
Notary Public

State of Iowa

ss.

County of Woodbury

On this 29th day of May 1940 before me, the subscriber, personally appeared R. A. Phillips duly authorized officer of the Central Electric and Telephone Company, to me personally known and known to me to be the same person described in and who executed the same on behalf of said Corporation.

/s/ Mary C. Lenagh
Notary Public

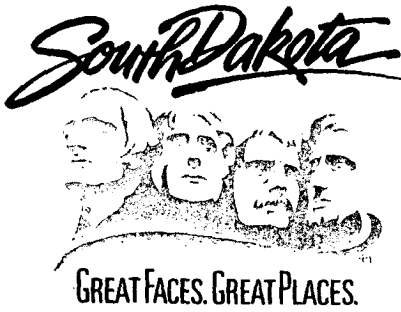
My Commission expires July 4, 1940

LITTLE WHITE RIVER HYDROELECTRIC PLANT
POWER GENERATION
TABLE
LISTED IN KILOWATT HOURS

MONTH	1980	1981	1982	1983	1984	1985	1986	1987
JAN		33,600	22,400	59,600	55,600	38,800	36,000	27,600
FEB		26,000	28,000	59,200	63,200	34,800	52,800	7,600
MAR		65,600	55,200	77,600	90,400	63,600	71,600	90,000
APR		45,200	81,600	102,400	130,400	94,000	89,200	98,400
MAY	5,200	40,800	70,400	92,800	115,200	72,400	78,800	104,800
JUN		56,400	5,600	115,600	74,400	26,400	86,400	80,400
JUL		29,600	42,800	69,600	54,400	14,400	68,400	28,800
AUG		35,200	37,600	78,000	23,200	16,800	40,000	19,600
SEPT		32,400	29,200	49,200	12,400	21,200	27,200	10,400
OCT	16,900	24,800	38,000	42,000	26,800	34,000	51,200	30,000
NOV	39,600	41,600	56,000	60,800	41,600	40,000	48,800	46,800
DEC	24,000	32,400	38,000	55,200	39,200	36,800	75,200	40,800
TOTAL	85,700	463,600	504,800	862,000	726,800	493,200	725,600	585,200

LITTLE WHITE RIVER HYDROELECTRIC PLANT
POWER GENERATION
TABLE
LISTED IN KILOWATT HOURS
(page 2)

MONTH	1988	1989	1990	1991	1992	1993	1994	1995
JAN	27,200	36,400	49,200					
FEB	52,000	42,000	57,200					
MAR	93,600	53,600	68,400	43,600				
APR	118,000	99,200	111,400	82,600				
MAY	106,800	85,600	56,000	88,000				
JUN	105,600	50,000	106,400	63,600				
JUL	64,000	29,200	67,200	67,600				
AUG	18,800	21,200	44,800	55,200				
SEPT	23,600	15,200	46,800					
OCT	29,600	30,400	26,800					
NOV	40,800	40,000	44,000					
DEC	42,400	35,200	13,600					
TOTAL	722,400	538,000	645,400					



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

November 6, 1991

Ronald Vincent
2210 Lassen Street
Oxnard, CA 93033

Dear Mr. Vincent:

Enclosed is a partially completed application to file for a Vested Right Claim on your Hydroelectric Dam on the Little White River. We still think this is the best way to proceed; however, if you disagree, you have the option of asking for a declaratory ruling before the Water Management Board. The Vested Right Claim does about the same thing and the Board, after considering your request, may tell you to make a Vested Right Claim anyway. Enclosed is some information on making a request for a declaratory ruling.

The enclosed instruction sheet refers to a map, which I already have prepared. Form 2B, Affidavit of Water Use, is also partially completed and should be finished by you. Please review the forms and make any necessary corrections. You may have more complete dates available for Form 2B. These forms should then be signed and notarized, and sent back to us, along with the filing fee of \$15.00 and any other information on the history of the dam you have.

Also enclosed for your information are three hydrographs. The graph for Lake Creek below the Refuge is located just below the Refuge in the SW 1/4 of Section 30-T37N-R35W. The graph for the Little White River near Martin is located in the NW 1/4 of Section 19-T37N-R36W, about 15 miles downstream of the confluence of Lake Creek and the Little White River. The graph for the Little White River below White River is located in the NW 1/4 of Section 23-T423N-R29W, about 2 miles downstream of the hydroelectric dam.

If you have further questions, please feel free to contact our office.

Sincerely,

Timothy G. Schaal, P.E.
Natural Resources Engineer
Water Rights Division
(605) 773-3352

enclosures

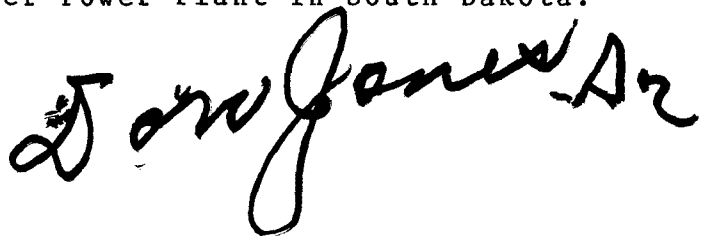
December 27, 1991

TO WHOM IT MAY CONCERN:

I, Don Jones Sr. am aware that the Hydroelectric Plant located on the Little White River near the town of White River South Dakota has been in continuous operation from the period of its initial construction in 1924 to the present date.

The continuous operation of the plant means that it used water from the Little White River to generate electricity and there never were any periods exceeding 36 months in the last 68 years when it was not using the water for the generation of electricity.

I certify that the above is a true statement of the facts as I know and understand the conditions relating to the water use of the Little White River Power Plant in South Dakota.

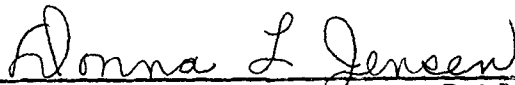


Don Jones Sr.

State of South Dakota)SS
County of Mellette)

Subscribed and sworn to before me this 6th day of January, 1992.




Donna L. Jensen, Notary Public
My comm. expires 1-13-92

RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER

RIGHT APPLICATION NO. 2213-2, Ronald Vincent

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Environment and Natural Resources concerning Validation of Vested Water Right Application No. 2213-2, Ronald Vincent, 2210 Lassen St, Oxnard, CA 93033.

The Chief Engineer is recommending VALIDATION of Application No. 2213-2 for 240 cfs because 1) water has been appropriated as described for hydroelectric power generation with a priority date of November 15, 1929, 2) the use has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) it is in the public interest.

See report on application for additional information.

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

JOHN HATCH, Chief Engineer
February 21, 1992

REPORT ON
VESTED WATER RIGHT CLAIM NO. 2213-2
RONALD VINCENT
FEBRUARY 18, 1992

Vested Water Right Claim No. 2213-2 was filed by Ronald Vincent to appropriate 240 cubic feet of water per second (cfs) from the Little White River through the Little White River Hydroelectric Dam. The hydroelectric dam is 17.5 feet high and stores approximately 40 acre-feet of water in the river channel. The dam is located in the NE 1/4 NW 1/4 of Section 34-T42N-R29W in Mellette County.

Water Right No. 253-2 was issued on April 18, 1930 with a priority date of November 15, 1929 to appropriate 400 cfs of the South Fork of the White River (now known as the Little White River) for electric power generation. Water Right No. 253-2 was limited to a 50 year period by South Dakota Revised Policy Code 8262, which was repealed in 1955. Since the 50 year period for Water Right No. 253-2 has expired, Vested Water Right Claim No. 2213-2 is being filed to clarify the Water Right for the Little White River Hydroelectric Dam.

Discussion:

Division of Water Rights files show that Water Right No. 253-2 was originally issued to the Central West Public Service Company which purchased the power plant in 1927 from the City of White River. On February 10, 1937 the Central West Public Service Company assigned Water Right No. 253-2 to Fred Schwarz.

On October 16, 1934, the State Engineer issued U.S. Withdrawal No. 2-2 to the U.S. Department of Agriculture, Bureau of Biological Survey for all unappropriated water flowing in Lake Creek (also called LaCreek), a tributary of the Little White River. On December 15, 1935, the Bureau of Biological Survey was issued U.S. Withdrawal No. 3-2 for all unappropriated water flowing in the Little White River above its junction with Lake Creek. These permits were for the LaCreek migratory Waterfowl Refuge which is located in Bennett County, southeast of Martin, South Dakota. The responsibility for the Refuge was later transferred to the U.S. Department of Interior, Fish and Wildlife Service.

Fred Schwarz brought action against the United States in the District Court of the United States concerning water use under Water Right No. 253-2 and U. S. Withdrawal Nos. 2-2 and 3-2. A Stipulation and Agreement for Settlement was negotiated and filed in the Court on November 2, 1938. This agreement resulted in dismissal of the court case and provided for the United States to make sufficient releases of water to maintain a minimum daily production at the power plant.

On April 21, 1939, Fred Schwarz sold a portion of Water Right No. 253-2 to the United States for \$20,000. This sale resulted in an Agreement, dated April 21, 1939, which relieved the United States from its obligation under the November 2, 1938 Stipulation and Agreement. The portion of Water Right No. 253-2 sold consisted of any and all of

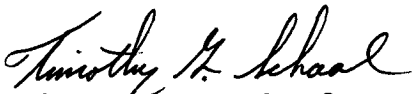
the waters of Lake Creek above Dam No. 10, which is located on Lake Creek in Section 25-T37N-R36W.

An inspection of the Little White River Hydroelectric Dam was conducted on November 24, 1990. The power plant consists of one 115 Hp and one 240 Hp water turbines with a combined maximum water capacity of 240 cfs. The current owner acquired the property in June 1979. The power plant was damaged by fire in November 1978 and power production was interrupted between November 1978 and May 1980. Except for this 19 month interrupted period, the system has operated continuously as a run-of-river operation that generates power according to the amount of river flow available.

A USGS Gaging station is located on the Little White River about 2 miles downstream of the hydroelectric dam in the SW 1/4 NW 1/4 of Section 23-T42N-R29W. The attached Hydrograph represents the mean monthly flow of the Little White River at this location for 39 years of record starting in 1950. The hydrograph indicates there is only a 10% chance of occurrence, or 1 out of 10 years, that the mean monthly flows of the Little White River will exceed 400 cfs. This would occur in March and April during the spring runoff. The hydrograph also indicates that there is a 50% chance of occurrence that the mean monthly flows will be less than 200 cfs, except for the months of March and April. The average discharge of the Little White River for this period of record is 127 cfs.

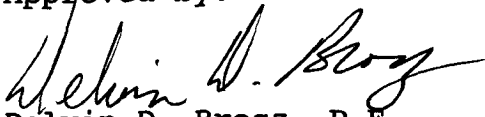
Conclusion:

1. Vested Right Claim No. 2213-2 was inspected and found to exist as described.
2. According to the Affidavit of Water Use, the Little White River Hydroelectric Dam was originally constructed in 1924. In 1929 the power plant was increased to its current capacity (240 cfs) and has been put to beneficial use since that time.
3. It is recommended that Vested Right Claim No. 2213-2 be validated for 240 cfs with a priority date of November 15, 1929. This was the priority date of water Right No. 253-2.



Timothy G. Schaal, P.E.
Natural Resources Engineer III

Approved by:



Delvin D. Brosz, P.E.
Natural Resources Engineer IV

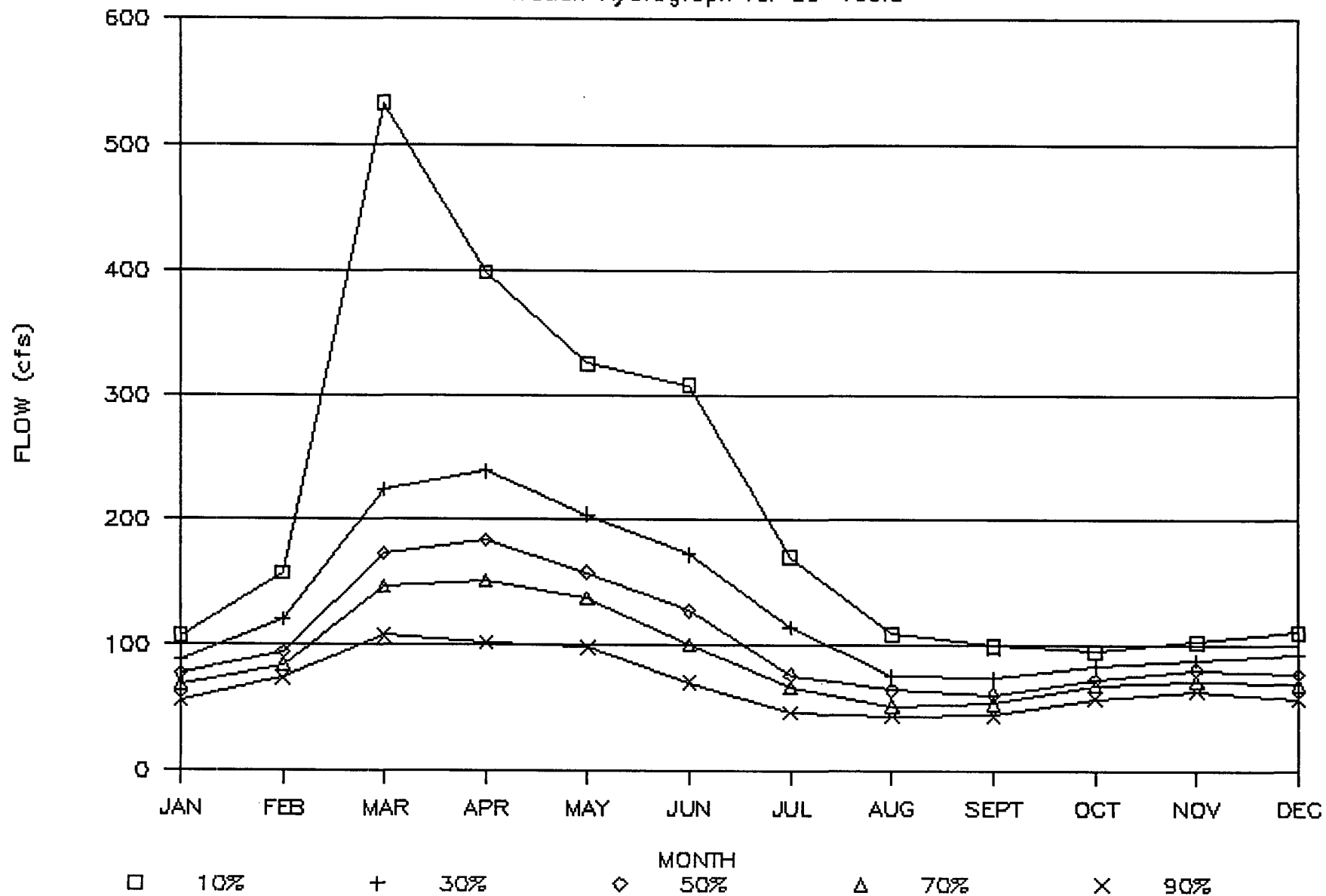
References:

Burr, M.J. and others, Water Resources Data South Dakota Water Year 1989, 1990, United States Department of Interior, U.S. Geological Survey, Huron, SD.

Water Rights Division, 1991 Water Permit/Right Files, DWNR, Joe Foss Building, Pierre, SD

LITTLE WHITE RIVER BELOW WHITE RIVER

Duration Hydrograph for 39—Years



REVISED REPORT ON
VESTED WATER RIGHT CLAIM NO. 2213-2
RONALD VINCENT
April 14, 1992

Vested Water Right Claim No. 2213-2 was filed by Ronald Vincent to appropriate 240 cubic feet of water per second (cfs) from the Little White River through the Little White River Hydroelectric Dam. The hydroelectric dam is 17.5 feet high and stores approximately 40 acre-feet of water in the river channel. The dam is located in the NE 1/4 NW 1/4 of Section 34-T42N-R29W in Mellette County.

Water Right No. 253-2 was issued on April 18, 1930 with a priority date of November 15, 1929 to appropriate 400 cfs of the South Fork of the White River (now known as the Little White River) for electric power generation. Water Right No. 253-2 was limited to a 50 year period by Revised Policy Code 8262, which was repealed in 1955. Since the 50 year period for Water Right No. 253-2 has expired, and the 50 year statute was repealed, Vested Water Right Claim No. 2213-2 has been filed to clarify the Water Right for the Little White River Hydroelectric Dam.

Discussion:

Division of Water Rights files show that Water Right No. 253-2 was originally issued to the Central West Public Service Company which purchased the power plant in 1927 from the City of White River. On February 10, 1937 the Central West Public Service Company assigned Water Right No. 253-2 to Fred Schwarz.

On October 16, 1934 the U.S. Department of Agriculture, Bureau of Biological Survey was issued, by the State Engineer, U. S. Withdrawal No. 2-2 for all unappropriated water flowing in Lake Creek (also called LaCreek), a tributary of the Little White River. On December 15, 1935 they were issued U.S. Withdrawal No. 3-2 for all unappropriated water flowing in the Little White River above its junction with Lake Creek. These permits were for use of the water by the LaCreek Migratory Waterfowl Refuge which is located in Bennett County southeast of Martin, South Dakota. The responsibility for the Refuge was later transferred to the U.S. Department of Interior, Fish and Wildlife Service.

Fred Schwarz brought action against the United States in the District Court of the United States concerning water use under Water Right No. 253-2 and U. S. Withdrawal Nos. 2-2 and 3-2. A Stipulation and Agreement for Settlement was negotiated and filed in the Court on November 2, 1938. This agreement resulted in dismissal of the Court case and provisions for the United States to make sufficient releases of water to maintain a minimum daily production at the power plant.

On April 21, 1939, Fred Schwarz sold a portion of Water Right No. 253-2 to the United States for \$20,000. This sale resulted in an Agreement, dated April 21, 1939, which relieved the United States from its obligation under the November 2, 1938 Stipulation and Agreement; and a Deed To Water Rights, dated May 27, 1940, reflecting payment for

the above sale. The portion of Water Right No. 253-2 sold consisted of "...any and all of the waters covered by Water License No. 253-2 that are flowing in the south fork of White River, sometimes known as Little White River, above its convergence with Lake Creek or that are flowing in Lake Creek above said party of the third part's dam, known as Dam No. 10, situated on Lake Creek in Section 25-T37N-R36W, Sixth Principal Meridian."

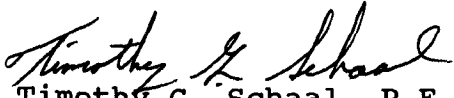
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A USGS Gaging station is located on the Little White River about 2 miles downstream of the hydroelectric dam in the SW 1/4 NW 1/4 of Section 23-T42N-R29W. The Hydrograph in Figure 1 represents the mean monthly flow of the Little White River at this location for 39 years of record starting in 1950. The hydrograph indicates there is only a 10% chance of occurrence, or 1 out of 10 years, that the mean monthly flows of the Little White River will exceed 400 cfs. This would occur in March and April during the spring runoff. The hydrograph also indicates that there is a 50% chance of occurrence that the mean monthly flows will be less than 200 cfs, except for the months of March and April. The average discharge of the Little White River for this period of record is 127 cfs.

Conclusion:

1. Vested Right Claim No. 2213-2 was inspected and found to exist as described.
2. According to the Affidavit of Water Use, the Little White River Hydroelectric Dam was originally constructed in 1924. In 1929 the power plant was increased to its current capacity (240 cfs) and has been put to beneficial use since that time.
3. According to the May 27, 1940 Deed to Water Rights between the predecessors of Water Right No. 253-2 and the United States of America, and the May 29, 1940 recognition by the Office of the State Engineer which approved the conveyance of a portion of Water Right No. 253-2 and a change of point of diversion; the United States is entitled to withhold or otherwise divert waters out of Water Right No. 253-2 and/or Vested Right Claim No. 2213-2 for purposes of the LaCreek Migratory Waterfowl Refuge as described above. This Vested Right Claim does not change the status of the above agreements.

4. It is recommended that Vested Right Claim No. 2213-2 be validated for 240 cfs with a priority date of November 15, 1929. This was the priority date of Water Right No. 253-2.



Timothy G. Schaal, P.E.
Natural Resources Engineer III

Approved by:



Delvin D. Brosz, P.E.
Natural Resources Engineer IV

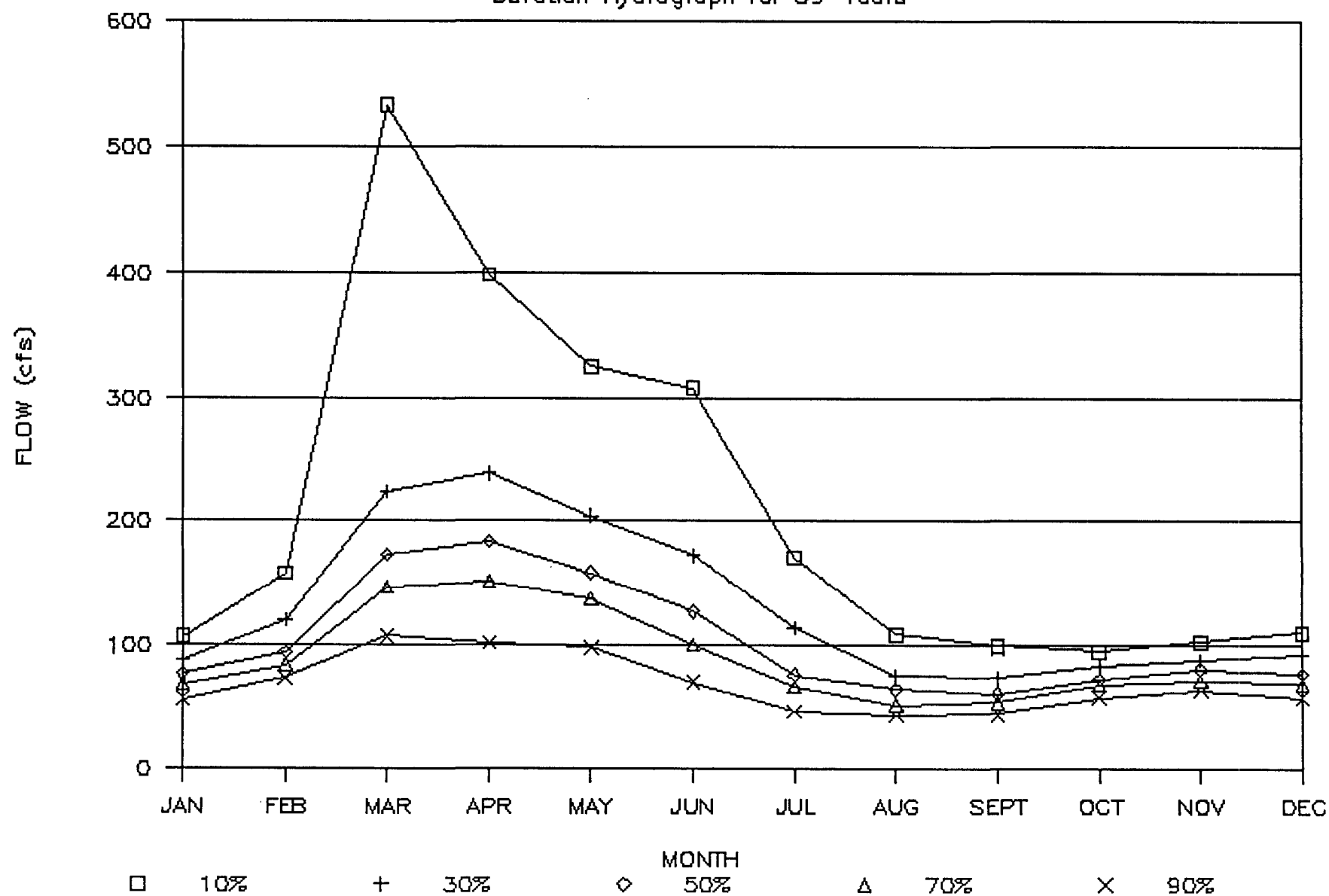
References:

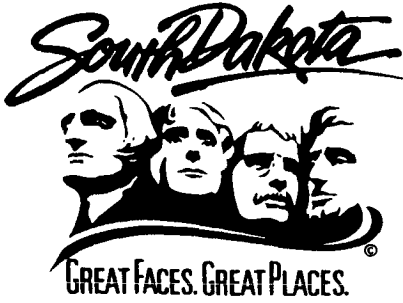
Burr, M.J. and others, Water Resources Data South Dakota Water Year 1989, 1990, United States Department of Interior, U.S. Geological Survey, Huron, SD.

Water Rights Division, 1991 Water Permit/Right Files, DWNR, Joe Foss Building, Pierre, SD

LITTLE WHITE RIVER BELOW WHITE RIVER

Duration Hydrograph for 39—Years





**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.

February 26, 1992

Ronald Vincent
2210 Lassen Street
Oxnard, CA 93033

Dear Mr. Vincent:

Your Application No. 2213-2 for a vested water right claim has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of your claim has been sent to the Publisher of the Bennett County Booster II (Phone No.(605)685-6866) printed at Martin, SD. 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 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 to validate a vested right 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. We must receive Proof of Publication before the application can be considered.

This notice of hearing has also been sent to the Lakota Times for publishing. The Division of Water Rights will pay for the publication in the Lakota Times.

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

February 26, 1992

Bennett County Booster II
Box 610
Martin, SD 57551

ATTN: Legal Publications:

Enclosed is a Notice of Hearing to Validate Vested Right Application No. 2213-2 to be published twice. Please publish the notice on March 11, 1992, 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 Ronald Vincent, 2210 Lassen Street, Oxnard, CA 93033.

A copy of BOTH publications must be SENT to the WATER RIGHTS DIVISION. 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. The permit application cannot be considered until proof of publication has been received.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

FIRST TRANSMITTAL NOTICE

TO: ATTN: Eric Gronlund
Water Rights Division
523 E Capitol
Pierre SD 57501-3181

Date _____
We are in receipt of your letter of _____ enclosing Notice of Hearing to
Validate A Vested Right Application which was first published in our issue
of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 26, 1992

Lakota Times
1920 Lombardy Drive
Rapid City, SD 57701

ATTN: Legal Publications:

Enclosed is a Notice of Hearing to Validate Vested Right Application No. 2213-2 to be published twice. Please publish the notice on March 10, 1992, with the second publication 7 days later.

Please bill the Division of Water Rights for the cost of publication.

A copy of BOTH publications must be SENT to the WATER RIGHTS DIVISION. 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. The permit application cannot be considered until proof of publication has been received.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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TO: ATTN: Eric Gronlund
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We are in receipt of your letter of _____ enclosing Notice of Hearing to
Validate A Vested Right Application which was first published in our issue
of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper

March 10, 1992 and

Instruction to Newspaper - Publish first Notice on March 11, 1992, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING To Validate
Vested Water Right Application No. 2213-2 to Appropriate Water

Notice is given that Ronald Vincent, 2210 Lassen Street, Oxnard, CA 93033 has filed an application to validate a vested water right claim to appropriate 240 cubic feet of water per second from the Little White River for operation of a hydroelectric dam located in the NE 1/4 NW 1/4 Section 34-T42N-R29W. The dam impounds approximately 40 acre-feet of water. The water use has a claimed priority date of November 15, 1929, and is used for generating hydroelectric power at the Little White River Hydroelectric Dam.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2213-2 because 1) water has been appropriated as described for hydroelectric power with a claimed priority date of November 15, 1929, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, and 4) it is in the public interest. Unless a petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation, the Water Management Board will NOT CONDUCT a HEARING to consider this application and the chief engineer will issue the vested water right application as recommended. Petitions filed in support of the application will NOT require the Board to hear the application.

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 Division, 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 March 30, 1992. 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.

For purposes of publishing 1) the notice of hearing on Application No. 2213-2 and 2) the chief engineer's recommendation, a meeting at the Division of Water Rights office to hear this application is scheduled for April 7, 1992, at 9:00 am in Room 413, Joe Foss Building, 523 E Capitol, Pierre SD. If this application is opposed or the recommendation is contested, the April 7, 1992, hearing date will be rescheduled for a regularly scheduled Board meeting. Notice of the time and place of the rescheduled hearing before the Board will be given by First Class Mail to the applicant and persons filing petitions. Anyone not filing a petition, but interested in attending the hearing, may contact the Division of Water Rights to confirm a hearing date and location. The April 7, 1992, 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 March 30, 1992.

If a hearing is held, the Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve the validation, 2) approve the validation with qualifications, 3) defer, or 4) deny validation of the application based on the facts presented at the public hearing. 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. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact the Water Rights Division to request copies of information pertaining to this application or to assure access to the hearing by the handicapped.

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-18; 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, 46-5-49; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; 74:02:01:19 thru 74:02:01:22.

AFFIDAVIT OF PUBLICATION

State of South Dakota)

)ss

County of Pennington)

THERESA THOMPSON

of said county being first duly sworn on oath says that she is Office Manager of the Lakota Times, a weekly newspaper printed and published in Rapid City, said county of Pennington, and has full and personal knowledge of all the facts herein stated: that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred fifty copies weekly and has been published for fifty-two successive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the

NOTICE OF HEARING: To Validate Vested Water Right

Application No. 2213-2

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made part of the Affidavit was published in said newspaper at least once in each week for two (2) successive weeks, on the day of each week on which said newspaper was regularly published to-wit:

March 11	, 19 92
March 18	, 19 92
	, 19
	, 19
	, 19

that the full amount of the fee for the publication of the annexed notice is \$ 56.03

Theresa Thompson

Theresa Thompson, Office Mgr.

Subscribed and sworn to before me this

3rd day of April, 19 92

Karen Little Thunder

Notary Public

My commission expires 05-09-98



Affidavit of Publication

State of South Dakota }
County of Bennett } ss.

Wendell E. Long

being duly sworn, says: the Bennett County Booster II is, and during all the times herinafter mentioned was, a weekly legal newspaper as defined in SDCL 17-2-2, as amended published at Martin, Bennett County, South Dakota; that affiant is and during all of said times was, an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is attached, was

published in said newspaper for 2 successive issues, bearing the following dates:

March 11, 1992

March 18, 1992

, 19

, 19

, 19

, 19

that the full amount of the fee charged for publishing

the same, to-wit, the sum of \$ 65.93, inures solely to the benefit of the publisher of said newspaper; that no agreement or understanding for the division of the fee has been made with any person, and that no part of the fee has been agreed to be paid to any other person.

Wendell E. Long

Subscribed and sworn to before me this 18 day

of March, 1992.

Mary E. Long

Notary Public

County of Bennett, South Dakota



NOTICE OF HEARING

To Validate Vested Water Right
Application No. 2213.2 to
Appropriate Water

Notice is given that Ronald Vincent, 2210 Lassen Street, Oxnard, CA 93033 has filed an application to validate a vested water right claim to appropriate 240 cubic feet of water per second from the Little White River for operation of a hydroelectric dam located in the NE 1/4 NW 1/4 Section 34-T42N-R29W. The dam impounds approximately 40 acre-feet of water. The water use has a claimed priority date of November 15, 1929, and is used for generating hydroelectric power at the Little White River Hydroelectric Dam.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2213-2 because 1) water has been appropriated as described for hydroelectric power with a claimed priority date of November 15, 1929, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, and 4) it is in the public interest. Unless a petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation, the Water Management Board will NOT CONDUCT a HEARING to consider this application and the chief engineer will issue the vested water right application as recommended. Petitions filed in support of the application will NOT require the Board to hear the application.

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 Division, 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 March 30, 1992. 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.

For purposes of publishing 1) the notice of hearing on Application No. 2213-2 and 2) the chief engineer's recommendation, a meeting at the Division of Water Rights office to hear this application is scheduled for April 7, 1992, at 9:00 a.m. in Room 413, Joe Foss Building, 523 E Capitol, Pierre, SD. If this application is opposed or the recommendation is contested, the April 7, 1992, hearing date will be rescheduled for a regularly scheduled Board meeting. Notice of the time and place of the rescheduled hearing before the Board will be given by First Class Mail to the applicant and persons filing petitions. Anyone not filing a petition, but interested in attending the hearing, may contact the Division of Water Rights to confirm a hearing date and location. The April 7, 1992, 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 March 30, 1992.

if a hearing is held, the Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve the validation, 2) approve the validation with qualifications, 3) defer, or 4) deny validation of the application based on the facts presented at the public hearing. 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. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact the Water Rights Division to request copies of information pertaining to this application or to assure access to the hearing by the handicapped.

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-18; 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, 46-5-49; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; 74:02:01:19 thru 74:02:01:22.

21-41

1801
under
74:02:01:15
74:02:01:19
74:02:01:22



United States Department of the Interior
FISH AND WILDLIFE SERVICE



IN REPLY REFER TO:

WR/SD
BA/EN
Mail Stop 60190

MAILING ADDRESS:
Post Office Box 25486
Denver Federal Center
Denver, Colorado 80225

STREET LOCATION:
134 Union Blvd.
Lakewood, Colorado 80228

MAR 27 1992



Mr. John Hatch
State Engineer
South Dakota Department of
Water and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

Dear Mr. Hatch:

Enclosed please find the U.S. Fish and Wildlife Service's
Petition to Oppose Application for Vested Water Right Claim No.
2213-2, Ronald Vincent, Applicant.

A copy of this petition has been forwarded to Mr. Vincent.

Should you have any questions or require further information,
please contact Ginger Chesy of our Engineering Division, Water
Rights Branch at (303) 236-5321.

Sincerely,

John L. Sprinkles, Jr.
Deputy Regional Director

Enclosure

sold consisted of any and all of the waters of Lake Creek above Dam No. 10, which is located on Lake Creek in Section 25-T37N-R36W."

THAT the May 27, 1940, Deed to Water Rights conveying the portion of Water Right No. 253-2 actually states in part "...any or all of the waters covered by Water License No. 253-2 that are flowing in the South Fork of White River, sometimes known as Little White River, above its convergence with Lake Creek or that are flowing in Lake Creek above said party of the third part's dam, known as Dam No. 10, situated on Lake Creek in Section 25, T37N, R36W, Sixth Principal Meridian."

THAT this reference to waters in the South Fork of the White River sometimes known as the Little White River should be included in said report, Discussion paragraph number four (4). The report should also reference the approval by the South Dakota State Engineer of the change in point of diversion of this water from the hydro plant to the refuge structures. Copies of the Deed to Water Rights and the May 29, 1940 letter from the State Engineer are attached and fully incorporated in this petition.

b. THAT the second page, first paragraph of Deed to Water Rights states, "AND, the grantors, their heirs and assigns, and successors and assigns, do hereby release, satisfy and discharge any claim that they now have or may hereafter acquire against the United States of America for any shortage of water resulting from

withholding or otherwise diverting by the United States of America any and all water carried in the South Fork of the White River above the point where Lake Creek converges therewith and also the water in Lake Creek above the point where the United States Dam No. 10 is located."

c. THAT recommendation of Chief Engineer for Validation of Vested Water Right Application No. 2213-2, Ronald Vincent, contains no statement of condition to protect these water rights of the United States.

THAT said recommendation of Chief Engineer add reference to the water rights held by the United States.

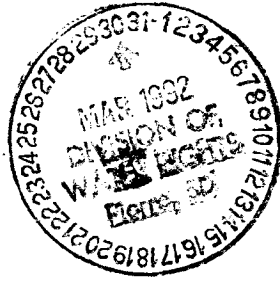
WHEREFORE, Petitioner respectfully requests that, upon issuance, Water Right No. 2213-2 contain a condition that water use covered under such right is subordinate to the Water Rights of the United States of America under U.S. Withdrawal Nos. 2-2 and 3-2, and that portion of Water License No. 253-2, conveyed to the United States, by Deed to Water Rights on the 27th day of May, 1940, to include any waters covered by Water License No. 253-2 that are flowing in the South Fork of the White River sometimes known as the Little White River, above its convergence with Lake Creek or that are flowing in Lake Creek above the Lacreek National Wildlife Refuge's Dam No. 10 situated on Lake Creek in Section 25, T37N, R36W, Sixth Principal Meridian.

Dated this 27th day of March, 1992.

United States of America,
Department of Interior, Fish
and Wildlife Service


Deputy **JOHN L. SPINKS, JR.**
FOR Galen Buterbaugh
Regional Director

cc: Ronald Vincent
2210 Lassen Street
Oxnard, California 93033



March 26, 1992

Chief Engineer
Water Rights Division
Foss Building
523 E. Capitol
Pierre, S.D. 57501

Dear Sir;

As we own land along the Little White River in Bennett County, South Dakota, we are writing to protest the Water Rights Application No 2213.2. We are protesting because;

- 1) We don't believe one person or entity should be able to tie up all the water rights along the Little White River.
- 2) We would like to have some water rights also.
- 3) We would like to have some water rights for future generations for food and to make a living.

Sincerely,

Larry L. Novotny
HWC 2 Box 5
Martin, S.D. 57551

March 26, 1992

Water Management Board
South Dakota Department of Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501



Members of the Board:

I am **opposing** the proposed VALIDATION of Vested Water Right Application No. 2213-2 which is recommended by the Chief Engineer, Water Rights Division, 523 E. Capitol, Pierre, S.D.

I am an owner of real estate traversed by the Little White River --and have been for a number of years.

Please consider this as a petition in opposition to the Chief Engineer's recommendation validation. The reason for opposing-- in part-- is:

- 1) Not enough information is given in the Notice of Hearing for the land owners whose land is traversed by the Little White River to know what is involved by this proposed recommended validation.
- 2) The Chief Engineer's Notice of Hearing states it is in the public interest. If the individual owning the hydroelectric power dam is selling the electricity, how can this be in the public interest?

Sincerely,

Walter Johnson
PO Box 5
Tutthill, SD 57554
+Martin, SD 57551

cc: Ronald Vincent, 2210 Lassen Street
Oxnard, CA 93033

Members of the Board :

I am an owner of real estate traversed by the Little White River --and have been for a number of years.

- 1) Not enough information is given in the Notice of Hearing for the land owners whose land is traversed by the Little White River to know what is involved by this proposed recommended validation.
- 2) The Chief Engineer's Notice of Hearing states it is in the public interest. If the individual owning the hydroelectric power dam is selling the electricity, how can this be in the public interest?

James Zimring

BOX 291

cc: Ronald Vincent, 2210 Lassen Street
Oxnard, CA 93033

March 26, 1992

Water Management Board
South Dakota Department of Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501



Members of the Board:

I am **opposing** the proposed VALIDATION of Vested Water Right Application No. 2213-2 which is recommended by the Chief Engineer, Water Rights Division, 523 E. Capitol, Pierre, S.D.

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- 2) The Chief Engineer's Notice of Hearing states it is in the public interest. If the individual owning the hydroelectric power dam is selling the electricity, how can this be in the public interest?

Sincerely,

John Slattery

Box 3, Box 9
Martin, SD 57551

cc: Ronald Vincent, 2210 Lassen Street
Oxnard, CA 93033

March 26, 1992

Water Management Board
South Dakota Department of Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501



Members of the Board:

I am **opposing** the proposed VALIDATION of Vested Water Right Application No. 2213-2 which is recommended by the Chief Engineer, Water Rights Division, 523 E. Capitol, Pierre, S.D.

I am an owner of real estate traversed by the Little White River--and have been for a number of years.

Please consider this as a petition in opposition to the Chief Engineer's recommendation validation. The reason for opposing--in part--is:

- 1) Not enough information is given in the Notice of Hearing for the land owners whose land is traversed by the Little White River to know what is involved by this proposed recommended validation.
- 2) A few years ago, I made inquiry to SDDWNR about obtaining a water right to pump water out of the Little White River and was advised by SDDWNR that **all** the water in Little White River was obligated into perpetuity by the then owners of the hydroelectric dam--what has happened to this water right?
- 3) The Chief Engineer's Notice of Hearing states it is in the public interest. If the individual owning the hydroelectric power dam is selling the electricity, how can this be in the public interest?

Sincerely,

A handwritten signature in cursive script that reads "Charles J. Tutsch".

Charles J. Tutsch
HC 56, Box 10
Martin, SD 57551

cc: Ronald Vincent, 2210 Lassen Street
Oxnard, CA 93033

March 26, 1992

Water Management Board
South Dakota Department of Water & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501



Members of the Board:

I am **opposing** the proposed VALIDATION of Vested Water Right Application No. 2213-2 which is recommended by the Chief Engineer, Water Rights Division, 523 E. Capitol, Pierre, S.D.

I am an owner of real estate traversed by the Little White River--and have been for a number of years.

Please consider this as a petition in opposition to the Chief Engineer's recommendation validation. The reason for opposing--in part--is:

- 1) Not enough information is given in the Notice of Hearing for the land owners whose land is traversed by the Little White River to know what is involved by this proposed recommended validation.
- 2) The Chief Engineer's Notice of Hearing states it is in the public interest. If the individual owning the hydroelectric power dam is selling the electricity, how can this be in the public interest?

Sincerely,

Charles W. Emley
Box 673

Martin, SD 57551

cc: Ronald Vincent, 2210 Lassen Street
Oxnard, CA 93033



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 1, 1992

NOTICE

TO: Ronald Vincent
2210 Lassen St.
Oxnard, CA 93033
and Parties of Record (see attached list)

FROM: John Hatch, Chief Engineer *John Hatch*
Water Rights Division
605 773-3352

SUBJECT: Rescheduling of Hearing on Vested Water Right Application
No. 2213-2, Ronald Vincent

Petitions in opposition to Vested Water Right Application No. 2213-2 have been filed by area residents and the U.S. Fish and Wildlife Service. The hearing before the Water Management Board will no longer be held on April 7, 1992.

The Water Management Board will consider Vested Water Right Application No. 2213-2, on May 6, 1992 at 11:30 am in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Ave., Pierre, SD 57501. The agenda time is an estimate and may be delayed due to prior agenda items.

Applicable provisions of the notice of hearing published March 11 and 18, 1992 in the Bennett County Booster II and the Lakota Times will still apply at this hearing.

If you have any questions regarding the location of the Board meeting or the water permit application, please contact Eric Gronlund at 773-3352.

cc: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on April 1, 1992, I have personally deposited with the United States Mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated April 1, 1992, regarding Rescheduling of Hearing on Vested Water Right Application No. 2213-2, Ronald Vincent addressed as stated below, and also on the attached list:

Ronald Vincent, 2210 Lassen St., Oxnard, CA 93033.

Sent Inter-Office To:

Diane Best, Assistant Attorney General, Capitol Building.

Cheryl F. Frost

Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 2nd day of April, 1992.

John Hatch
Notary Public



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 6, 1992

Dear :

I am writing to provide you additional information for Vested Water Right Application No. 2213-2 on which you have filed a petition to oppose the validation. Enclosed is a copy of the staff report and the Chief Engineer's recommendation on this claim.

South Dakota Codified Law 46-1-9 defines a vested right as:

The right of a riparian owner to continue to use water actually applied to any beneficial use on March 2, 1955, or within three years immediately prior to that date to the extent of the existing beneficial use made of the water.

There is documentation, based on Water Right No. 253-2, which indicates that the power plant has been in existence and has made a beneficial use of water since November 15, 1929. This use of water qualifies as a vested right and for this reason the recommendation was made for validation of Vested Water Right Application No. 2213-2.

Your concerns regarding whether this application is in the public interest can be addressed at the Water Management Board meeting on May 6, 1992. This hearing is scheduled to begin at 11:30 am in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Ave., Pierre, SD 57501.

If you have additional questions, please feel free to contact Eric Gronlund at (605) 773-3352.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division

enclosure

cc: Diane Best, Assistant Attorney General
Ronald Vincent

PARTIES OF RECORD

VESTED WATER RIGHT CLAIM NO. 2213-2

Applicant

Ronald Vincent
2210 Lassen Street
Oxnard, CA 93033

Petition of Opposition

John Spinks
Deputy Regional Director
US Fish & Wildlife Service
PO Box 25486
Denver Federal Center
Denver, CO 80225

Charles Tutsch
HC 56, Box 10
Martin, SD 57551

John Slottery
HWC 3, Box 9
Martin, SD 57551

James Fanning
Box 291
Martin, SD 57551

Wilbur Johnson
PO Box 5
Tuthill, SD 57574

Larry Novotny
HWC 2, Box 5
Martin, SD 57551

Charles Emley
Box 673
Martin, SD 57551



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 20, 1992

Ginger Chesy
U.S. Fish and Wildlife Service
Water Rights Branch
P.O. Box 25486
Denver Federal Center
Denver, Colorado 80225

Dear Ms. Chesy:

Enclosed is a copy of our revised report on Ronald Vincent's Vested Water Right Claim No. 2213-2. The revised report includes the wording from the 1940 Deed To Water Rights regarding the sale of a portion of Water Right No. 253-2 to the United States. We have also added an additional conclusion referencing the status of the agreements between the United States and the Hydroelectric Dam.

We hope these changes will answer your concerns, and if you have additional questions, please feel free to contact Eric Gronlund or Tim Schaal at (605) 773-3352.

Very truly yours,

John Hatch, Chief Engineer
Water Rights Division

enclosure

cc: Diane Best, Assistant Attorney General
Ronald Vincent



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Mountain-Prairie Region



IN REPLY REFER TO:

BA EN

WR SD

Mail Stop 60190

MAILING ADDRESS:

Post Office Box 25486
Denver Federal Center
Denver, Colorado 80225

STREET LOCATION:

134 Union Blvd.
Lakewood, Colorado 80228

Chief Engineer
South Dakota Department of
Water and Natural Resources
Foss Building, 523 East Capitol
Pierre, South Dakota 57501

MAY 20 1992



RE: NOTICE OF HEARING on Vested Water Right Claim No. 2213-2

Dear Sir:

The U.S. Fish and Wildlife Service (Service) holds U.S. Withdrawal Permit No. 3-2 which claims all unappropriated water of the Little White River, as well as any and all of the waters covered by Water License No. 253-2 that are flowing in the Little White River above its convergence with Lake Creek or that are flowing in Lake Creek above the Lacreek National Wildlife Refuge's Dam No. 10.

We have reviewed the Revised Report dated April 14, 1992, and support the Chief Engineer's recommendation to approve with particular attention to Conclusion No. 3 which states:
"According to the May 27, 1940 Deed to Water Rights between the predecessors of Water Right No. 253-2 and the United States of America, and the May 29, 1940 recognition by the Office of the State Engineer which approved the conveyance of a portion of Water Right No. 253-2 and a change of point of diversion; the United States is entitled to withhold or otherwise divert waters out of Water Right No. 253-2 and/or Vested Right Claim No. 2213-2 for purposes of the LaCreek Migratory Waterfowl Refuge as described above. This Vested Right Claim does not change the status of the above agreements."

The Service hereby withdraws its Petition to Oppose.

Sincerely,

William A. Godby
Regional Engineer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

JUN 2 5 1992

2213-2

Ronald Vincent
2210 Lassen Street
Oxnard, CA 93033

Dear Mr. Vincent:

Enclosed are your Validated Vested Water Right and Water License No. 2213-2. As long as you use the water beneficially, as stated in the Water License, the State Water Laws provide that you have a continuing right to use the water.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 5, 1996

2213-2

Jay Larson
Schmucker, Paul, Nohr & Associates
PO Box 398
Mitchell, SD 57301-0398

Dear Mr. Larson:

Enclosed, as you requested, is a copy of Vested Water Right No. 2213-2 for Ronald Vincent. I included a copy of a report in the file which gives some background information on the project.

If you have any questions or need additional information from the file, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352

enclosures

Gronlund, Eric

From: Gronlund, Eric
Sent: Wednesday, September 06, 2000 1:48 PM
To: Rath, Mark; Duvall, Ron; Schaal, Tim; McMath, Genny
Subject: RE: Little White River hydroelectric dam - Ron Vincent

Mr. Strain stopped back in the office today. He indicated he had an opportunity to review the statutes and discussed the history of Vested Water Right No. 2213-2 with Mr. Vincent and the prospective buyers. The buyers are supposedly a couple of electrical engineers from Minnesota.

Mr. Strain stated that since the lightning strike in 1996 there has been some hydropower generation by use of a secondary generator (smaller output). The primary generator will not be fixed until the new owner took possession.

Mr. Strain in reviewing the Board rules for legal use (37.01) noted that legal excuse for nonuse of water include but are not limited the criteria listed. I stated that only the Water Management Board (or the court) can make a determination on the validity of a water right.

He intended to advise his client that the vested water right was in place and that in his legal opinion it was proper to represent that a water right was held for the dam's hydropower generation. He understood that if a future question came up on the validity of the water right that it would require a Board determination and he felt confident that legal excuse existed.

He still had the transfer of ownership forms I previously gave him and they will file a transfer once the sale is completed.

-----Original Message-----

From: Gronlund, Eric
Sent: Tuesday, August 01, 2000 2:50 PM
To: Rath, Mark; Duvall, Ron; Schaal, Tim; McMath, Genny
Subject: Little White River hydroelectric dam - Ron Vincent

Tuesday afternoon - Mick Strain (attorney) stopped in on behalf of Mr. Vincent regarding his hydroelectric dam. Mr. Vincent is possibly selling the dam and wondered about the status of the dam. Mr. Strain indicated that lightning hit the dam 1996 and caused a substantial amount of damage to the workings. He was unsure whether it has been functional. However, he knew Mr. Vincent has been working diligently on repairs.

I explained the three years of nonuse statute and the legal excuse rule. I said currently a vested water right for the facility was on file but that could not speak directly to if it was valid, given the circumstances. I told him that only the Board can make an absolute determination on the validity of a water right through the declaratory ruling process.

Mr. Strain stated that up until 1991, Mr. Vincent received an annual form to report use of water (he had some of the forms and cover letters signed by Del Brosz). I stated I did not know why they stopped but speculated that in 1992 when Vested Water Right No. 2213-2 was validated it did not include a reporting qualification and for this reason the annual form stopped being sent. He had concern that since we weren't sending that annual form it somehow affected the water right and I assured him it did not.

I also sent blank transfer of ownership forms with him in the event the hydroelectric dam is sold.

NOTICE OF TRANSFER OF OWNERSHIP

To: Chief Engineer
Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

No. 2213-2



Date: November 22, 2000

I/We request that Vested Water Right No. 2213-2

formerly owned by: Ronald Vincent, 2551 Ruby Drive, Oxnard, CA 93030

be transferred to: (name & address) Ken Hayes, 435 185th Ave NE, Princetown, MN 55371

Telephone No. 763 662-2314

Title to the following described land(s)/property has been transferred as described above:

NE 1/4 NW 1/4 Section 34, T42N, R29W

I/We understand that the validity of Vested Water Right No. 2213-2 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

You are requested to file this "Notice of Transfer" in the appropriate file with the Water Rights Program, as evidence of the change of ownership.

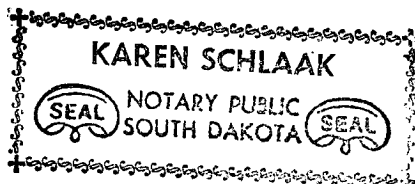
A fee of Two Dollars and Fifty Cents (\$2.50) is required to cover the filing fees as required under SDCL 46-2-13. This form must be signed by the new owner.

STATE OF SOUTH DAKOTA)

County of Hughes)

I/We Michael Strain being first duly sworn on my oath depose and say that my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and that I know of my own personal knowledge that the information herein stated is true.

Subscribed and sworn to before me this 22nd day of November, 2000. Ken Hayes
Atty for Ronald Vincent (Signed)



Karen Schlaak
(Notary Public)
KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001

NOTE: Water permits may be cancelled for nonconstruction within the five year construction period. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

N2 416695

Pierre, November 22, 2000

RECEIVED OF Michael Mick Strain, PO Box 269, White River, SD 57579 (for Ken Hayes)
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. _____ to Appropriate Water, to construct
and to put water to beneficial use _____

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 _____ Vested Water Right No. 2213-2

Fee for Filing Extension Request _____

Fee for _____

(Any Other Work Provided by Law)

Total

2 50

2 50

By

Chief Engineer

Garland REbele



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 4, 2000

2213-2

Ken Hayes
435 185th Ave NE
Princetown, MN 55371

Dear Mr. Hayes:

I am writing in regard to ownership of Vested Water Right No. 2213-2. On November 22, 2000, Mick Strain stopped by our office and finalized the transfer of the vested right.

The transfer of ownership has been completed and Vested Water Right No. 2213-2 is now listed in your name. I am enclosing a copy of the "Notice of Transfer of Ownership". You may keep this for your records. The receipt for the \$2.50 filing fee is being forwarded to Mr. Strain with a copy of this letter.

If you have any questions concerning the transfer or the vested water right, please get in touch with us.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosures

c: Mick Strain, PO Box 269, White River, SD 57579 w/receipt No. 416695