

**WATER PERMIT NO. 2350-2**

Name of Applicant: David Brost

Address: HCR 74, Box 77, Murdo SD 57559

Phone: XX

Amount of Water Claimed: 4.0

Total Acres: 279

Source of Water Supply: White River

Water to be used for: irrigation

County: Jones

Type of Waste Disposal System: NA

Location: 12 miles south of Draper

PRIORITY

Date Received: 12-13-95

Fee: \$15.00

Corrected Application Received: NA

Period of Annual Use: April 1 - November 1

Remarks: Proposed priority date of January 1, 1933. Applicable portions Water Right No. 933-2 will be incorporated into this Vested Right.

Diversion Point: Pt A - SE 1/4 SE 1/4 Sec 29;

Pt B - NW 1/4 SE 1/4 Sec 33; and Pt C -

NW 1/4 SW 1/4 Sec 33; all in T3S-R30E

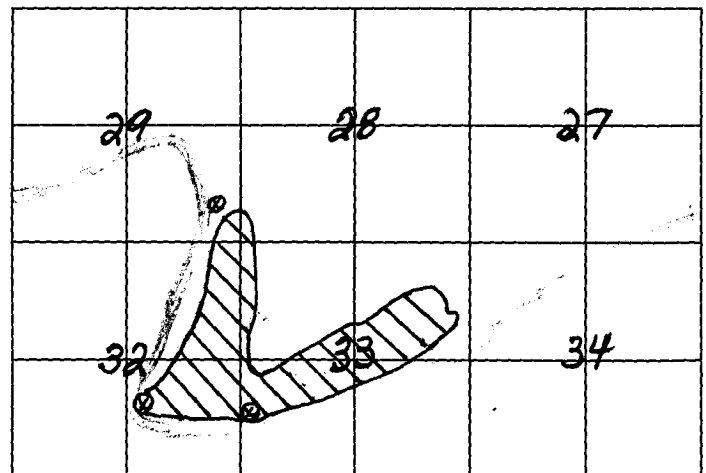
Land to be Irrigated: SW 1/4 SW 1/4 Sec 28,

SE 1/4 SE 1/4 Sec 29, E 1/2 NE 1/4, N 1/2 SE 1/4,

Sec 32, W 1/2 NW 1/4, SE 1/4 NW 1/4, N 1/2 SW

1/4, W 1/2 NE 1/4, SE 1/4 NE 1/4, NW 1/4 SE 1/4

Sec 33; all in T3S-R30E



Depth of Well: NA

Well Driller: NA

Remarks:

Type of Map: aerial

Prepared by: Del Brosz

Reviewed and the Number Assigned on: 12-13-95

By: Karen Schlaak

Notice of Hearing - date to intervene: \_\_\_\_\_

# FORM 2: Application for Irrigation in South Dakota

(type or print)



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

No. 2350-2 Hydrologic Unit 10140104  
Basin White River  
Newspaper The Murdo Coyote, Murdo, SD  
(office use only)

(Thurs)

## Application For Soil/Water Compatibility Permit And Permit To Appropriate Water

Type of Application:    New    ☒ Vested Right    Amendment/Correction to Permit No.     
(check one) (Use predates Mar 2, 1955)

Description of amendment/correction: (i.e. acreage change, change diversion point(s), add diversion point(s), etc.)   

- Name of Applicant David Brost Phone     
Mailing Address HCR 74 Box 77 Murdo State SD 57559  
(Street, RR, or Box) (City) (Zip Code)
- Amount of water claimed 4 \*CFS or    \*\*GPM    \*\*\*AF    Total Acreage 279  
(\*Cubic Feet per Second) (\*\*Gallons per Minute) (\*\*\*)Acre Feet - storage capacity of dam/dugout if applicable)
- Source of water supply White River (SE 1/4 SE 1/4)
- Location of point of diversion (example: 3 wells in SW 1/4 NE 1/4 section 12-T104N-R53W) Pt A - 1220 Feet N and 1130 Feet W  
of the SE corner section 29. Pt B - 820 Feet S and 2210 Feet W of W 1/2 corner section 33. Pt C - 2400 Feet  
W and 1160 Feet S center of section 33. All in T35, R30 E County Jones (NW 1/4 SW 1/4)
- County or counties where water will be used Jones
- Annual period during which water is to be used April 1 to November 1
- List below each forty acre subdivision, or lot, or fraction thereof and show number of acres to be irrigated in each.  
(Attach sheet if more space is needed)

| Land Description    | Acres      | Land Description | Acres |
|---------------------|------------|------------------|-------|
| <u>Attachment I</u> | <u>279</u> |                  |       |
|                     |            |                  |       |
|                     |            |                  |       |
|                     |            |                  |       |

- Type of Irrigation: Gravity: ☒ Towline:    Center Pivot:    Gun:    Other (Specify):
- Crops to be irrigated:
- Give a description of the project. (Attach sheet if more space is needed)  
Water is pumped from the White River into irrigation ditches. The water  
is released from the ditches and allowed to flow by gravity over the fields.

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Attach maps, soils information and any other technical information. (see instructions)

STATE OF SOUTH DAKOTA)

County of Jones <sup>SS</sup>

I, DAVID BROST, the applicant, certify that I have read this application and examined the attached maps, that the water sample, if needed, has been taken by the required procedures and has not been adulterated or tampered with and is representative of the water to be used, and that the matters stated in this application are true and correct.

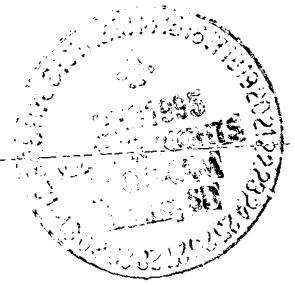
Signed David Brost

Subscribed and sworn to before me this 12<sup>th</sup> day of December 19 95

Karen J. Lopez  
Notary Public

Commission Expires: 10-8-2003

## ATTACHMENT I



| <u>Land Description</u>        | <u>Acres</u> |
|--------------------------------|--------------|
| SWSW      Section 28, T3S-R30E | 2            |
| SESE      Section 29, T3S-R30E | 17           |
| NENE      Section 32, T3S-R30E | 20           |
| SENE      Section 32, T3S-R30E | 22           |
| NWSE      Section 32, T3S-R30E | 11           |
| NESE      Section 32, T3S-R30E | 37           |
| NWNW      Section 33, T3S-R30E | 12           |
| SWNW      Section 33, T3S-R30E | 13           |
| SENW      Section 33, T3S-R30E | 30           |
| NWSW      Section 33, T3S-R30E | 43           |
| NESW      Section 33, T3S-R30E | 27           |
| NWNE      Section 33, T3S-R30E | 3            |
| SWNE      Section 33, T3S-R30E | 35           |
| SENE      Section 33, T3S-R30E | 2            |
| NWSE      Section 33, T3S-R30E | <u>5</u>     |
| TOTAL                          | 279          |

## SOUTH DAKOTA

### VESTED WATER RIGHT NO. 2350-2 FOR IRRIGATION

Date of Receipt of Claim December 13, 1995.

Date of Validation February 20, 1996.

The Chief Engineer, on behalf of the Water Management Board validated Vested Water Right Claim No. 2350-2 for David Brost, HCR 74, Box 77, Murdo SD. 57559 irrigation purposes for with the following limitations, conditions and qualifications:

1. Vested Water Right No. 2350-2 appropriates 4.0 cubic feet of water per second from the White River located in the SE 1/4 SE 1/4 Section 29, NW 1/4 SE 1/4 Section 32 and NW 1/4 SW 1/4 Section 33; all in T3S-R30E for irrigation of 279 acres located in the SW 1/4 SW 1/4 Section 28, SE 1/4 SE 1/4 Section 29, E 1/2 NE 1/4, N 1/2 SE 1/4 Section 32, W 1/2 NW 1/4, SE 1/4 NW 1/4, N 1/2 SW 1/4, W 1/2 NE 1/4, SE 1/4 NE 1/4, NW 1/4 SE 1/4 Section 33; all in T3S-R30E. The applicable portions of Vested Right Claim No. 933-2 are incorporated into Vested Water Right No. 2350-2 with the abandoned portions of No. 933-2 cancelled.
2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per irrigated acre per year. The water is to be used during the following annual period: April 1 - November 1.
3. The priority date of the Vested Water Right is January 1, 1933.
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

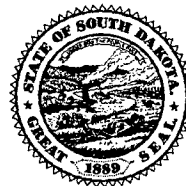
#### WATER MANAGEMENT BOARD

By: \_\_\_\_\_

John Hatch  
John Hatch, Chief Engineer  
Water Rights Program  
Department of Environment and Natural Resources

JUL 2 1996

date



# Affidavit of Water Use



No. \_\_\_\_\_

Note: This Form is supplemental to Form 2 and is to be used when an affidavit pertaining to construction and water use already constructed 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) David Brost  
Mailing Address HCR 74 Box 77 Murdo SD 57559  
(Street, RR or Box) (City) (State) (Zip Code)

- A. Notice of Appropriation Nov. 20, 1911 Date of Posting \_\_\_\_\_  
Date of Recording \_\_\_\_\_ Recording Date \_\_\_\_\_  
B. Date of start of construction of water supply system 1912  
C. Date that water was first applied to beneficial use \_\_\_\_\_  
D. Name of owner of original water supply system Martin Johnson  
E. Amount of water originally applied to beneficial use 4.5 cfs  
F. Present use of water - amount of water now being used 4.0 cfs  
Date that this water was first used 1933

### G. Chronological History of Water Use

*An application for a water permit was filed by Martin Johnson on November 20, 1911. The application was approved and Mr. Johnson constructed the project. There are affidavits on file showing that irrigation has taken place on this project continuously since 1933.*

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 )  
County of JONES ) ss

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

Signed David Brost

Subscribed and sworn to before me Dec 16, 19 95

Laura J. Boyle  
Notary Public  
Comm Expires 10-8-2003

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.

DAVID BROST, 19 95  
(Print name)

\_\_\_\_\_, 19 \_\_\_\_  
(Print name)

# RECEIPT

414714

## Division of Water Rights

### South Dakota Department of Environment and Natural Resources

Pierre, December 13, 19 95

RECEIVED OF Brost Ranch, HCR 74, Box 77, Murdo SD 57559

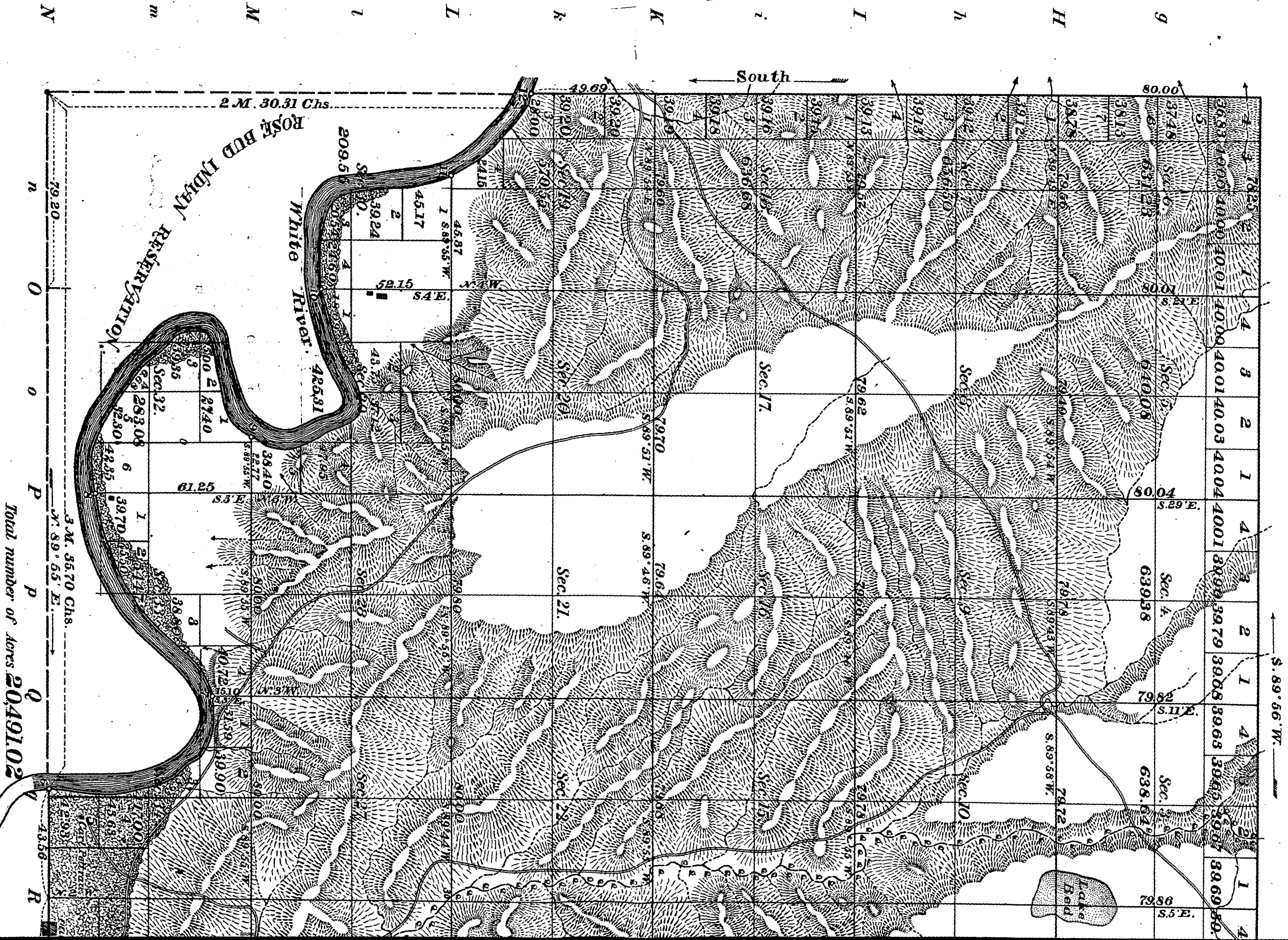
the following amount in fees for services rendered as provided for by law:

|                                                                                                                              |       |
|------------------------------------------------------------------------------------------------------------------------------|-------|
| Fee for Application for Permit No. <u>2350-2</u> to Appropriate Water, to construct 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 _____                                                                                                                |       |
| _____                                                                                                                        |       |
| _____                                                                                                                        |       |
| (Any Other Work Provided by Law)                                                                                             |       |
| <b>Total</b>                                                                                                                 | 15 00 |

By John Hatch  
Chief Engineer JOHN HATCH KS

Township No. 3 South, Range No. 30 East, Black

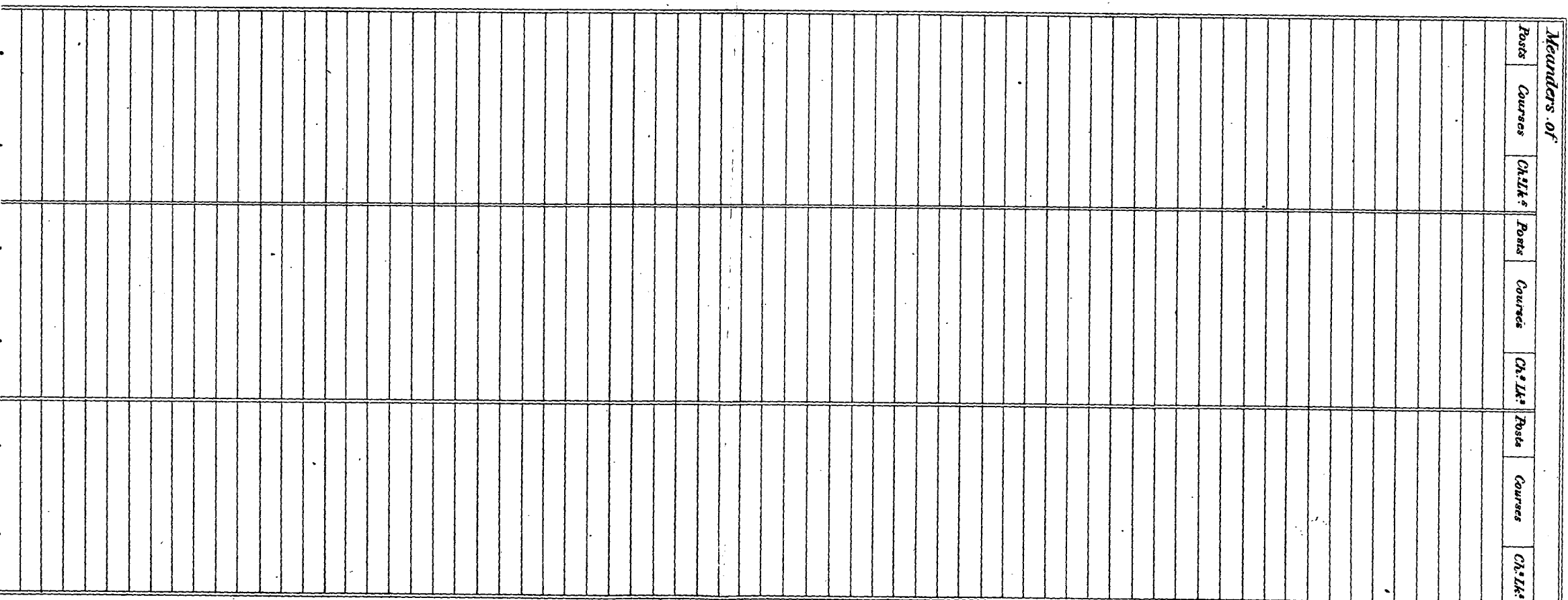
G f F e E d D c C



| Survey Designated | By Whom Surveyed | Date of Contract | Amount of Surveys<br>M. Chs. Ecs. | When Surveyed     | Mean Direction E. |
|-------------------|------------------|------------------|-----------------------------------|-------------------|-------------------|
| Township lines    | E. W. Van Dine   | March 27, 1890   | 55 31 09                          | Sept. 8 Oct. 1890 | 13° 37' 24"       |
| Subdivisions      |                  |                  |                                   |                   |                   |
| Acres             |                  |                  | 8 21 90                           |                   |                   |

Total number of Acres 20491.02

$C$        $B$        $a$        $A$



William  
Davis & Son

Accepted:  
Commissioner's letter "E"  
dated Aug. 31, 1891



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

January 28, 1993

David Brost  
HCR 74 Box 77  
Murdo, SD 57559

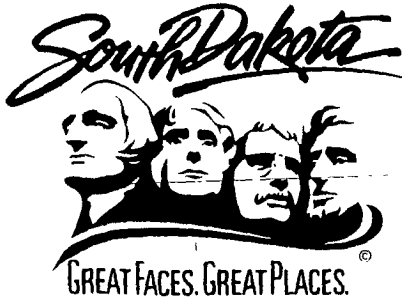
Dear Mr. Brost:

Last summer I visited with you and inspected your Vested Water Right No. 933-2. After comparing the irrigated acreage that you described as being irrigated with your vested right, I found the acreage to be considerably different. We will need to do something to correct the differences.

If you are ever in Pierre and have some extra time, you can stop by my office and we can discuss the situation. I can also stop by your place sometime next spring. If you don't stop by my office, I will make an appointment with you sometime next spring.

Sincerely,

Delvin D. Brosz, PE  
Natural Resources Engineer  
Division of Water Rights  
(605) 773-3352



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

December 6, 1995

David Brost  
HCR 74 Box 77  
Murdo, SD 57559

Dear Mr. Brost:

Enclosed are the forms for your vested right application that you and I visited about last month. I completed most of the information on the forms. Please add or correct where needed. The forms need to be signed in the presence of a notary and then returned to us with a filing fee of \$15.00.

The copy of the map is yours to keep. I am keeping the original map to attach to your file when you return the application. If you have any questions or disagree with something on the application, please call me at 773-3352.

Thank you for taking the time to get this in order.

Sincerely,

Delvin D. Brosz, PE  
Natural Resources Engineer  
Water Rights Program

**REPORT ON  
VESTED WATER RIGHT CLAIM APPLICATION NO. 2350-2  
DAVID BROST  
DECEMBER 15, 1995**

**Background**

Vested Water Right Application No. 2350-2, filed by David Brost, requests validation of a claim to appropriate 4.0 cubic feet of water per second (cfs) from the White River. The points of diversion are located in the SE 1/4 SE 1/4 Section 29, NW 1/4 SE 1/4 Section 33, and NW 1/4 SW 1/4 Section 33; all in T3S-R30E. Diversion of water from the White River is for irrigation of 279 acres located in the SW 1/4 SW 1/4 Section 28; SE 1/4 SE 1/4 Section 29; E 1/2 NE 1/4, N 1/2 SE 1/4 Section 32; and W 1/2 NW 1/4, SE 1/4 NW 1/4, N 1/2 SW 1/4, W 1/2 NE 1/4, SE 1/4 NE 1/4, NW 1/4 SE 1/4 Section 33; all in T3S-R30E.

**Discussion**

Water Permit No. 128-2 with a priority date of November 20, 1911, was approved for this project by the State Engineer January 30, 1912. The permit was issued to Martin Johnson to irrigate 427.63 acres with a diversion rate of 4.5 cfs from the White River. Water Permit No. 128-2 was never licensed.

An investigation of Water Permit No. 128-2 was made September 8, 1967. The owner at that time, David Brost, could only verify continuous irrigation of the land since 1933. Following the investigation, a vested water right claim for the irrigation project was filed.

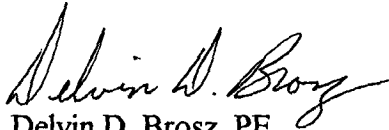
Vested Water Right Claim No. 933-2, with a priority date of January 1, 1933, was recognized November 8, 1967, to irrigate 170 acres with a diversion rate of 2.4 cfs from the White River. Applicable portions of Water Permit No. 128-2 were incorporated into Vested Water Right Claim No. 933-2.

An investigation of Vested Water Right Claim No. 933-2 November 15, 1995, found that the irrigation project was not as described in the claim. The project is very similar to what was approved in the original Water Permit No. 128-2 and described in Vested Water Right Claim Application No. 2350-2. David Brost, the present owner, stated that the project has not changed since 1933. There has been continuous irrigation of the land since 1933.

**Conclusions**

1. According to the applicant, continuous irrigation has occurred since 1933. There are no complaints on file regarding this project.

2. An investigation of Vested Water Right Claim No. 2350-2 found that the project exists as described.
3. Vested Water Right Claim No. 2350-2 should be validated for a diversion rate of 4.0 cfs from the White River to irrigate 279 acres with a priority date of January 1, 1933.
4. Applicable portions of Vested Water Right Claim No. 933-2 should be incorporated into No. 2350-2 and the abandoned portions canceled.



Delvin D. Brosz, PE

Natural Resources Engineer IV

**RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED  
WATER RIGHT APPLICATION NO. 2350-2, David Brost**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Validation of Vested Water Right Application No. 2350-2, David Brost, HCR 74, Box 77, Murdo, SD 57559.

The Chief Engineer is recommending VALIDATION of Application No. 2350-2 for 4.0 cfs and that the applicable portions of Water Right Claim No. 933-2 be incorporated into No. 2350-2 and that the abandoned portions of No. 2350-2 be cancelled because 1) water has been appropriated as described for irrigation use with a priority date of January 1, 1933, 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  
January 18, 1996



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

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

January 24, 1996

David Brost  
HCR 74, Box 77  
Murdo, SD 57559

Dear Mr. Brost:

Your Application No. 2350-2 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 Murdo Coyote printed at Murdo, SD (Ph # (605) 669-2271). 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.

Sincerely,

  
Eric Gronlund  
Natural Resources Engineer  
605 773-3352

enclosures

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



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

January 24, 1996

The Murdo Coyote  
Box 465  
Murdo, SD 57559-0465

ATTN: Legal Publications:

Enclosed is a Notice of Hearing to Validate Vested Right Application No. 2350-2 to be published twice. Please publish the notice on February 1, 1996, 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 David Brost, HCR 74, Box 77, Murdo, SD 57559.

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

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. 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: Eric Gronlund  
Water Rights Program  
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

Instruction to Newspaper - Publish first Notice on February 1, 1996, with the second publication 7 days later. The applicant is responsible for payment.

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NOTICE OF HEARING To Validate  
Vested Water Right Application No. 2350-2 to Appropriate Water

---

Notice is given that David Brost, HCR 74, Box 77, Murdo, SD 57559 has filed an application to validate a vested water right claim to appropriate 4.0 cubic feet of water per second from the White River located in the SE 1/4 SE 1/4 Section 29, NW 1/4 SE 1/4 Section 33 and NW 1/4 SW 1/4 Section 33; all in T3S-R30E for irrigation of 279 acres located in the SW 1/4 SW 1/4 Section 28, SE 1/4 SE 1/4 Section 29, E 1/2 NE 1/4, N 1/2 SE 1/4 Section 32, W 1/2 NW 1/4, SE 1/4 NW 1/4, N 1/2 SW 1/4, W 1/2 NE 1/4, SE 1/4 NE 1/4, NW 1/4 SE 1/4 Section 33; all in T3S-R30E.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2350-2 because 1) water has been appropriated as described for irrigation with a claimed priority date of January 1, 1933, with the applicable portions of Water Right No. 933-2 incorporated into No. 2350-2 and the abandoned portions cancelled, 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. In accordance with SDCL 46-2A-23, the chief engineer will act on the application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and chief engineer. The applicant must file a petition if contesting the chief engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by February 20, 1996.

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. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Nettie H. Myers, Secretary, Department of Environment and Natural Resources.

# PROOF OF PUBLICATION



1. Clarice Roghair

taken from the Murdo Coyote

printed and published in Mundo

Feb 1, 1996

Feb 8, 1996

Cost of Printing: 37 <sup>53</sup>

Clarice J. Foghain  
(Signature)

Paulusker  
(Title)

Feb 7, 1996  
(Date Signed)

NOTICE OF HEARING To Validate Vested Water Right Application No. 2350-2 to  
Appropriate Water

Notice is given that David Brost, HCR 74, Box 77, Murdo, SD 57559 has filed an application to validate a vested water right claim to appropriate 4.0 cubic feet of water per second from the White River located in the SE 1/4 SE 1/4 Section 29, NW 1/4 SE 1/4 Section 33 and NW 1/4 SW 1/4 Section 33; all in T3S-R30E for irrigation of 279 acres located in the SW 1/4 SW 1/4 Section 28, SE 1/4 SE 1/4 Section 29, E 1/2 NE 1/4, N 1/2 SE 1/4 Section 32, W 1/2 NW 1/4, SE 1/4 NW 1/4, N 1/2 SW 1/4, W 1/2 NE 1/4, SE 1/4 NE 1/4, NW 1/4 SE 1/4 Section 33; all in T3S-R30E.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2350-2 because 1) water has been appropriated as described for irrigation with a claimed priority date of January 1, 1933, with the applicable portions of Water Right No. 933-2 incorporated into No. 2350-2 and the abandoned portions cancelled, 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. In accordance with SDCL 46-2A-23, the chief engineer will act on the application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

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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. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Nettie H. Myers, Secretary, Department of Environment and Natural Resources.

Publish February 1, February 8, 1996

Water District

**Report Of Examination Of Works And/Or Application Of Water To Beneficial Use**

TO: Chief Engineer, Division of Water Rights, DWNR, Foss Bldg., Pierre, SD 57501

I have this day made a thorough examination of the water use system constructed by David Brost  
HCR 74 Box 77 of Murdo, SD 57559 holder of  
 Permit No. 933-Z, bearing the priority of \_\_\_\_\_ 1933 authorizing  
 the diversion of 2.4 cu. ft. per second of the waters of the White River  
 for irrigation purposes, in Jones County.

I have to report on the conditions of the same as follows:

## A. Works used to divert the water:

10 inch Crisafulli pump powered by 25 HP electric motor.  
Capacity = 3700 gpm

## B. Works used to transport water to place of use:

Irrigation ditches of various sizes

## C. Works used to apply water to beneficial use:

Nylon dam is placed in the irrigation ditch. Water flows over the  
field by gravity.

The system is in the following condition goodThe point of diversion is located Pt A- 1220 feet N and 1130 feet W of the SE corner section 29.

Pt B- 820 feet S and 2210 feet W of W 1/4 corner section 33. Pt C- 2400 feet W and 1160 feet S  
Center of section 33. All in T35, R30E.

The works are capable of diverting and conveying to the place of use \_\_\_\_\_

cu. ft. per second of water which is to be used for 8.2

Water has been put to beneficial use to the maximum extent as follows: \_\_\_\_\_

See Attachment I

comprising a total of 279 acres of land and the license should be issued for 4 cfs when new application  
is validated.

Applicable permit qualifications have been complied with \_\_\_\_\_ Yes ☒ No

Exceptions to compliance are: A new vested right application will Date 11-15-95  
be filed.

Herwin W. Brost  
 (signature)

## CHECK LIST FOR FIELD INSPECTION

Permit Number 933-Z Date 11-15-95

Other permit(s) associated with the project \_\_\_\_\_

NOTE: For Permits with additional wells or changes in well locations, record the following for each well: pumping capacity, date constructed, well driller and if a well log is available.

1. Diversion point legal location: N 40° 23' W 1730 feet from the SE corner  
Section 27, T3S, R30E. Should be Section 29. Location will be  
corrected on new vested Right application.

2. Well Information: Well Drilling Firm \_\_\_\_\_

No. of wells \_\_\_\_\_ Depth(s) \_\_\_\_\_

a) Casing 1) diameter \_\_\_\_\_ inches

2) length \_\_\_\_\_ feet

3) type \_\_\_\_\_

d) Static Water Level \_\_\_\_\_ feet

e) Motor:

1) make Electric

2) model No. —

3) horsepower rating 25

b) Screen 1) type \_\_\_\_\_

2) length \_\_\_\_\_ feet

c) Pump 1) make Crisafulli

2) model CP100R

3) Size 10 inches

4) capacity 3700 GPM

5) turbine pump - No. of stages \_\_\_\_\_

6) operating pressure \_\_\_\_\_ PSI

3. Distribution lines or canals:

a) type ditches b) size Varies c) length Varies

4. System Type:

a) Sideroll:

1) length \_\_\_\_\_ feet

2) diameter of pipe \_\_\_\_\_ inches

3) sprinkler spacing \_\_\_\_\_ feet

b) Towline:

1) length \_\_\_\_\_ feet

2) sprinkler spacing \_\_\_\_\_ feet

#### 4. System Type (continued):

##### c) Siphons:

- 1) size \_\_\_\_\_ inches
- 2) number \_\_\_\_\_

##### e) Center pivot:

- 1) make \_\_\_\_\_
- 2) overall length \_\_\_\_\_ feet
- 3) number of towers \_\_\_\_\_
- 4) distance between towers \_\_\_\_\_ feet
- 5) end gun \_\_\_\_\_ (Y/N)
- 6) high or low pressure \_\_\_\_\_
- 7) capacity \_\_\_\_\_ GPM

##### d) Gated pipe:

- 1) length \_\_\_\_\_ feet
- 2) diameter \_\_\_\_\_ inches
- 3) spacing of gates \_\_\_\_\_ inches

##### f) Gun:

- 1) make \_\_\_\_\_
- 2) nozzle size \_\_\_\_\_ inches
- 3) capacity \_\_\_\_\_ GPM
- 4) hose size \_\_\_\_\_ inches
- 5) hose length \_\_\_\_\_ feet

#### 5. Dam Information:

- a) height to crest \_\_\_\_\_ feet
- b) height to primary spillway \_\_\_\_\_ feet
- c) height to secondary spillway \_\_\_\_\_ feet
- d) crest width \_\_\_\_\_ feet
- e) crest length \_\_\_\_\_ feet
- f) spillway length \_\_\_\_\_ feet
- g) spillway width \_\_\_\_\_ feet
- h) approx. storage \_\_\_\_\_ ac-ft
- i) approx. storage to crest \_\_\_\_\_ ac-ft
- j) date constructed \_\_\_\_\_

##### k) outlet tubes:

- 1) diameter \_\_\_\_\_ inches
- 2) type \_\_\_\_\_
- 3) valved \_\_\_\_\_ (Y/N)
- 4) valve type \_\_\_\_\_
- 5) location on structure \_\_\_\_\_

l) category of dam \_\_\_\_\_ (I, II, III)

m) inspection sheet completed \_\_\_\_\_ (Y/N)

n) name of contractor \_\_\_\_\_

#### 6. Chemigation Equipment:

- b) main line check valve \_\_\_\_\_ (Y/N)
- d) low pressure drain \_\_\_\_\_ (Y/N)
- f) interlock type \_\_\_\_\_
- g) injection pump type \_\_\_\_\_
- i) injection line check valve or positive displacement pump \_\_\_\_\_ (Y/N)
- j) all chemigation equipment appears to be installed in proper position and comply with chemigation laws and rules \_\_\_\_\_ (Y/N)
- k) comments: \_\_\_\_\_
- a) does chemigate ✓ (Y/N)
- c) inspection port/air relief \_\_\_\_\_ (Y/N)
- e) discharge is 20' from source \_\_\_\_\_ (Y/N)
- h) injection check valve \_\_\_\_\_ (Y/N)

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

----- WATER RIGHTS PROGRAM -----

April 2, 1996

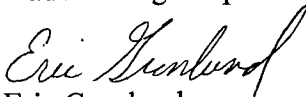
RE: Change in location of one of the diversion points for Vested Water Right No. 2350-2, David Brost

South Dakota Codified Law Chapter 46-5-13.1 provides that a point of diversion may be changed or additional points of diversion may be approved without application or publication of a notice of hearing if the additional point of diversion is from the same source of water, no additional water is appropriated and the chief engineer makes a finding that the change does not increase the potential for interference with existing diversions.

Vested Water Right Application No. 2350-2, filed by David Brost, requests validation of a claim to appropriate 4.0 cubic feet of water per second (cfs) from the White River. The filing of this application was a product of an investigation conducted by Del Brosz on Water Permit No. 128-2 with a priority date of November 20, 1911, and Vested Water Right Claim No. 933-2 with a priority date of January 1, 1933. At that time, Mr. Brost could only verify continuous irrigation of the land since 1933. The investigation also found that the irrigation project was not as described by Claim No. 933-2. Vested Water Right Application No. 2350-2 was then filed for the irrigation system.

Vested Water Right No. 2350-2, approved February 20, 1996, validates a claim to appropriate 4.0 cfs from three points along the White River to irrigate 279 acres (see report on Application No. 2350-2). The points of diversion were advertised as being located in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 29 (Point A), NW $\frac{1}{4}$  SE $\frac{1}{4}$  **Section 33** (Point B) and NW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 33; all in T3S, R30E. Point B was advertised incorrectly due to an error on the application. The map clearly shows the correct location of Point B.

Point B is correctly located in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  **Section 32**, T3S, R30E. There will be no impairment existing downstream rights as a result of this change. In terms of physical location of the diversion point, Point B is located upstream one mile west of where it was advertised. The only point of diversion from the White River between these points is Point C which is part of Mr. Brost's irrigation system. The result of approving this request to use SDCL 46-5-13.1 will be to allow issuance of the vested water right without readvertising the publication notice.



Eric Gronlund

Water Rights Program

The Chief Engineer makes a finding that this change in location does not increase the potential for interference with existing diversions. In making the finding, "does not increase the potential for interference" is interpreted to mean potential for adverse interference. Vested Water Right No. 2350-2 may be issued without requiring publication of a readvertisement notice of hearing pursuant to SDCL 46-2A-4.



John Hatch, Chief Engineer

Water Rights Program

# STATE OF SOUTH DAKOTA

## VESTED RIGHT WATER LICENSE NO. 2350-2 FOR IRRIGATION

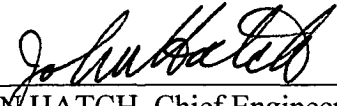
(1) David Brost, HCR 74, Box 77, Murdo SD 57559 made Application No. 2350-2, December 13, 1995 for validation of a vested right claim to appropriate 4.0 cubic feet of water per second from the White River, Jones County, South Dakota, for irrigation purposes. Vested Water Right No. 2350-2 was validated February 20, 1996 with a priority date of January 1, 1933. 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 vested right owner is entitled to divert 4.0 cubic feet of water per second for beneficial use. The location of the diversion points are: Pt A - 1,220 feet north and 1,130 feet west of the southeast corner of Section 29 (SE 1/4 SE 1/4); Pt B - 820 feet south and 2,210 feet west of the east quarter corner of Section 32 (NW 1/4 SE 1/4) and Pt C - 2,400 feet west and 1,160 feet south of the center of Section 33 (NW 1/4 SW 1/4); all in T3S-R30E.

The location of the irrigated acreage is: **all in T3S-R30E**

|            |               |          |            |               |           |
|------------|---------------|----------|------------|---------------|-----------|
| Section 28 | SW 1/4 SW 1/4 | 2 acres  | Section 33 | NW 1/4 NW 1/4 | 12 acres  |
|            |               |          |            | SW 1/4 NW 1/4 | 13 acres  |
| Section 29 | SE 1/4 SE 1/4 | 17 acres |            | SE 1/4 NW 1/4 | 30 acres  |
|            |               |          |            | NW 1/4 SW 1/4 | 43 acres  |
| Section 32 | NE 1/4 NE 1/4 | 20 acres |            | NE 1/4 SW 1/4 | 27 acres  |
|            | SE 1/4 NE 1/4 | 22 acres |            | NW 1/4 NE 1/4 | 3 acres   |
|            | NW 1/4 SE 1/4 | 11 acres |            | SW 1/4 NE 1/4 | 35 acres  |
|            | NE 1/4 SE 1/4 | 37 acres |            | SE 1/4 NE 1/4 | 2 acres   |
|            |               |          |            | NW 1/4 SE 1/4 | 5 acres   |
|            |               |          |            | Total         | 279 acres |

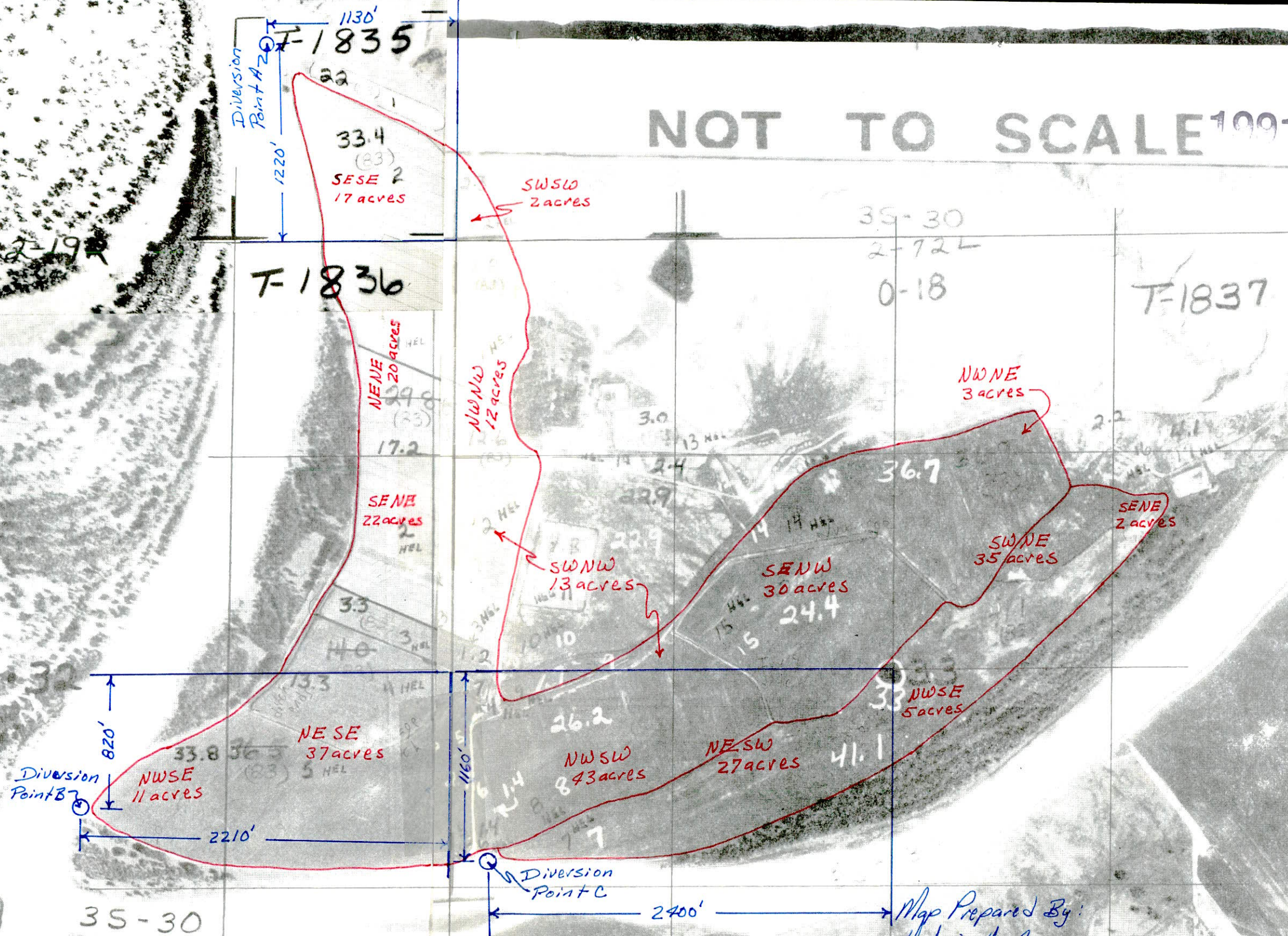
(3) Pursuant to Section 46-5-30.1 David Brost, HCR 74 Box 77, Murdo SD the holder and/or owner of Vested Water Right No. 2350-2 is issued a license to appropriate 4.0 cubic feet of water per second from the White River with a priority date of January 1, 1933 from the location specified in (2) of this license. The water is to be used for the purpose of irrigation. This license is subject to any limitations, conditions or qualifications listed in Vested Water Right No. 2350-2 and subject to South Dakota State Law.

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

JUL 2 1996  
date



NOT TO SCALE 1001



Map Prepared By:  
Melvin D. Brong, PE  
Natural Resources Engineer  
Water Rights Program



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

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

JUL 2 1996

VR 2350-2

David Brost  
HCR 74, Box 77  
Murdo, SD 57559

Dear Mr. Brost:

Enclosed are your Validated Vested Water Right and Water License No. 2350-2. 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 Program  
(605) 773-3352

enclosures



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 E. CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

**Subject: Bypass Qualifications on the White River**

March 30, 2023

Dear White River Water Right Holder,

The SD Dept. of Agriculture and Natural Resources Water Rights Program is reviewing qualifications on White River water rights in order to update when pumping is authorized. Water Rights issued with priority dates junior to 1975 contained a qualification requiring a mandatory June 1 shutoff to cease pumping water from the river. The mandatory June 1 shutoff qualification was placed on these permits to protect domestic water users, which includes livestock watering. The review found, with the passage of time the United States Geological Survey (USGS) streamflow monitoring has expanded and realtime access to this information has improved. An analysis of long-term historical flow found that the lower White River, downstream of the Little White River confluence, receives significant flow from the Little White River relative to the flow contribution from the upstream portion of the White River. Consequently, it may be possible to remove the mandatory June 1 shutoff qualification for the junior water right permits in this lower section of the river and replace the qualification with a flow bypass limitation as measured at the USGS streamflow gaging station located near Oacoma.

The intent of this effort is to allow for more efficient use of water when it is available by utilizing a bypass requirement as measured at a USGS stream flow gaging station for those water users. This qualification change will also allow many lower White River junior priority water right holders to irrigate after June 1 without the need to request an extension from the Chief Engineer. Current real time river flow information can be easily accessed on-line at the following internet address:

**<https://waterdata.usgs.gov/sd/nwis/rt>**

In order to amend a qualification on an existing water right permit, formal action by the SD Water Management Board is needed. In the near future, you can expect to receive official notification scheduling a hearing before the Water Management Board. The notification will include if your water right is proposed to have the qualification amended. This hearing will also be public noticed in select county newspapers in which the White River flows through. If you wish to participate in the hearing, you can, but you are not required to. There will be instructions with the notification on how to participate in the hearing if you so choose.

If you have any questions concerning this effort, please contact Mark Rath of the Water Rights Program at (605) 773-3352 or [mark.rath@state.sd.us](mailto:mark.rath@state.sd.us)

Sincerely,

Eric Gronlund, Chief Engineer  
SD DANR – Water Rights Program

# Review of White River Water Rights and Report on Proposed Amendment

## February 14, 2023

### Introduction

An evaluation was made of the current qualifications that were placed on the existing White River water permits/rights to determine whether these qualifications are effectively managing the water source for the users.

### Review of the Water Source

The White River, a prairie stream, located in southwestern South Dakota and northwestern Nebraska, Figure 1. The White River headwaters originate in northwestern Nebraska and drains approximately 9,975 square miles before discharging into the Missouri River near Oacoma SD.

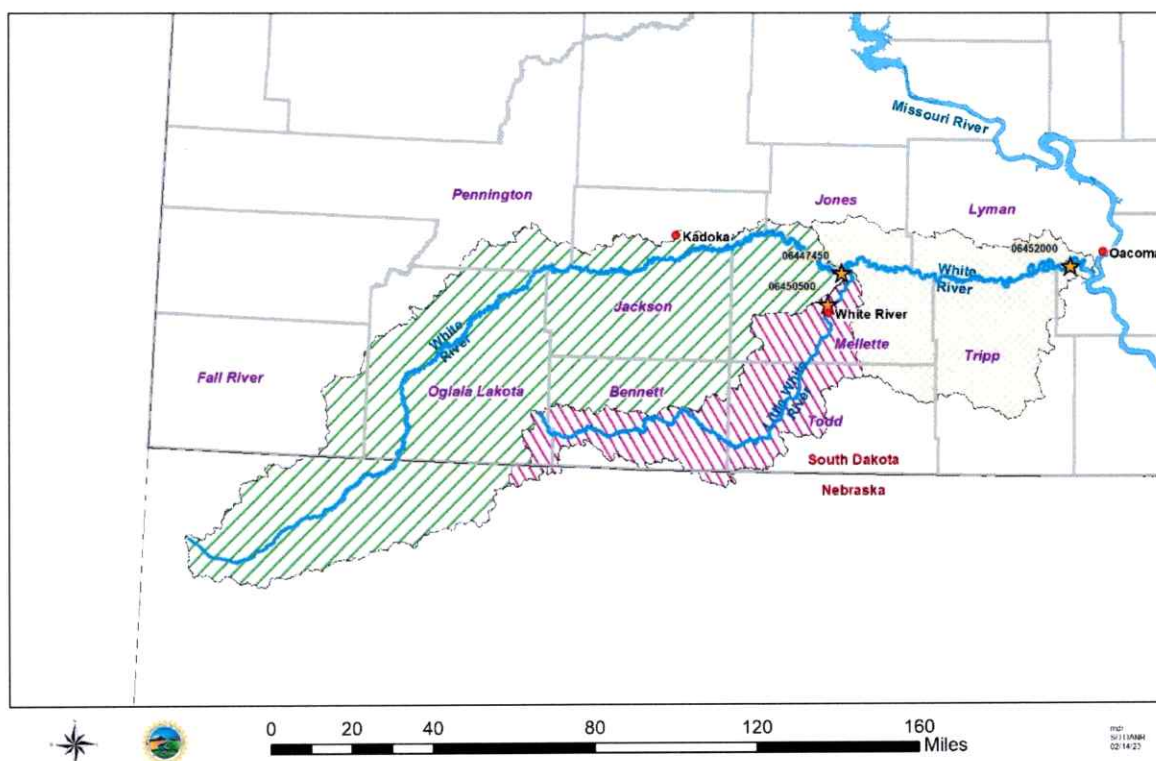


Figure 1. White River Watershed Map.

The entire watershed can be broken into three sections: upper White River, lower White River and Little White River. The upper White River watershed is the portion drained by the White River headwaters in northwestern Nebraska and drains portions of Oglala Lakota, Fall River, Bennett, Pennington, Jackson, Mellette, Jones, and Todd Counties located upstream of the Little White River confluence. The Little White River watershed is drained by the Little White River headwaters in Oglala Lakota County, draining portions of Nebraska, and Bennett, Todd, and Mellette Counties before merging with the White River approximately 12 miles southeast of the town of Murdo. The Little White River has more uniform flow than the White River due to a permeable sand formation allowing precipitation seeping into the ground to move laterally into the stream through springs and seeps (Ellis, et al. 1971). The lower White River section, after receiving contributing flow from the Little White and upper White rivers, also drains

portions of Mellette, Jones, Todd, Tripp, and Lyman Counties before discharging to the Missouri River just south of the town of Oacoma.

A percentile is a measure used in statistics to indicate the value below which a given percentage of observations in a group of observations fall, in this case daily flows. The percentiles shown correspond to flow scenarios during drier conditions when water would be in short supply. A percentile hydrograph can also give an indication of the time of year when water can be expected to be available at the gage location.

The USGS Stream Gaging No. 06447450 White River near White River, SD is located approximately 2 miles upstream from the confluence of the White and Little White rivers. Figure 2, shows three statistically derived flow levels consisting of the daily median (or 50 percentile), the 25 percentile, and the 10 percentile daily flow values for this stream gage. As this figure indicates, there is an increase in flow in the White River corresponding to spring snowmelt and spring rain events. The figure shows the median or 50 percentile hydrograph for this stream gage exhibits the daily flow values at or below this level on average one out of two years and also indicates flow curtailing in the mid-July to early September time frame before leveling off. It should be noted during any given year, flow in the river is not going to exactly mirror the median flow values. Since the median daily value is the center value with half the measured flow values greater and half less, what median values do provide is an overall indication of the historical flow characteristics for the stream at that location based upon the period of record. The hydrograph also shows there is a significant decline in available water corresponding with the 25 and 10 percentile levels from mid-to-late June.

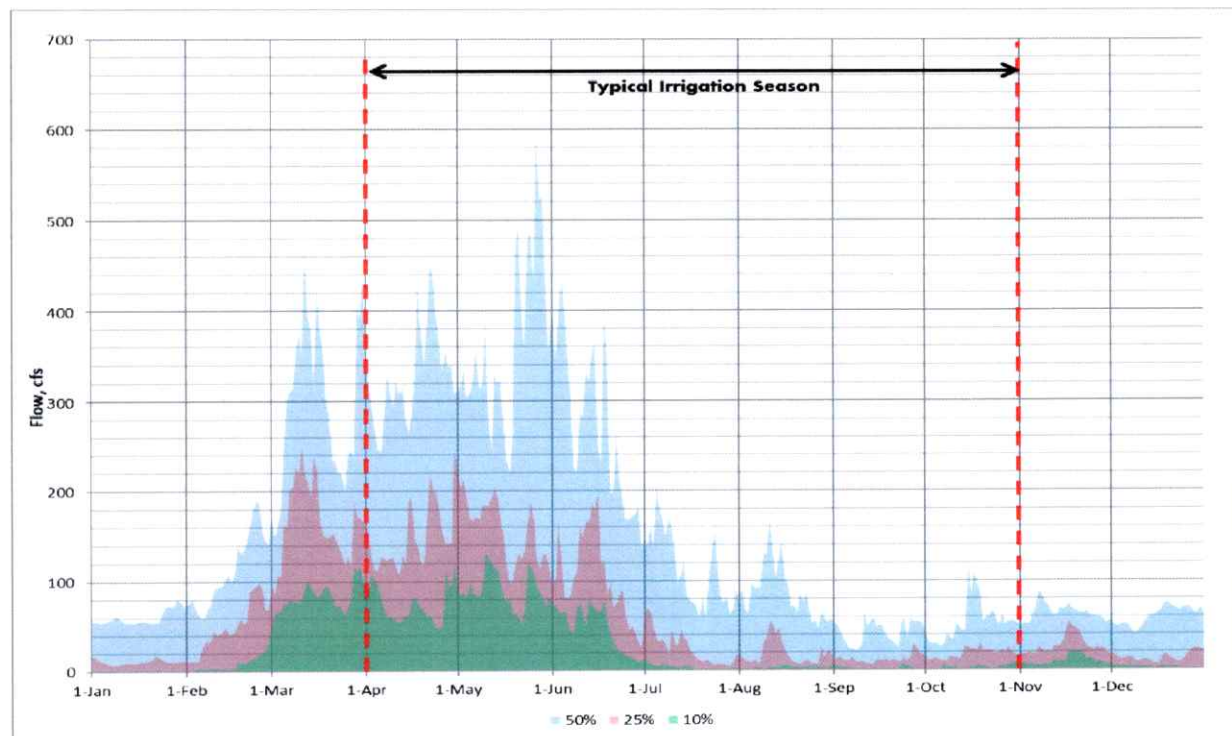


Figure 2. Daily percentile flow hydrographs for the USGS White River near White River 2001-2022, contributing drainage area 6202 mi<sup>2</sup> (USGS, 2023).

The USGS Stream Gaging No. 06450500 Little White River near White River, SD is located approximately 14.5 miles upstream from the confluence of the Little White River with the White River. Figure 3, indicates there is an increase in flow in the Little White River corresponding to spring snowmelt and rain events. The figure shows the median or 50, 25 and 10 percentile hydrograph levels for this stream and indicates flow at each of the three percentiles peaks in late March and steadily declines until the first of August. Flow then levels off for the remainder of the irrigation season but generally a base flow is maintained throughout the year.

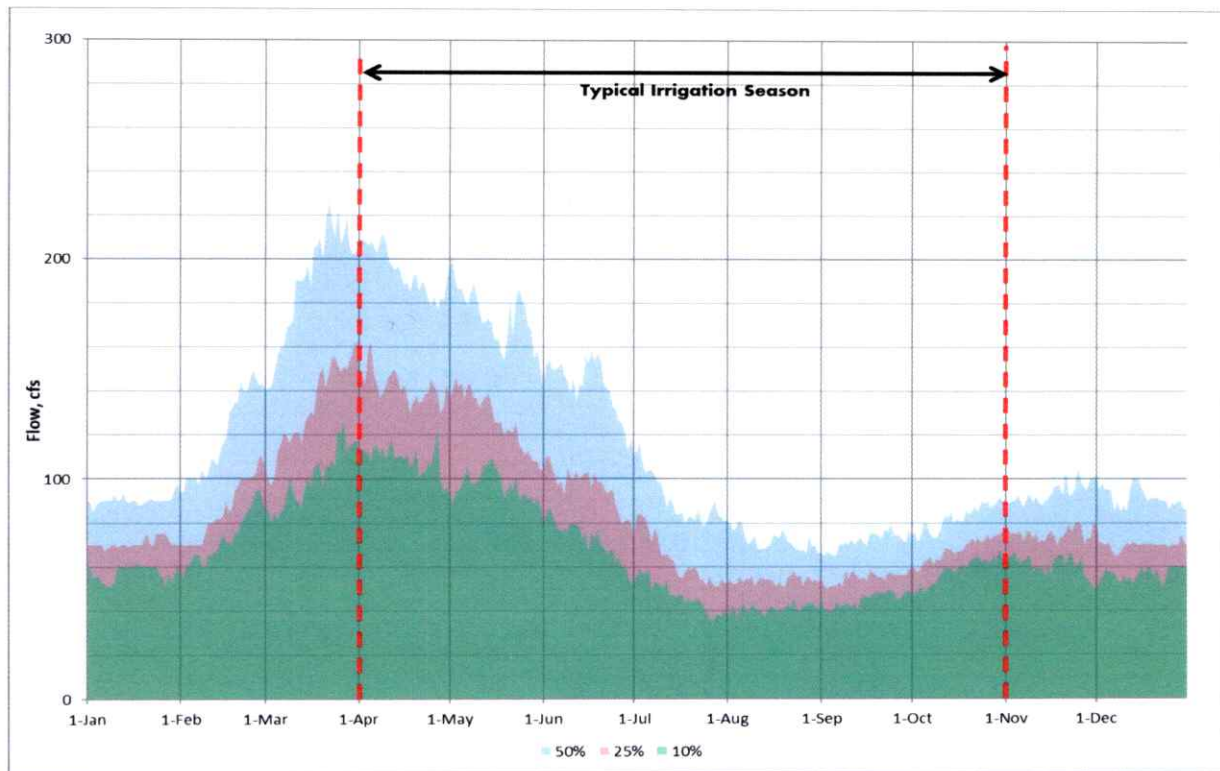


Figure 3. Daily percentile flow hydrographs for the USGS Little White River near White River, 1949-2022, contributing drainage area 1,495 mi<sup>2</sup> (USGS, 2023).

The USGS Stream Gaging No. 06452000 White River near Oacoma, SD is located approximately 55 river miles downstream from the confluence of the White and Little White rivers and approximately 16 miles upstream from the point where the White River flows into the Missouri River on Lake Francis Case. Figure 4 is a hydrograph showing the 50, 25 and 10 percentile levels similar to what was shown in the previous two figures. The median or 50 percentile hydrograph for this stream gage exhibits the daily flow values at or below this level on average one out of two years, and shows an increase in flow in the White River starting in early February corresponding to early spring runoff and maintains strong flows through most of June before tailing off through the remainder of the summer and fall months. At the 50 percentile level corresponding flow can be expected to be in excess of 40 cubic feet of water per second (cfs) throughout the year on average one out of two years. Looking at the hydrographs corresponding to the 25 and 10 percentiles, they show a similar trend to the 50 percentile curve with increased flows in February and tailing off in the latter part of June. The 25 percentile level shows the daily flow values at or below this level on average one out of four years, indicating flows remain above the 40 cfs level except for a period December through January. At the 10 percentile level, corresponding to the daily flow values

at or below this level on average one out of ten years, flows stay above 20 cfs except during the three week period from the first week of August through the first of September and the six week period in December and January, which is outside the irrigation season.

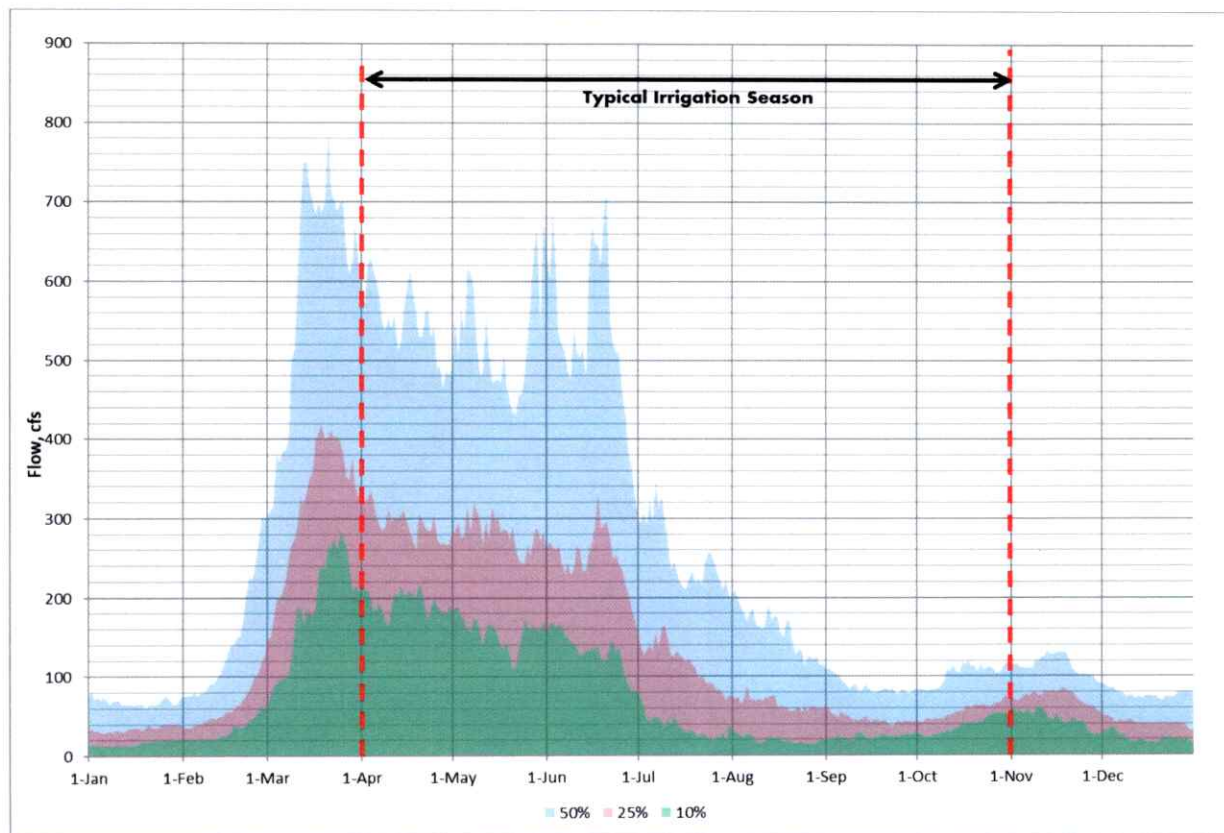


Figure 4. Daily percentile flow hydrographs for the USGS White River near Oacoma, 1928-2022, contributing drainage area 7,697 mi<sup>2</sup> (USGS, 2023).

### **The Water Management Board Authority**

SDCL 46-1-14 gives the Water Management Board the authority to amend water right permits. Water permits issued by the board may be amended by the board with priority retained upon amendment. The board may alter terms, conditions, restrictions, qualifications, or quantifications.

### **South Dakota Codified Law**

**46-1-14.** Terms and conditions of permits and licenses--Amendment. The Water Management Board may issue any permit or license subject to terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity consistent with this chapter which it considers necessary to protect the public interest and which are related to matters within the jurisdiction of the board. Water rights issued pursuant to this section may be amended by the board and priority is retained upon amendment. Upon amendment the board may alter terms, conditions, restrictions, qualifications, or quantifications consistent with this chapter.

**46-2-3.1.** Delegation of authority to chief engineer--Restrictions. The Water Management Board may delegate to the chief engineer authority to act on its behalf concerning the quasi-judicial functions of interpreting,

applying, and enforcing existing rules and laws and ordering action or abatement of action. The board may not delegate any other quasi-judicial functions as defined in § 1-32-1, except as otherwise provided by law. The board may promulgate rules pursuant to chapter 1-26 to delegate to the chief engineer the authority to issue permits pursuant to § 46-1-14.

**46-2-17.** Chief engineer's general enforcement authority. The chief engineer may:

- 1) Investigate the use of the waters of the state and compliance with the provisions of water permits, licenses, rules, regulations, and laws relating to water rights.
- 2) Institute enforcement and other proceedings before the Water Management Board;
- 3) Enforce orders of the board; and
- 4) Perform other acts authorized by statute or regulation.

**46-2-18.** Chief engineer's authority to order discontinuance of water use. The provisions of chapter 1-26 notwithstanding, the chief engineer may, after appropriate investigation, issue an order to any person to shut off or limit the person's use of surface or groundwater, or to plug or otherwise control a well. The order may be issued only to protect another user who has higher or earlier priority or to cause a user of water to discontinue the use of water to which the user has no legal right. Upon a refusal to obey the order, the chief engineer may request a court of proper jurisdiction to issue a temporary restraining order or injunction to effectuate the provisions of the order.

### **Review of Existing Water Rights and Reported Use**

A review of Water Right Program files shows there have been 200 water permits/rights issued from either the White or Little White rivers, some with priority dates going back to 1901. Many of these have been cancelled due to abandonment or forfeiture, some have been incorporated into other water permits, and some remain active. Currently, there are 82 existing permits/rights appropriating 190.9 cfs from the White River. Eighty of the existing permits/rights are for irrigation use and the other two are for small dams used for domestic and recreation purposes. Figure 5 shows a comparison between the water appropriated for irrigation use and the annual reported use by these irrigators for the years 1995 to 2021. As this figure indicates except for three years in the early 2000's, less than 10% of the water appropriated annually for irrigation was reported to be used (Water Rights. 2023).

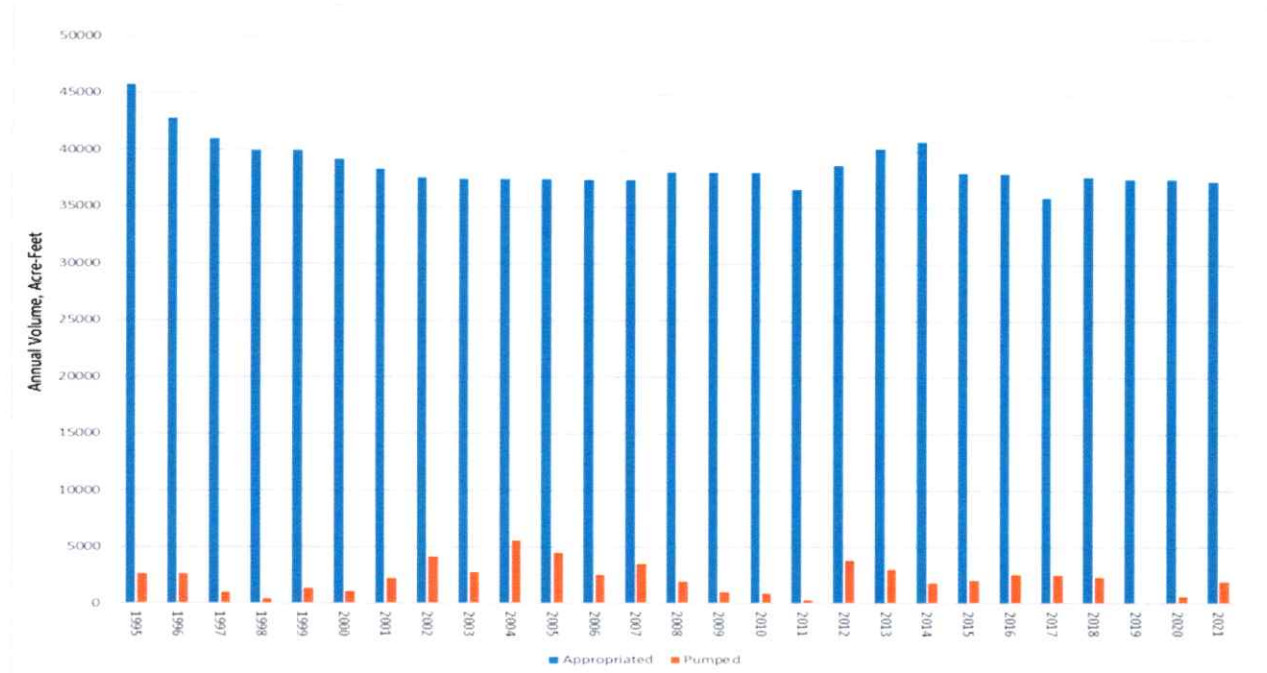


Figure 5. Total irrigation allocation and reported use from the White River (Water Rights, 2023).

### **Qualification Status**

An examination of water right files found the Water Resources Commission, a predecessor to the Water Management Board, placed the first low flow bypass qualification, on a White River water permits in Lyman and Jackson counties in 1964. (Water Rights, 2023). In January of 1977, the Water Rights Commission, another predecessor to the Water Management Board, approved several deferred White River applications with priority dates going back to April 12, 1976, and placed a June 1 cutoff qualification on them. This same qualification has been placed on all White River permits issued since then.

In 2012, the Water Rights Program received an application for a water permit to irrigate from the White River in the river reach downstream from the Little White confluence. The analysis for that application resulted in a qualification to the issued water permit that the permit holder may request written authorization from the Chief Engineer to allow the irrigator to continue irrigating after the June 1 shutoff date. Prior to issuing the written authorization, the Chief Engineer would determine whether an appropriate base flow level was present. A 20 cfs bypass has been used in on other major rivers in South Dakota to provide for a base flow to insure domestic/livestock water needs are satisfied. It was determined a minimum base flow of 20 cfs bypass after pumping, as measured at the USGS gaging station, White River near Oacoma, was needed to allow the Chief Engineer to provide written authorization to continue using water. The permit was issued with the following qualifications (Water Rights. 2023).

1. This Permit authorizes the diversion of water from the dugout adjacent to the White River until June 1 of each calendar year. After June 1, there shall be no diversions under this Permit unless written authorization is issued by the Chief Engineer. Diversion under this Permit shall be in accordance with any written orders issued by the Chief Engineer.

2. Diversions from the dugout adjacent to the White River are authorized only when flow at the USGS Gaging Station No. 06452000 – White River near Oacoma is at least 20 cfs while pumping under this Permit.

Since that water permit was issued in 2012, the 20 cfs bypass as measured at the Oacoma stream gage criteria has been utilized multiple times when issuing written authorization to allow pumping after the June 1 cutoff in this river reach. This criterion has worked well.

### **Analysis and Proposed Qualification Revisions**

The original cutoff date and the later adopted bypass requirement were analyzed to determine whether the 20 cfs bypass requirement would be a more effective means of managing active water rights going forward in the lower reach of the White River rather than a June 1 mandatory shutoff date. The review took into consideration the existing water rights, the qualifications, the authorized use, the location of the diversion points, the annual period of use, and historic stream flow data.

#### **Upper White River**

Water rights/permits with priority dates junior to April 11, 1976, located on the upper White River in the river reach upstream from the confluence with the Little White River contain the June 1 mandatory shutoff qualification.

The percentile hydrograph for USGS Stream Gaging No. 06447450 White River near White River, SD shown in Figure 2, indicates a decline in flow during the month of June at the three percentile levels shown (USGS. 2023). At the 10 and 25 percentile levels, corresponding to daily flow values at or below the indicated level on average one out of four years and one out of ten years respectively, show expected flow levels falling to a range of 20 cfs or below. At this time the current June 1 cutoff qualification appears to be working well, with irrigators requesting pumping variances when needed. A review of Water Rights Program files indicates this occurs sporadically with it most recently happening in the summer of 2022. An irrigator near Kadoka requested a temporary variance to pump runoff from a large upstream thunderstorm (Water Rights. 2023). At this time the recommendation is to leave the existing qualification requirements in place for current and future water rights/permits located in this river reach because the current qualification is working well.

#### **Lower White River**

Water rights/permits with priority dates junior to April 11, 1976, located on the lower White River in the river reach downstream from the confluence with the Little White River, contain the June 1 mandatory shutoff qualification.

In 2012, the Water Rights Program received Water Permit Application No. 2681-2, to divert water for irrigation from the lower White River reach. The analysis for that application determined that based upon historical flow data, there was a likelihood that water would be available many years in this reach after June 1 and there was a possibility the permit holder would be asking for a variance to allow pumping after the mandatory shutoff date. For the Chief Engineer to be able to grant written authorization to allow pumping and protect the base flow of the river, a new qualification was adopted (Water Rights. 2023).

- Diversions from the White River are authorized only when flow at the USGS Gaging Station No. 06452000 – White River near Oacoma is at least 20 cfs.

Since 2012, the June 1 mandatory shutoff and the 20 cfs bypass qualifications have been placed on water permits issued in the lower White River reach. The Water Rights Program has received numerous requests from these permit holders over multiple years to allow diversions from the river after June 1. Based upon the experience the Water Rights Program has gained managing use based off the 20 cfs bypass qualification, we found this qualification to be an effective water management tool for this lower reach of the White River.

There are 32 water permits/rights appropriating 86.81 cfs from the White River reach downstream of the Little White River confluence. Of these, there are 11 water permits/rights appropriating 29.54 cfs containing the qualification requiring diversions cease after June 1<sup>st</sup> of each calendar year (Water Rights. 2023). Based upon the review of the stream gaging, reported water use, and our experience with using the White River stream gage near Oacoma to regulate water diversions, I recommend for the water permits/rights located in the lower White River reach, the June 1<sup>st</sup> mandatory shutoff qualification be removed and the qualification requiring a 20 cfs bypass as measured at the White River near Oacoma stream gage be added to those water permits/rights that do not already have it.

### **Specific Proposed Qualification Revisions by Water Permit**

To standardize the bypass qualifications for the existing water permits containing a June 1 mandatory shutoff qualification in the lower White River reach downstream from the Little White River confluence to Missouri River, the following changes are proposed:

#### **Amendment to the qualifications contained in Water Right No. 1474-2**

##### **Delete Qualification:**

Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be by-passed. This permit authorizes the diversion of water from the White River for either to the land directly or off-stream storage until June 1 of each calendar year. After June 1, there shall be no diversions from the White River under this Permit unless written authorization is issued by the Water Rights Commission or its legally appointed representative. Diversion under this permit shall be in accordance with any written orders issued by the Commission or its Representative.

##### **Add Qualifications:**

- Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be bypassed.
- Diversions from the White River are authorized only when flow at the USGS Gaging Station No. 06452000 – White River near Oacoma is at least 20 cfs.
- Diversion of water under this permit shall be in accordance with any written orders issued by the Chief Engineer.
- The Water Management Board retains jurisdiction of this water right in the event additional information shows that adjustments need to be made to the bypass requirements.

#### **Amendment to the qualifications contained in Water Right No. 1501-2**

##### **Delete Qualification:**

Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be by-passed. This permit authorizes the diversion of water from the White River for either to the land directly or off-stream storage until June 1 of each calendar year. After June 1,

there shall be no diversions from the White River under this Permit unless written authorization is issued by the Water Rights Commission or its legally appointed representative. Diversion under this permit shall be in accordance with any written orders issued by the Commission or its Representative.

**Add Qualifications:**

- Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be bypassed.
- Diversions from the White River are authorized only when flow at the USGS Gaging Station No. 06452000 – White River near Oacoma is at least 20 cfs.
- Diversion of water under this permit shall be in accordance with any written orders issued by the Chief Engineer.
- The Water Management Board retains jurisdiction of this water right in the event additional information shows that adjustments need to be made to the bypass requirements.

**Amendment to the qualifications contained in Water Right No. 1504-2**

**Delete Qualification:**

Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be by-passed. This permit authorizes the diversion of water from the White River for irrigation to the land directly until June 1 of each calendar year. After June 1, there shall be no diversions from the White River under this Permit unless written authorization is issued by the Water Rights Commission or its legally appointed representative. Diversion under this permit shall be in accordance with any written orders issued by the Commission or its Representative.

**Add Qualifications:**

- Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be bypassed.
- Diversions from the White River are authorized only when flow at the USGS Gaging Station No. 06452000 – White River near Oacoma is at least 20 cfs.
- Diversion of water under this permit shall be in accordance with any written orders issued by the Chief Engineer.
- The Water Management Board retains jurisdiction of this water right in the event additional information shows that adjustments need to be made to the bypass requirements.

**Amendment to the qualifications contained in Water Right No. 1529-2**

**Delete Qualification:**

Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be by-passed. This permit authorizes the diversion of water from the White River for irrigation to the land directly until June 1 of each calendar year. After June 1, there shall be no diversions from the White River under this Permit unless written authorization is issued by the Water Rights Commission or its legally appointed representative. Diversion under this permit shall be in accordance with any written orders issued by the Commission or its Representative.

**Add Qualifications:**

- Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be bypassed.
- Diversions from the White River are authorized only when flow at the USGS Gaging Station No. 06452000 – White River near Oacoma is at least 20 cfs.
- Diversion of water under this permit shall be in accordance with any written orders issued by the Chief Engineer.
- The Water Management Board retains jurisdiction of this water right in the event additional information shows that adjustments need to be made to the bypass requirements.

#### **Amendment to the qualifications contained in Water Right No. 1557-2**

##### **Delete Qualification:**

Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be by-passed. This permit authorizes the diversion of water from the White River for irrigation to the land directly until June 1 of each calendar year. After June 1, there shall be no diversions from the White River under this Permit unless written authorization is issued by the Water Rights Commission or its legally appointed representative. Diversion under this permit shall be in accordance with any written orders issued by the Commission or its Representative.

##### **Add Qualifications:**

- Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be bypassed.
- Diversions from the White River are authorized only when flow at the USGS Gaging Station No. 06452000 – White River near Oacoma is at least 20 cfs.
- Diversion of water under this permit shall be in accordance with any written orders issued by the Chief Engineer.
- The Water Management Board retains jurisdiction of this water right in the event additional information shows that adjustments need to be made to the bypass requirements.

#### **Amendment to the qualifications contained in Water Right No. 1630-2**

##### **Delete Qualification:**

Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be by-passed. This permit authorizes the diversion of water from the White River for off-stream storage until June 1<sup>st</sup> of each calendar year. After June 1<sup>st</sup>, there shall be no diversions from the White River under this Permit unless written authorization is issued by the Water Management Board or its legally appointed representative. Diversion under this permit shall be in accordance with any written orders issued by the Board or its representative.

##### **Add Qualifications:**

- Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be bypassed.
- Diversions from the White River are authorized only when flow at the USGS Gaging Station No. 06452000 – White River near Oacoma is at least 20 cfs.
- Diversion of water under this permit shall be in accordance with any written orders issued by the Chief Engineer.

- The Water Management Board retains jurisdiction of this water right in the event additional information shows that adjustments need to be made to the bypass requirements.

#### **Amendment to the qualifications contained in Water Right No. 1765-2**

##### **Delete Qualification:**

Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be by-passed. This permit authorizes the diversion of water from the White River for either to the land directly or off-stream storage until June 1 of each calendar year. After June 1, there shall be no diversions from the White River under this Permit unless written authorization is issued by the Water Rights Commission or its legally appointed representative. Diversion under this permit shall be in accordance with any written orders issued by the Commission or its Representative.

##### **Add Qualifications:**

- Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be bypassed.
- Diversions from the White River are authorized only when flow at the USGS Gaging Station No. 06452000 – White River near Oacoma is at least 20 cfs.
- Diversion of water under this permit shall be in accordance with any written orders issued by the Chief Engineer.
- The Water Management Board retains jurisdiction of this water right in the event additional information shows that adjustments need to be made to the bypass requirements.

#### **Amendment to the qualifications contained in Water Right No. 2312-2**

##### **Delete Qualification:**

Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be by-passed. This permit authorizes the diversion of water from the White River for irrigation to the land directly until June 1 of each calendar year. After June 1, there shall be no diversions from the White River under this Permit unless written authorization is issued by the Water Rights Commission or its legally appointed representative. Diversion under this permit shall be in accordance with any written orders issued by the Commission or its Representative.

##### **Add Qualifications:**

- Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be bypassed.
- Diversions from the White River are authorized only when flow at the USGS Gaging Station No. 06452000 – White River near Oacoma is at least 20 cfs.
- Diversion of water under this permit shall be in accordance with any written orders issued by the Chief Engineer.
- The Water Management Board retains jurisdiction of this water right in the event additional information shows that adjustments need to be made to the bypass requirements.

The water rights/permits listed below were issued with a separate qualification that should be retained:

- Diversions from the White River are authorized only when flow at the USGS Gaging Station No. 06452000 – White River near Oacoma is at least 20 cfs while pumping under this water right.

#### **Amendment to the qualifications contained in Water Right No. 2681A-2**

##### **Delete Qualification:**

Water Permit No. 2681-2 authorizes the diversion of water from the White River for irrigation to the land directly or to two storage dams until June 1<sup>st</sup> of each calendar year. After June 1<sup>st</sup>, there shall be no diversions from the White River under this Permit unless written authorization is issued by the Chief Engineer. Diversion of water under this permit shall be in accordance with any written orders issued by the Chief Engineer.

##### **Add Qualifications:**

- Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be bypassed.
- Diversion of water under this permit shall be in accordance with any written orders issued by the Chief Engineer.
- The Water Management Board retains jurisdiction of this water right in the event additional information shows that adjustments need to be made to the bypass requirements.

#### **Amendment to the qualifications contained in Water Right No. 2701-2**

##### **Delete Qualifications:**

Water Permit No. 2701-2 authorizes the diversion of water from the White River for irrigation to the land directly or to the existing dugout and storage dam authorized by Water Right No. 1415A-2 and Water Permit No. 2647-2 until June 1<sup>st</sup> of each calendar year. After June 1<sup>st</sup>, there shall be no diversions from the White River under this Permit unless written authorization is issued by the Chief Engineer. Diversion of water under this permit shall be in accordance with any written orders issued by the Chief Engineer. *(Water Right No. 1415A-2 and Water Permit No. 2647-2 have been incorporated and are now licensed under No. 2647-2.)*

Water from the White River may be diverted to the dugout and existing dam authorized by Water Right No. 1415A-2 and Water Permit No. 2647-2 subject to qualifications Nos. 1 and 2. Diversion of stored water from either the dugout or the dam for irrigation of the authorized land is not subject the June 1<sup>st</sup> shut-off. *(Water Right No. 1415A-2 and Water Permit No. 2647-2 have been incorporated and are now licensed under No. 2647-2.)*

##### **Add Qualifications:**

- Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be bypassed.
- Water Right No. 2701-2 authorizes the diversion of water from the White River for irrigation to the land directly or to the existing dugout and storage dam authorized by Water Right No. 2647-2
- Diversion of water under this permit shall be in accordance with any written orders issued by the Chief Engineer.
- The Water Management Board is retaining jurisdiction of this permit in the event additional information shows that adjustments need to be made to the bypass requirements.

## **Amendment to the qualifications contained in Water Permit No. 2835-2**

### **Delete Qualification:**

This permit authorizes the diversion of water from the dugout adjacent to the White River until June 1 of each calendar year. After June 1, there shall be no diversions from the White River under this Permit unless written authorization is issued by the Chief Engineer. Diversion under this permit shall be in accordance with any written orders issued by the Chief Engineer.

### **Add Qualifications:**

- This permit authorizes the diversion of water from the dugout adjacent and hydraulically connected to the White River. Diversion of water under this permit shall be in accordance with any written orders issued by the Chief Engineer.
- The Water Management Board retains jurisdiction of this water right in the event additional information shows that adjustments need to be made to the bypass requirements.



Mark D. Rath  
Natural Resources Engineer III

### References

Ellis, M. J. and D.G. Adolphson. 1971. Hydrologic Atlas 357, Hydrogeology of the Pine Ridge Indian Reservation, South Dakota. United States Geologic Survey Publication Warehouse.

USGS. 2023. United States Geological Survey, National Water Information System – Stream Gaging Station Network for South Dakota.

Water Rights. 2023. Water Right/Permit Files. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

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April 14, 2023

Subject: Amendment of the Mandatory Shutoff Qualification on White River Water Rights

Dear White River Water Right Holder,

The SD Department of Agriculture and Natural Resources has reviewed all White River water rights and the historical, United States Geological Survey (USGS) stream flow records. The Chief Engineer is recommending amending the mandatory June 1 shutoff qualification on 11 junior priority White River water rights located in the reach between the Little White River confluence and the Missouri River. The intent is to allow for more efficient use of water when it is available by utilizing a bypass requirement as measured at a USGS stream flow gaging station for those water users.

The proposed amendment to those water rights would replace the mandatory June 1 shutoff qualification with a 20 cfs of flow bypass measured at the USGS Oacoma streamflow gaging station. This amendment would not be expected adversely impact your use of the White River as authorized by your water right(s). The amendment designates a US Geological Survey streamflow gaging station as the measuring point to determine if pumping is allowed. The gaging station has real time flow information that can be accessed on-line at <https://waterdata.usgs.gov/sd/nwis/rt>.

A hearing before the Water Management Board is scheduled at 9:45 AM, Wednesday, May 3, 2023, in the Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. Enclosed is the notice to be published on or before April 13, 2023, in one newspaper from each of the 9 counties that the White River flows through. This notice provides information on filing a petition in either support or opposition to the proposed amendment. The filing of a petition must be postmarked by April 24, 2023. Additionally filing a petition affords you the opportunity to participate in the May 3rd hearing before the Board if you choose.

The staff report including affected water rights and the proposed changes are available at <http://danr.sd.gov/public> or contact Mark Rath at 605 773-3352 or [mark.rath@state.sd.us](mailto:mark.rath@state.sd.us). If you have questions; please call. DANR is willing to work to answer any questions.

Sincerely,

Chief Engineer

Water Rights Program, DANR