

349-2

NO.

Office of State Engineer
DOCUMENT FILE

Mrs. Margaret Herber Harty
Kadoka, So. Dakota

Jackson County

Source of Supply:
White River

Map No. - 381-2
(also applies to Water
Right No. 348-2)

NO. 349-2

Water Division No. 2 White River District
(Blanks to be Filled by the State Engineer.)

APPLICATION FOR PERMIT

To appropriate Water within the State of South Dakota

RECEIVED
10:00 A.M.
MAR 30 1900

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

1. Name of applicant Mrs. Margaret Herbert Harty
Postoffice address Kadoka, County Jackson, State S. Dak.OFFICE OF THE ENGINEER
SOUTH DAKOTA

I. If a corporation

- (a) Name of same
- (b) Date and place of incorporation
- (c) Amount of capital stock
- (d) Amount paid in
- (e) Names and address of directors:

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

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

- (a) Method of accomplishing work (Whether by contract, employment of others, or by direct labor)
- (b) Cash on hand, \$2000.00 (c) Treasury stock, \$
- (d) Bonds to be issued, \$ (e) Other resources, \$

2. Name of diversion work Harty Irrigation Project No. 2
3. Quantity of water claimed 1.66 cubic feet per second.
4. Source of water supply White River
5. Location of point of diversion N. 61°58' E., 5246' from the W. 1/2 Cor. of Sec. 6, T. 4 S., R. 21 E., EHM on Left bank.
(Right or left bank looking down stream.)
6. Annual periods during which water is to be used April 1st to October 1st
7. To be used for:

I. Irrigation or domestic use:

- (a) Number of acres to be irrigated 116.16 acres.
- (b) Legal subdivisions to be irrigated See Attached sheet

(NOTE—A list of lands to be irrigated, giving each subdivision and fraction with average thereof, should be written here, or may be appended as a part of this application. Same must also be shown on accompanying map.)

- (c) Statement as to domestic use (giving location, etc.)

II. Mining, power, manufacturing, transportation, or other purposes:

- (a) Nature of use
- (b) Amount of power to be generated horse power.
- (c) Location of plant
- (d) Method of developing power
- (e) Point where water will be returned to stream

8. Estimated cost of works:

(a) Head gates, \$ (b) Pumping plant, \$ 750.00
 (c) Fluying, \$ (d) Canal-earth. \$ Rock. \$
 (e) Other structures Sprinkler line \$ 6250.00 Total, \$ 7000.00

9. Description of diversion works:

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

Pumping plant, Sprinkler line and meter

II. Dimensions of works:

(a) Dam: Height feet; length at bottom feet; length at top feet thickness at bottom feet; thickness at top feet; slope of front (water) face; slope of back face; material used in construction
 (b) Reservoir: Capacity when filled acre feet. Surface area at highwater mark acres.

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

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

(d) Canal: Total length miles.

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

(Give dimensions where reductions in size are made.)

10. Time required for completion of work 2 years.

11. Time required for complete application of water to the proposed beneficial use 3 years.

12. Choice of newspaper for publication of notice of intention to appropriate
 Kadoka Press, Kadoka, South Dakota

STATE OF SOUTH DAKOTA

County of Jackson

I, Mrs. Margaret Herber Harty

....., 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 and
 (Owner, manager, engineer.)

foregoing statement, and examined the map accompanying the same, and that I know of my own
 personal knowledge that the matters herein stated and shown are true.

Signed Mrs. Margaret Herber Harty

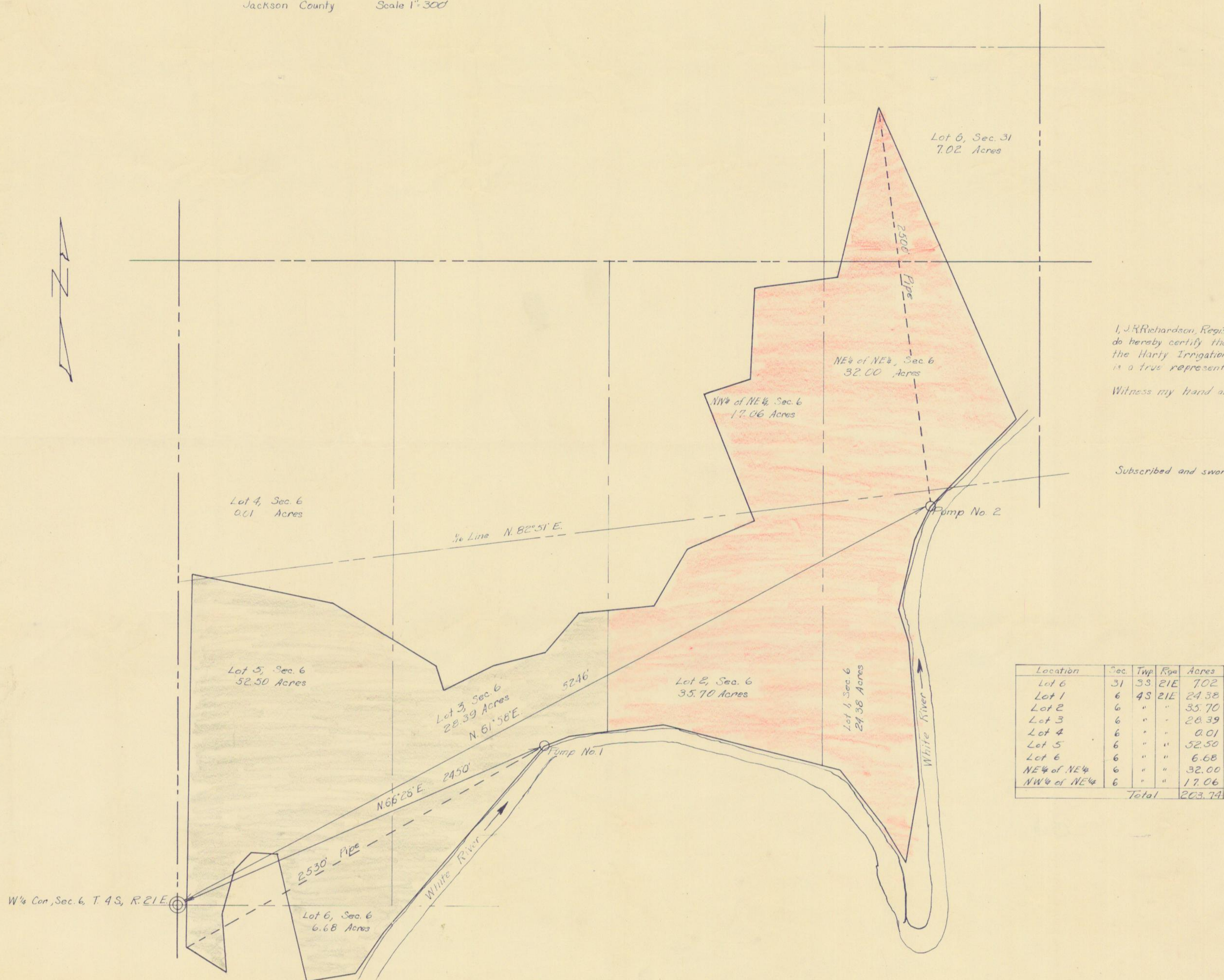
Subscribed and sworn to before me this 8th day of March 19 50

Edna F. Richardson

Notary Public (or other qualified officer.)

HARTY IRRIGATION PROJECTS NO. 1 & 2

Jackson County Scale 1"=300'



Surveyor's Certificate

I, J. K. Richardson, Registered Professional Engineer and Land Surveyor No. 219, do hereby certify that I have made a careful and complete survey of the Harty Irrigation Projects No. 1 & 2 and that the attached plat is a true representation of the same.

Witness my hand and seal this 10th day of March 1950 A.D.

J. K. Richardson
Registered Professional Engineer and Land Surveyor No. 219

Subscribed and sworn to before me this 10th day of March 1950 A.D.

Edna F. Richardson
A Notary Public

(State Regt No. - 348-2)
349-2
Map No. - 381-2

Remarks by State Engineer:

According to stream data records made available by the U. S. Dept. of the Interior, and from records on file in the State Engineers Office as to water right priorities on White River, there is available for use, water from the White River for approximately 145 days between April 1st and October 1st during any normal rainfall season.

STATE OF SOUTH DAKOTA
County of HUGHES } ss.

Pierre, South Dakota, June 8, 1950

This is to certify that the foregoing application was received at this office at 10:00 o'clock a. m. upon the 30th day of March, 1950 and that after examination it was found to comply with the State Water Code, a notice was duly advertised as required by law and no protests or objections were received.

Number of permit 319-2

DEAN W. LOUCKS,

State Engineer.

Date of first receipt of application March 30, 1950

Date of return to applicant for correction - - - - - 1950

Date of receipt of corrected application - - - - - 1950

Date from which applicant may claim right March 30, 1950

Approved June 8, 1950 Recorded in Book 2 Page 680-681

This is to certify that I have examined the foregoing application for a permit to appropriate water of the state of South Dakota, and I hereby grant the same as stated herein, subject, however, to the following limitations and conditions:

1st. The equivalent of at least one-fifth, of the work above specified is to be completed on or before June 8, 1951

2nd. The whole of said work is to be completed on or before June 8, 1952

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is June 8, 1952

4th. The water appropriated shall be used for the purpose of irrigation

5th. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be injuriously affected by this appropriation.

6th. The amount of the appropriation herein granted shall not exceed 1.66 cubic feet of water per second of time; neither shall it exceed the capacity of the above described system of diversion works, nor the amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before June 3, 1950; said water to be used during the following described annual period:

April 1st to October 1st, Incl.

Witness my hand this 8 day of June, 1950.

DEAN W. LOUCKS

State Engineer.

RAINBIRD #40 SPRINKLER DISCHARGE CHART

<u>Pounds Pressure</u>	<u>Discharge in G.P.M.</u>	
	<u>7/32 x 3/16 Nozzle</u>	<u>1/4 x 7/32 Nozzle</u>
25	11.7	14.8
30	12.8	16.2
35	13.8	17.6
40	14.9	18.9
45	15.9	20.1

LEGAL SUBDIVISIONS TO BE IRRIGATED

Lot 6	Sec. 31	T. 3 S.	R. 21 E.	7.02	Acres
NW $\frac{1}{4}$ of NE $\frac{1}{4}$ Sec. 6		T. 4 S.	R. 21 E.	17.06	"
NE $\frac{1}{4}$ of NE $\frac{1}{4}$ Sec. 6		"	"	32.00	"
Lot 2	Sec. 6	"	"	35.70	"
Lot 1	Sec. 6	"	"	24.38	"
Total				116.16	"

Permit No. 349-2 340-2

Water Division No. _____ Little River Water District

CERTIFICATE OF EXAMINATION OF WORKS

Report of Examining Engineer

OCT 8 1952

OFFICE OF STATE ENGINEER
PIERRE, S. D.

To the State Engineer, Pierre, South Dakota:

Dear Sir: I hereby certify that in accordance with your letter of authorization dated June 26, 1952

on 10-4-52, I have this day made a thorough examination of the diversion works constructed by

Mrs. Margaret Herber Hart, of Kadoka

Jackson County, South Dakota, holder of permit No. 349-2, issued

upon application No. 349-2, bearing date of priority of Mar. 3, 1950, authorizing the

diversion of 1.66 second feet of the waters of White River for Irrigation

purposes. I have to report on the condition of the same as follows:

The diversion works comprise: Pump Plant, 600 feet of Main, 2310 feet of sprinkler pipe, pressure gauge and 3/16" nozzles

and the system is in the following condition: Excellent

The point of diversion is located From the N. W. Corner of Sec. 6, T. 4 S., R. 21 E., N. 61 degrees, 58' E. a distance of 5246 feet to Point No. 2.

The works are capable of diverting and conveying to the place of use 1.66 second-feet of water, which is to be used for Irrigation of land

The legal sub-divisions to be irrigated are: Lot 6, 7.02, Sec. 31, T. 3 S. R. 21 E., NW 1/4, 17.04, NE 1/4, 32.00, Lot 1, 24.33, Lot 2, 31.70, All in Sec. 6, T. 4 S. R. 21 E. BLM
Comprising a total of 116.14

comprising a total of 116.14 acres of land.

The domestic use intended comprises None

The utilization for power, mining, or other beneficial uses comprises: None

Witness my hand, this 4th day of October

A. D. 1952

J. R. Richardson
Examining Engineer

STATE OF SOUTH DAKOTA

WATER LICENSE No. 349-2

WHEREAS, On the 30 day of March A. D. 19 50

MRS. MARGARET HERBER HARTY

of Kedoka County of Jackson and State of South Dakota duly made application (No. 349-2) to me for a permit to use 1.66

cubic feet per second of the waters of

County of Jackson, State of South Dakota, for irrigation

purposes; and

WHEREAS, On the 8th day of June A. D. 19 50

Permit No. 349-2 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 8th day of

June A. D. 19 52 and for the application to beneficial use of said

water on or before the 8th day of June A. D. 19 52

and,

WHEREAS, On the 8th day of June A. D. 19 52

the holder of said permit duly made proof of the completion of a requisite works for the diversion of 1.66

cubic feet per second of said waters, as evidenced by my Certificate No. 349-2

dated October 4, 1952 confirming the completion of works of sufficient capacity for

diverting and conveying to the place of intended use 1.66 cubic feet per second of water, with date of

priority of March 30, 1950 and ~~XXXXXX, XXXXXX~~

WHEREAS, On the 4th day of October A. D. 19 52

proof was duly made of the application to beneficial use of 1.66 cubic feet per second of said water;

NOW, THEREFORE, By the virtue of the authority vested in me by the laws of the State of South Dakota.

I hereby grant and confirm to Mrs. Margaret Harber Harty
of Kadoka, South Dakota the holder and owner of said permit No. 349-2
a water right, dating from March 30, 1950 to the use of 1.66
cubic feet per second of the waters of the White River
in the County of Jackson and State of South Dakota, or so much thereof as may be
necessary for the purposes hereinbelow mentioned, to be diverted at a point N. 61°58' E., 5246 ft.
from the W. 1/4 Corner of Sec. 6, T. 4S., R. 21E.
and conducted to and upon lot 6, Sec. 31, T. 3S., R. 21E. & NE 1/4 NE 1/4, NE 1/4 NE 1/4, lot 1 &
lot 2, Sec. 6, T. 4S., R. 21E.
for the purpose of providing sprinkler irrigation

subject, however, to the laws of the State of South Dakota applicable to a license for the use of the waters of the State, and subject, also to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and seal of my office at Pierre, South Dakota,
this 11th day of October A. D. Nineteen
Hundred and 52

LEAN W. LUCKS

State Engineer.

State of South Dakota

Water License No. 349-2

To Mrs. Margaret Harber Harty

Kadoka, South Dakota

Source of Supply

White River

County Jackson

Am't 1.66 Sec. Feet

Point of Diversion

Sec. 6, T. 4S., R. 21E.

Place of Use Sec. 6, T. 4S., R. 21E.

Sec. 21, T. 3S., R. 21E.

Purpose irrigation

Date of Priority March 30, 1950

Recorded June 6, 1950

in Book 2 of 2 Page 680
681

(First Publication _____, 19____)

APPROPRIATION OF WATER

Office of State Engineer,

Pierre, So. Dak., April 4, 1950

Notice is hereby given that Mrs. Margaret Herber Harty whose postoffice address is Kadoka, So. Dak., has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use 1.66 cubic feet of water per second of time from the White River through the Harty Irrigation Project #2, the point of diversion of which is to be located on the left bank of said stream in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 6 for irrigation Lot 6 Twp. 4S Range 21E. Said water to be used for the purpose of providing irrigation Lot 6 Sec. 31, T. 4S, R. 21E., NW $\frac{1}{4}$ of NE $\frac{1}{4}$ Sec. 6, T. 4S, R. 21E., NE $\frac{1}{4}$ of NE $\frac{1}{4}$ Sec. 6, T. 4S, R. 21E.

This application will be taken up by the State Engineer at his office at Pierre for consideration upon the 19th day of May, 1950, at 10:00 A.M. All persons who believe that their prior rights would be injuriously affected, or that the allowance of the permit would be detrimental to the public welfare shall file such protest with the State Engineer in writing prior to the above date and may appear on the day above mentioned in person for the purpose of discussing further, the information presented.

Appropriate action will be taken by the State Engineer after suitable time has elapsed for the consideration of any or all information presented.

DWL:jll
CC: Richardson

DEAN W. LOUCKS
State Engineer

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA } ss.
County of Jackson

Orville J. Rock being duly sworn, deposes and says the annexed printed copy of Notice of Intention to appropriate Water was taken from the

Kadoka Press a newspaper which

during the whole time of publication of said notice herein after stated, has been and is printed and published in the

Town of Kadoka County of Jackson and State of South Dakota;

that the said notice was published in said newspaper on the following dates:

April 13, 1950

April 20, 1950

April 27, 1950

May 4, 1950

in each and every issue of the full number thereof, the first publication being made on the 13th day of April

1950 and the last publication on the 4th day of

May 1950, upon which days or times

of publication aforesaid the newspaper was regularly published, and that during the whole time of said publication he

was one of the printer and publisher of

the said newspaper.

Subscribed and sworn to before me this 11 day of May

Notary Public

No. 349-2
APPROPRIATION OF WATER

Office of State Engineer,
Pierre, So. Dak., April 4, 1950

Notice is hereby given that Mrs. Margaret Herber Harty whose postoffice address is Kadoka, So. Dak., has made application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use 1.66 cubic feet of water per second of time from the White River through the Harty Irrigation Project No. 2, the point of diversion of which is to be located on the left bank of said stream in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 3 Twp. 4S Range 21E. Said water to be used for the purpose of providing irrigation for Lot 6 Sec. 31, Twp. 4S, R. 21E, NW $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 6, Twp. 4S, R. 21E, NE $\frac{1}{4}$ of NE $\frac{1}{4}$ Sec. 6, Twp. 4S, R. 21E, Lots 1 and 2 Sec. 6, Twp. 4S, R. 21E.

This application will be taken up by the State Engineer at his office at Pierre for consideration upon the 19th day of May, 1950, at 10:00 A. M. All persons interested who believe that their prior rights would be injuriously affected, or that the allowance of the permit would be detrimental to the public welfare shall file such protest with the State Engineer in writing prior to the above date and may appear on the day above mentioned in person for the purpose of discussing further, the information presented.

Appropriate action will be taken by the State Engineer after suitable time has elapsed for the consideration of any or all information presented.

DEAN W. LOUCKS
State Engineer

Published April 13, 20, 27; May 4

RECEIVED

OCT 8 1952

Permit No. 349-2.....

Water Division No..... White River..... Water District

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Certificate of Application of Water to Beneficial Use.

Deposition of Holder

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. Mrs. Margaret Harber Harty, Kadoka, S. Dak. Rancher

Ques. 2. If acting in behalf of a corporation state its name, principal place of business (if a foreign corporation, give name and postoffice of solicitor or agent), your position with reference to same, and your authority for appearing in its behalf.

Ans. Myself

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. Permit No. 349-2 dated Mar. 3, 1950, Date of Priority Mar. 3, 1950

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. White River, From the N.E. corner of Sec. 6, T. 4 S., R. 21 E. 61 degrees, 58' E., a distance of 52.6 feet to Point No. 2.

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

Ans. Pumping Plant, 600 feet of Main, 2310 feet sprinkler line, Pressure gauge and sized nozzles.

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have ACTUALLY been irrigated with said water.)

Ans. Irrigation, Lot 6, 7, 8, 2, Sec. 31, T. 3 S., R. 21 E., NENE 1 4x14 17.04,

NENE 1, 32.00, Lot 1, 24.38, Lot 2, 35.70, All in Sec. 6, T. 4 S., R. 21 E. BHM

Comprising a total of 116.14 Acres.

Ques. 7. If for other than irrigation purpose, state how applied, amount of horse power generated, etc.

Ans. None

Ques. 8. What is the minimum amount of water required for the use specified above?

Ans. 1.66 CFS

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

Ans. Original Applicant

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

Ans. During the seasons of 1951 and 1952 water was applied to irrigate the above described land in the amount of 1.66 CFS.

(Sign.) *Mrs. Margaret Herbert Harty*

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in 19100, County of Fall River

State of South Dakota, on this 4th day of October A. D., 1952

Edna J. Richardson
NOTARY PUBLIC

Permit No.

Proof of Application of Water to

Beneficial Use.

DEPOSITION OF HOLDER.

Amount of water second feet

Source

County

Purpose

Place of Use

Date of priority

Received and filed

Permit No. 349 - 2Water Division No. 2

White River Water District

OCT 3 1952

NOTICE OF COMPLETION OF WORKS

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

(This blank must be filled out by the holder of permit and forwarded to the State Engineer at least 60 days before the time set for completion of works.)

(P. O.) _____

(Date) June 8, 1952

TO THE STATE ENGINEER OF SOUTH DAKOTA, PIERRE:

DEAR SIR: Notice is hereby given of the completion of the works for the diversion of _____

1.66second feet of the waters of the state from the White Riverthrough the Harty Irrigation Project No. 2for irrigation

purposes

In accordance with terms and conditions of a certain permit heretofore issued by the State Engineer of the State of South Dakota.

1. The name of the person or corporation holding said permit is Mrs. Margaret Herber Harty2. The postoffice address of such person or the place of business of such corporation is KadokaCounty of Jackson State of South Dakota3. The number of such permit is 349 - 2 and the date set for the completion of such work is June 8, 19524. Said water to be used for irrigation purposes.5. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conducting to the place of intended use, in accordance with the plans accompanying the application for such permit, is 1.66 cubic feet per second.6. The amount of land for which said water is available is 116.16 acres, particularly described as follows: Lot 6 of Section 31, T.3S, R.21E.; NW¹/₄ NE¹/₄, NE¹/₄ NE¹/₄, Lots 1 and 2 of Section 6, T.1S, R.21E.

(In case of all canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well known and competent engineer.)

I hereby certify that the facts set forth in the above notice are true.

Engineer.

(Signature.)

x Mrs. Margaret Herber Harty

190-2/
348-2
349-2

INVESTIGATION OF WATER PERMIT 190-2

On April 28, 1967, I contacted Mr. Bernard Herber, current operator of the farm and the son of the owner. Mr. Herber related that to his knowledge the system proposed by permit 190-2 was never constructed and that he had no objection to its cancellation.

Most of the land covered under permit 190-2 is currently being irrigated under Water License 349-2. Mr. Herber stated that the area under 349-2 and 348-2 had been irrigated in the summer of 1965 but not last year. From this, it would seem that these two water licenses are still valid.

Conclusion: No evidence was presented during the investigation that would indicate that an irrigation system under permit 190-2 had been built. Most of the same land is covered by a later priority water license. It is recommended that permit 190-2 should be cancelled.

RICHARD D. SCHMOYER
Water Right Specialist

Date: May 2, 1967



Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181
April 12, 1985

MRs. M H Harty
Kadoka SD 57543

Notice

Re: Violation of Requirement To Submit 1984 Irrigation Questionnaire

Our records indicate that the 1984 Irrigation Questionnaire has not been submitted for Permit No(s). 348-2 & 349-2. The request for the Questionnaire was dated October 17, 1984. The Water Management Board has directed that owners of water permits who have not submitted 1984 Irrigation Questionnaires be given notice of hearing(s) to be held by the Board to determine if any action is to be taken concerning the violation.

The hearings will be held at 10:30 a.m., May 15, 1985 in the Civil Defense Room, State Capitol Building, Pierre, South Dakota.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11, and 46-2-17. These are contested case hearings pursuant to procedures contained in SDCL 1-26. Following the hearing(s), the Water Management Board can:

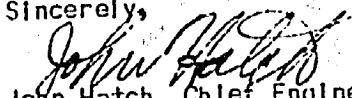
1. Amend Permit No(s). 348-2 & 349-2 to require the Irrigation Water Use Questionnaire to be submitted each year;

2. Postpone any action;

3. Take no action.

The hearing(s) is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

Sincerely,


John Hatch, Chief Engineer
Water Rights Division
Phone: (605) 773-3352

NOTE: If the questionnaire(s) is received in this office before the May 15th hearing date, your name will be deleted from the agenda for the hearings.

**South Dakota Department of
Water & Natural Resources**

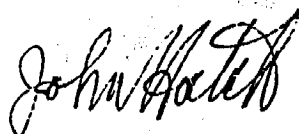
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

June 12, 1985

Notice of Amendment to Water Permit(s)

To: Mrs. M. H. Harty
Kadoka, SD 57543

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



SUBJECT: Amendment to Water Permit No(s). 349-2 & 348-2.

Pursuant to the provisions of the notice dated April 15, 1985, and following the Hearing May 15, 1985, the Water Management Board has amended Water Permit No(s). 349-2 & 348-2 to add the following qualification:

"This permit is subject to the Irrigation Water Use Questionnaire being submitted each year."

The addition of this qualification to your Permit means that failure to submit the required irrigation questionnaire in the future could result in suspension of the water permit and no use of water for up to one year for the first violation. Please include the enclosed attachment with your permit.

SOUTH DAKOTA
Department of
Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

Attachment to Water Permit No(s). 349-2 & 348-2

Pursuant to the provisions of the notice dated April 15, 1985, and following the Hearing May 15, 1985, the Water Management Board has amended Water Permit No(s). 349-2 & 348-2 to add the following qualification:

"This permit is subject to the Irrigation Water Use Questionnaire being submitted each year."

**South Dakota Department of
Water & Natural Resources**

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

Division of Water Rights
605 773-3352

No. 348-2 & 349-2

December 16, 1985

Bernard Herber
Box 47
Kadoka SD 57543

Dear Mr. Herber:

Please find enclosed a copy of a Notice of Transfer of Water Permit form. This form must be signed by the owner before a notary and returned to this office with a filing fee of \$2.50 each. (total \$5.00 for the two permits)

Upon receipt of the enclosed form and the \$2.50 filing fee the permit will be transferred to the proper name. South Dakota Water Law 46-5-30.3 requires Notice of any sale, grant, lease, conveyance or other transfer of a Water Permit or Water Right to appropriate water to be filed with this office within ninety days.

Please advise if you have any questions.

Sincerely,

Karen Schlaak

KAREN SCHLAACK
Administrative Aide

DWNR-820A-8/83

NO. 319-2

NOTICE OF TRANSFER OF WATER PERMIT

TO: Water Rights
Foss Building
Pierre, SD 57501

Date: Jan 15 1986

This is to notify you that the title to the lands described as follows:

116.14 acres - Lot 6, Section 31, T3S, R21E; N $\frac{1}{2}$ NE $\frac{1}{4}$, Lots 1 & 2

Section 6, T4S, R21E

formerly owned by M.H. Harty

has been transferred to Bernard Herber, Box 47, Kadoka SD

(please include complete mailing address)

together with any rights to the beneficial use of water thereon as evidenced by

Water Right Permit No. 319-2 as provided for in SDCL 46-5-32 and 46-5-33.

You are therefore hereby requested to file this "Notice of Transfer of Water Permit" in its appropriate file at the Div. of Water Rights, Water Management Board as evidence of the change of ownership.

A fee of Two Dollars and Fifty Cents (\$2.50) is hereto attached to cover filing fees as required under SDCL 46-2-13.

STATE OF SOUTH DAKOTA)
County of Jackson) ss.

I, Margaret Harty 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 I know of my own personal knowledge that the information herein stated is true.

Margaret Harty
(Signed)

Subscribed and sworn to before me this 14 Day of January, 1986.

Patsy Ferguson
(Notary Public)

My Commission Expires: 12/31/86



RECEIPT

Division of Water Rights

No 4 10294 -

South Dakota Department of Water and Natural Resources

Pierre, January 16, 19 86

RECEIVED OF Bernard Herber, Box 47, Kadoka, SD 57543

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct works 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 _____ 349-2	2	50
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	2 50

By

Chief Engineer

JOHN HATCHES

SOUTH Dakota Department of
Water & Natural Resources

Joe Foss Building Water Rights Division
Pierre, South Dakota 57501

Phone (605) 773-3352

No. 348-2

349-2

January 17, 1986

Bernard Herber
Box 47
Kadoka, South Dakota 57543

Dear Mr. Herber:

Enclosed is receipt Nos. 10293 & 10294 in the amount of \$2.50 each which you
paid for transfer of Water Right Nos. 348-2 & 349-2

Our records now show you as the owner of ^{these} this Water Rights.

Sincerely,

Maxine Stirling
Staff Assistant

ms/
Enc.

South Dakota
Department of
Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

March 23, 1987

BERNARD HERBER
BOX 47
KADOKA, SD 57543

NOTICE

Re: Violation of Water Permit No(s). 348-2, 349-2.

Our records indicate that the 1986 Irrigation Questionnaire has not been received for Permit No(s). 348-2, 349-2. The request for the Questionnaire was dated November 3, 1986. The Water Management Board has directed that owners of water permits who have not submitted 1986 Irrigation Questionnaires be given notice of permit violation and of hearing(s) before the Board. The hearings(s) will be held to determine action to be taken by the Board for violation of Water Permit No(s). 348-2, 349-2 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

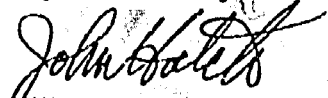
The hearing(s) will be at 2:00 pm, May 6, 1987, Room 216, Joe Foss Building, 523 E Capitol, Pierre SD.

The hearing(s) will be conducted pursuant to the provisions of SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to procedures contained in SDCL 1-26.

Following the hearing(s) the Water Management Board can:

1. Suspend Permit No(s). 348-2, 349-2 until either the 1986 Questionnaire is submitted or for a period of up to one year;
2. Postpone any action;
3. Take no action.

The hearing(s) is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.


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

NOTE: If the questionnaire(s) is received in this office before the hearing date, you will no longer be in violation of your permit(s) and your name will be deleted from the agenda pertaining to these hearings.



Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

April 24, 1987

348-2
(349-2)

Bernard Herber
Box 47
Kadoka, SD 57543

Dear Mr. Herber:

This will acknowledge receipt of and thank you for the return of your 1986 Irrigation Questionnaires. A notice was sent to you March 23, 1987 regarding the Irrigation Questionnaire submittal violation of Water Right Nos. 348-2 and 349-2 and the date hearings were to be held before the Water Management Board to determine any action to be taken concerning the violation.

Please disregard the notice sent to you dated March 23, 1987. Your name has been deleted from the agenda pertaining to these hearings.

If you have any questions, please contact us.

Very truly yours,

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



349-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

February 4, 1997

NOTICE

TO: BERNARD HERBER, BOX 47, KADOKA, SD 57543

FROM: Ron Duvall, Natural Resources Engineer
for John Hatch, Chief Engineer
Water Rights Program

SUBJECT: Violation of Water Permit No(s). 348-2 & 349-2

Our records indicate that the 1996 Irrigation Questionnaire has not been submitted for Permit No(s) 348-2 & 349-2. The request for the Questionnaire was dated October 24, 1996. The Water Management Board has directed that owners of water permits who have not submitted the 1996 Irrigation Questionnaire be given notice of permit violation and a hearing to be held by the Board. The hearing held by the Board will determine the action to be taken for violation of Water Permit No(s) 348-2 & 349-2 qualification:

"This permit is approved subject to the Irrigation Water Use Questionnaire being submitted each year."

The hearing will be held at 2:30 pm, March 5, 1997 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 348-2 & 349-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by law.

If the questionnaire(s) is(are) received in this office on/or before February 28, 1997, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

NOTE: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.

349-2



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 13, 1997

348-2

349-2

Bernard Herber
Box 47
Kadoka, SD 57543

Dear Mr. Herber:

I am writing to acknowledge receipt of your 1996 irrigation questionnaires. You may disregard the February 4, 1997, Notice of Violation of Water Permit Nos. 348-2 and 349-2.

The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

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



**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

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.

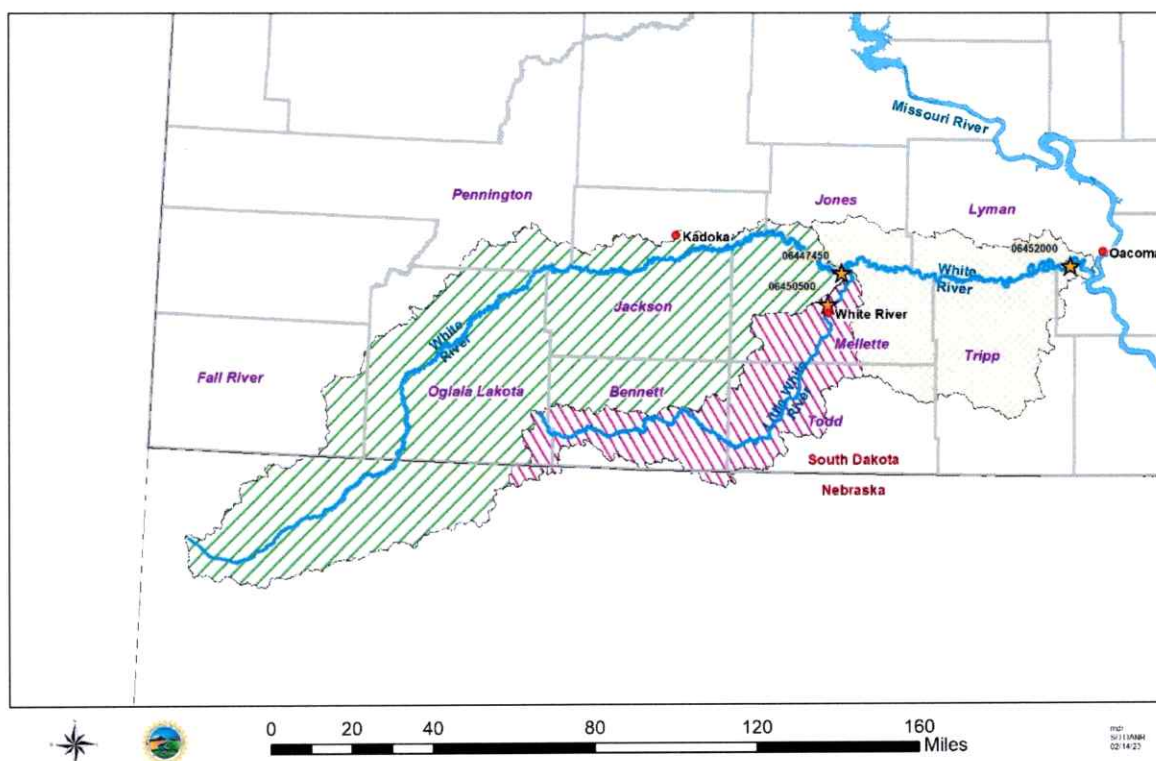


Figure 1. White River Watershed Map.

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.

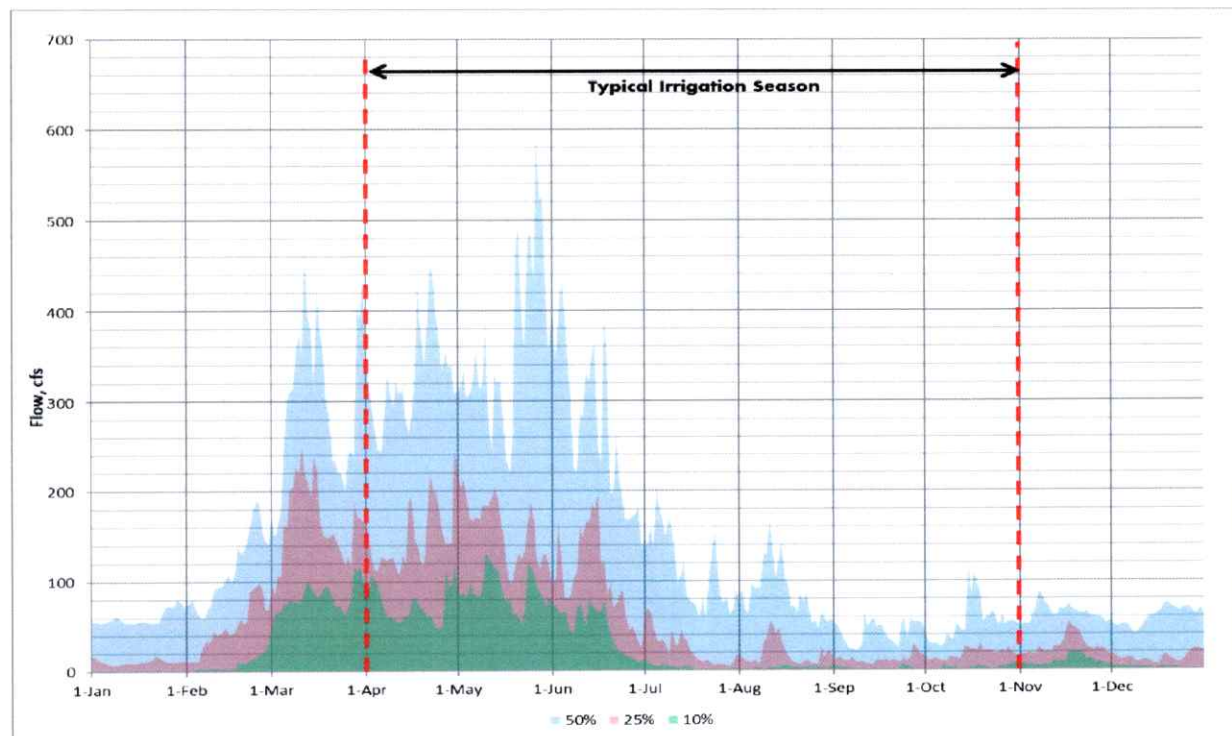


Figure 2. Daily percentile flow hydrographs for the USGS White River near White River 2001-2022, contributing drainage area 6202 mi² (USGS, 2023).

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.

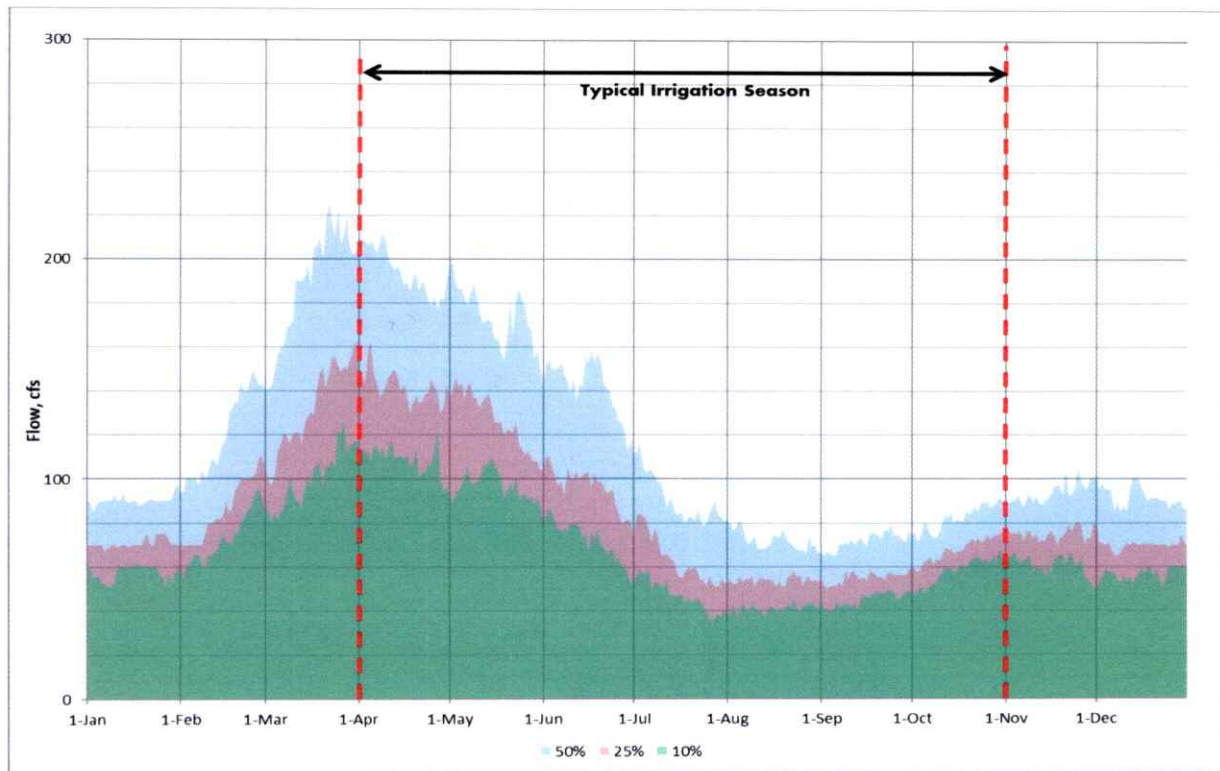


Figure 3. Daily percentile flow hydrographs for the USGS Little White River near White River, 1949-2022, contributing drainage area 1,495 mi² (USGS, 2023).

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.

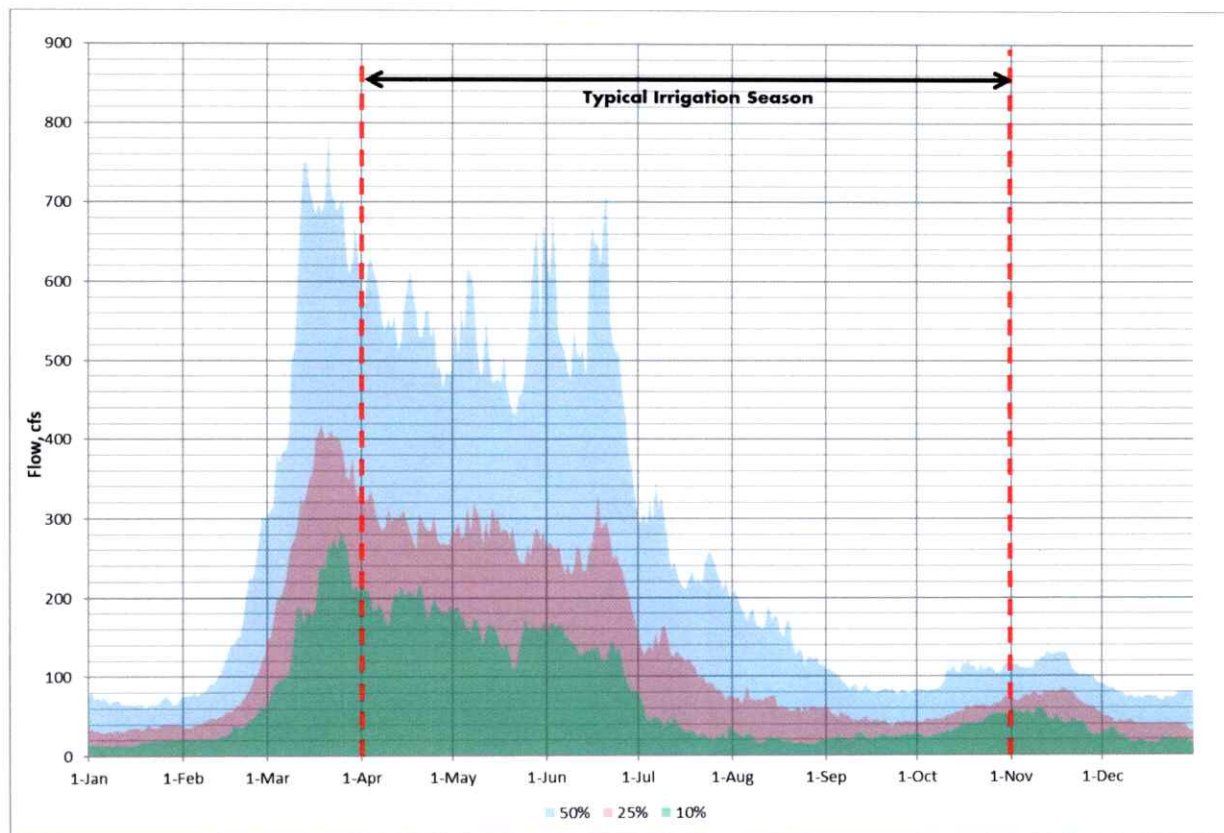


Figure 4. Daily percentile flow hydrographs for the USGS White River near Oacoma, 1928-2022, contributing drainage area 7,697 mi² (USGS, 2023).

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).

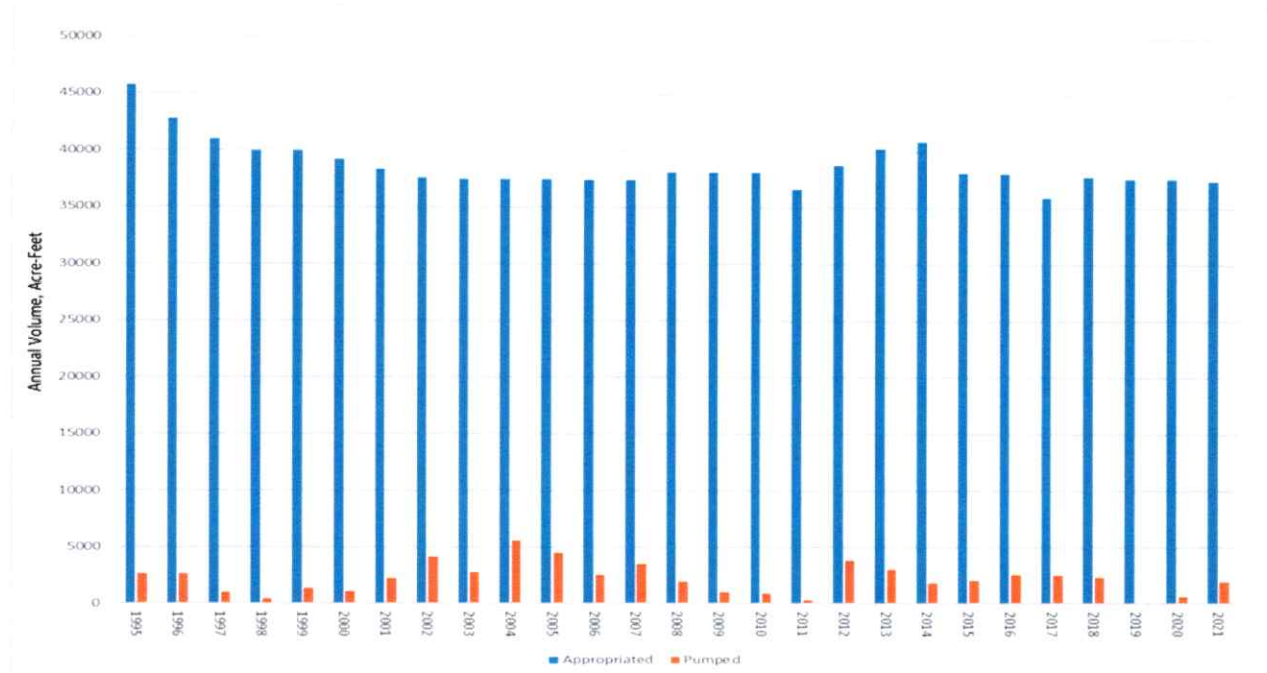


Figure 5. Total irrigation allocation and reported use from the White River (Water Rights, 2023).

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 1st 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 1st 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 1st of each calendar year. After June 1st, 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 1st of each calendar year. After June 1st, 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 1st of each calendar year. After June 1st, 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 1st 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**

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

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. If you have questions; please call. DANR is willing to work to answer any questions.

Sincerely,

Chief Engineer

Water Rights Program, DANR



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

November 6, 2025

348-2
349-2

John Herber
PO Box 47
Kadoka, SD 57543

Dear Mr. Herber:

I have enclosed 2 Notice of Transfer of Ownership forms with a return prepaid envelope. When I receive these completed forms and appropriate fees, I will transfer Water right #348-2 and #349-2 to new ownership as requested per the information sent.

Please return the forms with a check for \$100.00 (\$50.00/transfer) made payable to "SD Water Rights Program" to cover the transfer fee. If you would prefer to pay by card you may call our Fiscal Office at 605.773.4216. This form will still need to be returned even if you are submitting payment over the phone.

If you have any questions or concerns, please give me a call. My direct number is 605.773.3352

Sincerely,

Shannon Konst
Water Rights Program
605 773-3352
Shannon.konst@state.sd.us

enclosures



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

February 26, 2026

349-2

Herber Family LLP
C/O Barbara, James & John
Kadoka, SD 57543

Dear Herber Family:

The Water Rights Program is in receipt for the "Notice of Transfer of Ownership" form you submitted for Water Right No. 349-2, currently held by Bernard Herber. However, the required fee for processing the transfer has not been received.

Please submit payment in the amount of \$50.00 via check (payable to SD Water Rights) or over the phone by calling our Fiscal Office at 605-773-5559.

Once payment has been received, our office will proceed with transferring ownership of Water Right No. 349-2 to Herber Family LLP.

If you have any questions, please contact me.

Sincerely,

Shannon Konst

Shannon Konst
Water Rights Program
605 773-8204
Shannon.konst@state.sd.us

PAID

JAN 15 2026

Ck# CC

Rec't# _____

NOTICE OF TRANSFER OF OWNERSHIP

For assistance call (605) 773-3352

RECEIVED

DEC 09 2025

OFFICE OF
WATER

Mail to: SD DANR, Water Rights Program
523 E Capitol Ave
Pierre, SD 57501-3182

Water Right/Permit No. 349-2

Date: _____

I/We request that Water Right/Permit No. 349-2 formerly owned by:

Bernard Herber

be transferred to:

New Owner Name: Herber Family LLP (Barbara, James, + John)

Address: PO Box 49 mobile: 605-488-0079

City, State, Zip Kadoka, SD 57543 email: herberdirtwork@gwtc.net

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

116.16 Acres, Located in portions of Lot 6, S31, T3S, R21E, NW1/4 NE1/4, NE1/4 NE1/4
Lot 1 & Lot 2, S6, T4S, R21E

☐ I understand that the validity of Water Right/Permit No. 349-2 has not been determined by this transfer action. If I have any questions on validity, I understand that only the Water Management Board has the authority to determine if a water right/permit is valid (see note below).

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 Fifty Dollars (\$50.00) is included to cover the filing fee as required by SDCL 46-2-13.

I, James Herber, John Herber Barbara Herber, the new owner, certify that the above information is true and correct.

Barbara Herber
(signed by new owner)

NOTE: Water permits may be cancelled for nonconstruction after the five-year construction period has expired. Once a water permit is developed, an inspection is conducted to issue a water right license for the project as developed. A water permit/right may be cancelled for one or more of the following 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 Agriculture and Natural Resources

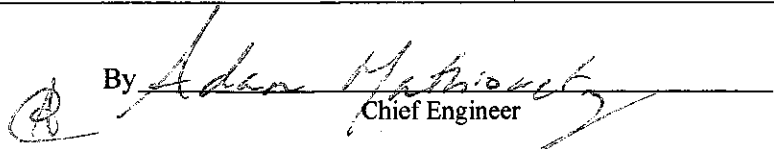
Date January 15, 2026

RECEIVED OF Herber Family LLP PO Box 47 Kadoka, SD 57543

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 #349-2 _____	\$ <u>50.00</u>
Fee for _____	\$ _____
Fee for Issuing New Well Driller's License No. _____	\$ _____
Fee for Renewal of Well Driller's License No. _____	\$ _____
Fee for Issuing Well Pump Installer's License No. _____	\$ _____
Fee for Renewal of Well Pump Installer's License No. _____	\$ _____
(Any Other Work Provided by Law)	
TOTAL	\$ <u>50.00</u>

By


Chief Engineer



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

March 3, 2026

349-2, 348-2

Herber Family LLP
PO Box 47
Kadoka, SD 57543

Dear Herber Family,

The South Dakota Water Rights Program is in receipt of the "Notice of Transfer of Ownership" forms and the required fees you submitted for Water Right Nos. 349-2, 348-2. Enclosed are the receipts of payment for your records.

Water Right Nos. 349-2, 348-2, previously held by Bernard Herber, is now listed under Bernard Family LLC. I have also updated your contact information in our system.

As a reminder, so long as you use the water beneficially, as stated in the License's (copy's enclosed), State Water Laws provide that you have a continuing right to use the water. Should the water not be put to beneficial use for a period longer than 3 consecutive years, without legal excuse, the License's will be subject to cancellation.

If you have any questions, please contact me.

Sincerely,

Shannon Konst
Water Rights Program
605 773-3352
Shannon.konst@state.sd.us

NOTE: The validity of Water Right Nos. 349-2, 348-2 has not been determined by this transfer action. Only the Water Management Board has the authority to determine if a water permit/right is valid.

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