

1. Considered 5-18, 1966
2. Name of Applicant John Adkins
3. Post Office Address White River
4. Amount of water claimed 6.40
5. Source of water supply Little White River
6. Water to be used for irrigation
Acres to be irrigated 448.2
7. Water to be diverted and used in Mellott County about
4 miles 5 of White River
8. Proof of Publication Received yes ✓
Not Received _____
9. Application Approved _____
Subject to _____
Not Approved _____
Action deferred _____

10. Remarks:

LeRoy—

After looking this
over it really hasn't
been completed on the
inspection.

If you have any questions
ask me

Billy

8-20-79

LeRoy said

should inspect this again - 1980 ±

FEE HAS BEEN PAID FOR
the water license.

BW

 **Department of
Water & Natural Resources**
Joe Foss Building Water Rights, Water Management Division
Pierre, South Dakota 57501 (605) 773-3335.

August 20, 1979

John R. Didler
White River, SD 57579

Dear Mr. Didler:

On February 22, 1978 and July 16, 1979 we wrote you requesting the fee of \$12.00 for issuing the Water License and Certificate of Completion of Works. The \$12.00 fee was received July 23, 1979, Receipt No. 4-6963 is on file with your Permit No. 884-2.

When writing up the License it was discovered on the Inspection sheet by the engineer who inspected the works on July 25, 1972, the following statement.

"As the date of time limit for putting water to beneficial use is July 21, 1975 and there is a 48 acre field authorized for irrigation in Water Permit No. 884-2, which may or may not be irrigated before July 21, 1975 time limit, issue a Certificate of Construction only at this time."

The engineer in our office plans on re-inspecting the project in the near future. When this is done, the Water License and Completion of Works will be sent to you. The receipt will be kept on file with your application, you will not be billed again.

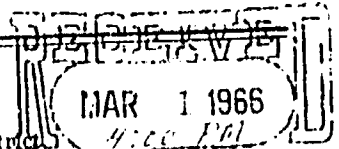
If you have any questions, please contact this office.

Sincerely,

BETTY WESTLUND
Water Rights Specialist I

BW/gy

an Equal Opportunity Employer

No. **884-2**Water Division No. **2** **WHITE RIVER**
(Blanks to be filled by the Engineer for the W. R. C.)STATE WATER RESOURCES COMM.
SIOUX FALLS, SOUTH DAKOTA

APPLICATION FOR PERMIT To appropriate Water within the State of South Dakota

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

1. Name of applicant John Didier
 Postoffice address White River, County Mellette, State So. Dakota

I. If a corporation

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

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

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

- (a) Method of accomplishing work (Whether by contract, employment of others, or by direct labor)
Contract

- (b) Cash on hand, \$ _____ (c) Treasury stock, \$ _____
 (d) Bonds to be issued, \$ _____ (e) Other resources, \$ adequate

2. Name of diversion work Project No. 1
 3. Amount of water claimed 6.40 cubic feet per second
 4. Source of water supply South Fork White River
 5. Location of point of diversion Between two points S 30° E, 4620' from SW 1/4 Sec. 23, T41N, R29W and E, 4370' from NW 1/4 Corner both banks Mellette County.
Sec. 23, T41N, R29W.
 6. Annual period or periods during which water is to be used April through October
 7. To be used for:

1. Irrigation or domestic use: Gravity, overhead sprinkling or combination system?

- (a) Number of acres to be irrigated 448.2 acres.
31 ac. Sec. 26, 320 ac., Sec. 23, 97.2 ac.,
Sec. 14, T41N, R29W

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

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

II. Stockwatering, mining, milling, power, fish culture, fire protection and public recreation:

- (a) Nature of use fire protection
 Name any of the above uses claimed
 (b) Amount of power to be generated _____ horse power.
 Amount claimed for engine cooling _____
 (c) Location of plant _____
 (d) Method of developing power _____
 (e) Point where water will be returned to stream _____

MAP NO 763-2

8. Estimated cost of work:

(a) Head Gates, \$.....

(b) Pumping plant, \$.....

(c) Fluming, \$.....

(d) Canal-earth, \$.....

Rock, \$.....

(e) Other structures \$.....

Total, \$30,000.....

9. Description of diversion works:

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

pumping plants, ditches, sprinkler systems.....

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 at front water face; slope at back face

material used in construction

(b) Reservoir: Capacity when filledacre feet. Surface area at highwater mark.....acres.

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

(c) * Head gate: Width.....feet; heightfeet;

Material

(d) Canal: Total lengthmiles.

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

(Give dimensions where reductions in size are made.)

10. Time required for completion of work5.....years.

11. Time required for complete application of water to the proposed beneficial use4.....years. additional

12. Choice of newspaper for publication of notice of intention to appropriate
Melrose County News, White River, South Dakota.....

STATE OF SOUTH DAKOTA

County of Hughes ss.

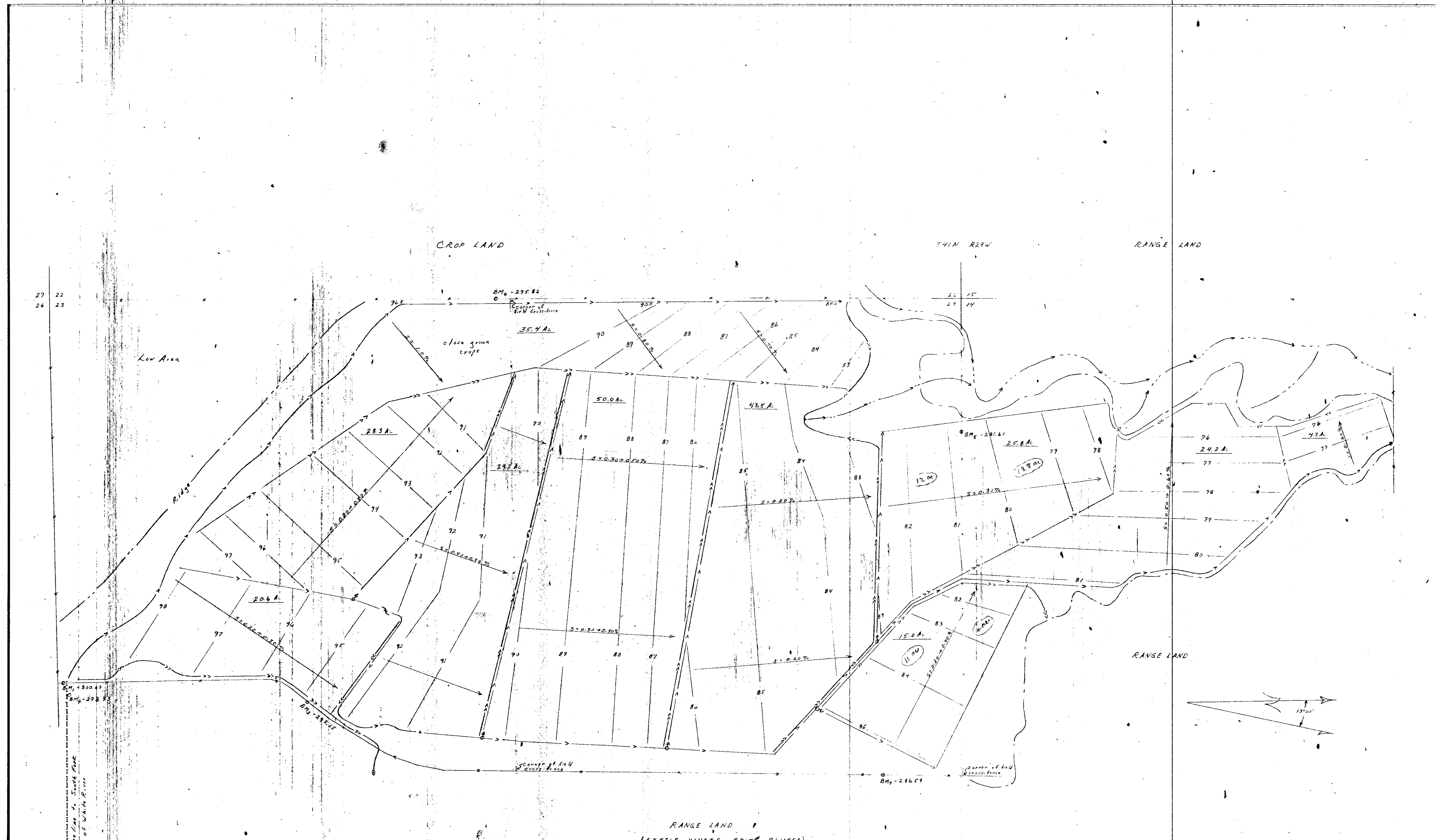
I, John R. Dickey, being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of owner, that I have read the above foregoing statement, examined the map accompanying the same, and that I know of my own personal knowledge that the matters therein stated and shown are true.

Signed

Subscribed and sworn to before me this 1st day of March 1966

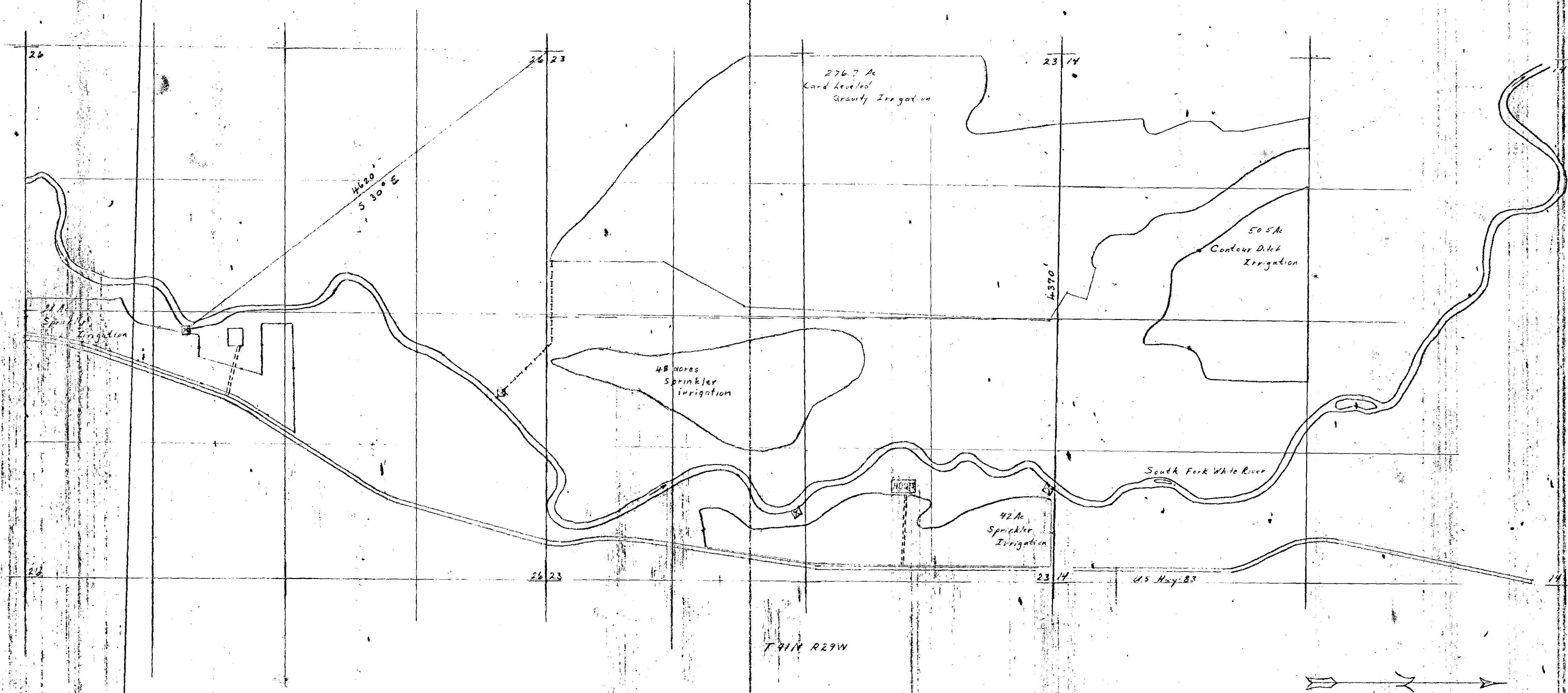
Notary Public (or other qualified officer.)

*Each diversion must have a headgate or measuring device.



- LEGEND
- Direction of Irrigation
 - Irrigation Supply Ditch
 - - - Field Drain Ditch
 - Land Leveling Design Elevation Contour
 - Fence line
 - Boundary Between Cropland and Rangeland
 - Natural Drain
 - Irrigation Turnout Structure
 - Irrigation Drop Structure
 - Bench Mark

JOHN DIDIER IRRIGATION PLAN - PROJECT NO. 1 TOTAL IRRIGABLE LAND - 276.7 ACRES MELLETT COUNTY SOUTH DAKOTA SCALE: 1 INCH = 300 FEET	
U. S. DEPARTMENT OF AGRICULTURE SOIL CONSERVATION SERVICE	
Designed by <i>John Didier</i>	Date <i>12-65</i>
Drawn by	Approved by
Traced by	Title
Checked by	Sheet No. of
	Drawing No.



John Didier
 Irrigation Project Description - 4482 Acres
 Mellette County,
 Scale: 1 inch = 660 feet

**U. S. DEPARTMENT OF AGRICULTURE
 SOIL CONSERVATION SERVICE**

Designed.....	Date.....	Approved by.....
Drawn.....		Title.....
Traced.....		Title.....
Checked.....		Sheet No.....
		Drawing No.....
		No.....
		of.....

Remarks by State Water Resources Commission:

RESTRICTIONS UNDER THIS PERMIT WILL BE NECESSARY WHEN THE FLOWS OF THE LITTLE WHITE RIVER IMMEDIATELY BELOW LAKE CREEK ARE INSUFFICIENT TO SATISFY PRIOR WATER RIGHTS GRANTED IN SUCH WATER FLOWS.

STATE OF SOUTH DAKOTA
County of HUGHES ss.

Pierre, South Dakota, AUGUST 19, 1966

This is to certify that the foregoing application was received by the Commission at 4:00 o'clock

P.m. upon the 1ST day of MARCH, 1966

State Water Resources Commission

By:

Burton J. Jones
Chief Engineer, Executive Officer

Number of permit 884-2

Date of first receipt of application MARCH 1, 1966

Date of return to applicant for correction, amendments or changes required as follows: _____, 19____

Date of receipt of corrected application _____, 19____

Date from which applicant may claim right MARCH 1, 1966

Approved JULY 21, 1966, Recorded in Book 9 Page 149

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

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

JANUARY 21, 1969

2nd. The whole of said work is to be completed on or before JULY 21, 1971

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

JULY 21, 1975

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 hereby granted shall not exceed 6.4 cubic feet per second; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the 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 JULY 21, 1975; said water to be used during the following described annual period:

APRIL THRU OCTOBER

Witness my hand this 19TH day of AUGUST, 1966

State Water Resources Commission

By:

Burton J. Jones
Chief Engineer, Executive Officer

Certificate of Construction Issued _____, 19____

Water License Issued _____, 19____

on or before April 24, 1966
(First Publication)

APPROPRIATION OF WATER

Office of State Water Resources Commission,

Pierre, S. Dak., March 29, 1966

Notice is hereby given that John Didier, whose postoffice address is White River, S. 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 6.40 cubic feet of water per second of time from the Little White River through the Didier Project #1 between a point in the NW $\frac{1}{4}$ Sec. 26, and a point on the either bank of said stream in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 23 portions of Twp. 41N Range 29W. Said water to be used for the purpose of providing irrigation on the following described land:
W $\frac{1}{2}$ SE $\frac{1}{4}$, Section 26; Section 23; E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$, Section 14, T41N, R29W

and for purposes.

This application will be taken up by the State Water Resources Commission at their office at Pierre for consideration upon the 18th day of May, 1966, at 2 P. M. All interested persons may appear and be heard.

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

State Water Resources Commission

CC: Donald D. Evans, Publisher
Mellette County News
White River, S.D.

By:
BOSTON F. JONES
Water Right Specialist

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA }
County Mellotte } ss.

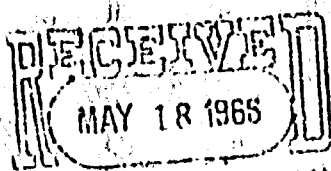
Donald D. Evans being duly sworn, deposes and says the annexed printed copy of Notice of Intention to appropriate Water was taken from the Mellotte County News a newspaper which during the whole time of publication of said notice herein after stated, has been and is printed and published in the White River County of Mellotte and State of South Dakota; that the said notice was published in said newspaper on the following dates:

April 7, Thursday, 1966
April 14, Thursday, 1966
April 21, Thursday, 1966
April 28, Thursday, 1966

In each and every issue of the full number thereof, the first publication being made on the 7 day of April 1966 and the last publication on the 28 day of April 1966, upon which days or times of publication aforesaid the newspaper was regularly published, and that during the whole time of said publication he was owner the printer and publisher of the said newspaper.

Donald D. Evans

Subscribed and sworn to before me this 20 day of April



STATE WATER RESOURCES COMMISSION

Notary Public

APPROPRIATION OF WATER

Office of State Water Resource Commission
Pierre, S. Dak.
March 29, 1966

Notice is hereby given that John Didier, whose postoffice address is White River, S. 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 840 cubic feet of water per second of time from the Little White River through the Didier Project No. 1, the point of diversion of which is to be located on either bank of said stream between a point in the NW 1/4 SE 1/4 Section 26, and a point in the NE 1/4 of the NE 1/4 of Section 23, Twp. 41N, Range 29W. Said water to be used for the purpose of providing irrigation on portions of the following (described) land:

W 1/2 SE 1/4 Section 26;
Section 23, E 1/4 NW 1/4 and W 1/2 NE 1/4 Section 14, T. 41N, R. 29W.

This application will be taken up by the State Water Resources Commission at their office at Pierre for consideration upon the 18th day of May, 1966, at 2 P.M. All interested persons may appear and be heard.

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

State Water Resources Commission

By

Burton F. Jones

Water Right Specialist

CC: Donald D. Evans, Publisher
Mellotte County News
White River, S. D.

Pub. April 7, 14, 21, 28

RECEIPT

WATER RIGHTS COMMISSION

State of South Dakota

No 4 6963

PIERRE, July 23, 19 79

RECEIVED OF John R. Didier, White River, SD 57579

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

Fee for Application for Permit to Appropriate Water No. (examination, processing, recording and filing)		
Fee for Inspecting Construction, and Issuing Cert. of Construction No. 884-2	12	00
Fee for Inspecting Beneficial Use, and Issuing Water License No. 884-2		
Fee for Issuing Location Certificate-Dry Draw, No.		
Fee for filing		
Fee for certified copy of		
Fee for Print copy of map		
Fee for Certifying		
Fee for (any other work as provided by law)		
TOTAL	12	00

WATER RIGHTS COMMISSION

By *John Hatch*
 Chief Engineer, Executive Officer
 JOHN HATCH gy 86

Permit No. 884-2Water Division 2 WHITE RIVER Water DistrictREPORT OF EXAMINATION OF WORKS
AND/OR APPLICATION OF WATER TO BENEFICIAL USE

TO: Water Resources Commission, State Office Building No. 2, Pierre, South Dakota 57501

I have this day made a thorough examination of the water use system constructed by John Didierof White River, S.D. holderof Permit No. 884-2, bearing date of priority of March 1, 1956authorizing the diversion of 6.4 cu. ft. per second of the waters of Little White River
for irrigation purposes, in Melleche County.

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

The Water Use System consists of,

A. Works used to divert the water:

Lower system-Pacific centrifugal pump 3" powered by
Allis Chambers 50 HP Gasoline tractor-600 GPM.
Upper System-Gorman Rupp Centrifugal 6" pump at
river side, powered by Westinghouse 100 HP, electric
motor, 1800 GPM.

B. Works used to transport water to place of use,

Lower system-1320' of 8" main line.
Upper System-1350' of 10" pipe to Lagoon.
Gorman Rupp 6" pump-Westinghouse, 75 HP, electric
motor-1650' of 8" pipe to pivots.
Berkeley 6" centrifugal pump, U.S. Motor, 20 HP, electric
motor and 1 1/2 mile of 8" inch main line.

C. Works used to apply water to beneficial use.

Lower System-540 ft. of 8" gated pipe.
Upper System-1 1/2 mile of 8" gated pipe.
one "Electrigrator" circular sprinkler system.

Two fields, totaling 39 acres, located in
 the river valley adjacent to the river
 are now irrigated, using a portable pump
 and gated pipe.

The main irrigation is on the high land
 west of the river, 260 acres being
 irrigated with one circular sprinkler
 system, from two pivots, and 36 acres
 being irrigated with gated pipe.
 The water is first pumped from the
 river to a lagoon, 220' x 110' x 5' on
 high land 135 ft. above the river.

The system is in the following condition: very good

The point of diversion is located between two points South 30° East, 4620 ft. from the SW
Corner, Section 23, and East 4370 ft. from the NW Corner, Sec. 23, all in T41N, R29W.

The works are capable of diverting and conveying to the place of use 5.4
 cu. ft. per second of water which is to be used for irrigation

Water has been put to beneficial use to the maximum extent as follows: all in T41N, R29W.

SE 1/4	Section 26	25 Acres
NE 1/4 NE 1/4	Section 23	14 acres
W 1/2	Section 23	260 acres
SW 1/4	Section 14	36 acres

comprising a total of 335 acres of land.

As the date of the time limit for putting water to beneficial use is July 21, 1975
 and as there is a 48 acre field authorized for irrigation in Water Permit No. 884-2
 which may or may not be irrigated before July 21, 1975 time limit, issue a
 Certificate of Construction only at this time.

Date July 25, 1972

Donald Driscoll
 (Signature)

DONALD DRISCOLL, Deputy Chief Engineer, W.R.C.

515-3

10-20-70

Inspected this system. The pump and
electric motor were there, but it appeared
there had been no irrigation use for a long time.

No pipe or sprinkler equipment was stored
in the area. Local people reported that El/L
Scheidt had hired a number of employees. The
HW 1/4 NW 1/4 had been gravel pit-still
being quarried.

10-21-70

Talked to Mrs. Gerald Schaefer, Daughter-
in-law of El/L, who lives in Omaha.
Mr. G. S. said they had irrigated the land
in 1968, but had been failed out in
1969 and 1970 (the 1970 questionnaire also so
states). She said that the irrigation pipe
and sprinkler were stored at their home
location and they planned to irrigate next
year.

I told her to notify the Works Program
Commissioner as soon as they were irrigating so
a formal inspection could be made.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT
OF SOUTH DAKOTA WESTERN DIVISION

Fred W. Schwarz, Plaintiff,

vs.

Henry A. Wallace, Ira N. Gabrielson,
M. C. Steen, L. M. Thomas, Ryner Johnson,
Harold L. Iokes, John Collier, G. R.
Whitlock, and Carl B. Aamot, Defendants.

Stipulation and Agreement

For Settlement

Fq. No. 191 U. D.

For convenience of reference White River Hydro No. 1 is hereinafter referred to as "Plant"; Little White River as "River"; LaCreek Migratory Waterfowl Refuge as "Project"; and Fred W. Schwarz as "the Plaintiff".

1. WHEREAS, the above-entitled action was duly commenced between the above-named plaintiff against the above-named defendants by the issuance of a subpoena and complaint which were served upon all of the defendants named therein; and

2. WHEREAS, at all times hereinafter mentioned the Plaintiff or his predecessors in interest, was and now is the owner of the White River Hydro Number One located on the Northwest Quarter of Section 34 of Township 42 North of Range 29 West of the Sixth Principal Meridian in Mellette County, South Dakota; and

3. WHEREAS, said Plant consists of a dam across the Little White River, buildings and structures incident to the operation thereof, together with the necessary turbines, generators, transmission lines, etc, and was constructed in the years 1923 and 1924, that said Plant, dam and other works appurtenant thereto, is located upon land owned by the Plaintiff which real estate consists of sixty-five acres situated in Mellette County, South Dakota and described as follows:

The Southeast Quarter of the Southeast quarter of the Southwest Quarter of Section 27, and the Southeast Quarter of the Northeast Quarter of the Northwest Quarter, and the East Half of the Southwest Quarter of the Northeast Quarter of the Northwest Quarter, and the East Half of the Southeast Quarter, of the Northwest Quarter, and the East Half of the West Half of the Southeast Quarter of the Northwest Quarter and the Northeast Quarter of the Northeast Quarter of the Northwest Quarter of Section 34 of Township 42 North of Range 29 West of the Sixth Principal Meridian.

That said land, dam, power plant, and other improvements appurtenant thereto, are of chief value for the purpose of generating electric current which cannot be produced by said power plant except by the use of the water normally flowing in said river, and that if said flow is withheld in whole or in part for any cause the value, output and income of said property will be diminished in direct proportion to the quantity of water diverted or withheld from said stream; and

4. WHEREAS, the Plaintiff holds a permit from the State of South Dakota to appropriate 400 cubic feet of water per second from the Little White River in the State of South Dakota, and has used said water for the continuous operation of said Plant since 1924; and

5. WHEREAS, said River has one of its sources in what is commonly known as the LaCreek Country in Bennett County, South Dakota, in the region where the Bureau of Biological Survey has established and created the LaCreek Migratory Waterfowl Refuge Project; and

6. WHEREAS, numerous dikes or dams have been constructed by said Bureau of Biological Survey, thereby expounding large bodies of water taken from said River which have spread over an area of approximately 4000 acres, causing considerable loss of water by seepage and evaporation that would otherwise flow down said river to Plaintiff's Plant; and that the detention of said waters by the Bureau of Biological Survey has continued since about March 15, 1936; and

7. WHEREAS, it is in contemplation that the Bureau of Biological Survey may construct a dam across said River at Approximately Section 14, Township 37 North of Range 36 West, for the purpose of diverting the waters therein flowing into the dam and ponds on said Project; and

8. WHEREAS, during the five year period next prior to the construction of said Project, said Plant produced about 600,000 kilowatt hours annually or at the rate of approximately 70 kilowatts per hour, which it is the purpose of this agreement to enable the Plaintiff to maintain; and

9. WHEREAS, the capacity of the Plant is 210 kilowatts per hour with a varying daily output depending upon the amount of water available in the River; and the demand for the current produced by the Plaintiff as measured at the switchboard is such as to enable the Company to dispose of said current from day to day at a uniform price per kilowatt; and

10. WHEREAS, it is the desire of all parties hereto to utilize the water in said river to the best possible advantage with the object of enabling said Plant to produce approximately the same amount of current annually as it did prior to the creation of the Project, but that the same shall be generated at such times in such amounts as will protect the levels of water in the ponds of said Project as nearly as may be done to keep them useful for the purpose of the Project; and

11. WHEREAS, by reason of the detention of the waters of said River by said Bureau of Biological Survey, the output of said Plant has been greatly diminished and that Plaintiff has thereby suffered a diminution of output to date of this contract in the amount of about 359,000 kilowatt hours; and

12. WHEREAS, the United States Bureau of Indian Affairs has already established, and may later establish, numerous pumping stations, and may otherwise divert water on the Rosebud Indian Reservation in South Dakota for the purpose of using the waters of Little White River, upstream from said Plant, to irrigate farms and gardens operated by the Indians under the supervision of the Superintendent of said reservation with which it is not desired to interfere, except to keep a record of water used and prevent wastage of water as hereinafter stipulated and agreed; and

13. WHEREAS, the Bureau of Indian Affairs, in the future, in the event that existing Indian lands are involved and may be deemed to be benefitted thereby, may establish Indian irrigation projects on said River between the outlet of said Project and the west line of said Rosebud Indian Reservation.

NOW THEREFORE, the United States Bureau of Biological Survey agrees with the Plaintiff herein to release a sufficient amount of water from Project ponds or reservoirs to maintain a minimum average daily production of not less than 70 kilowatts per hour, less any reduction of output at the Plant that may be brought about by the pumping stations and gravity projects maintained by the Bureau of Indian Affairs on said River for irrigation purposes; that is to say, if said Bureau of Indian Affairs shall take from such River a sufficient amount of water to reduce the output at the Plant 5 kilowatts per hour, for example, such loss shall be sustained by the Plaintiff and need not be made good by the Bureau of Biological Survey either at the time it occurs or later; provided that if the natural flow of the River shall be such in any one year as to furnish an ample supply for the Project, said pumping stations and irrigation projects of the Bureau of Indian Affairs, and to enable the Plaintiff to produce in excess of

600,000 kilowatts for the year, such excess shall not be charged back to the Plaintiff by future deductions from what the Plaintiff is otherwise entitled to under this agreement.

The measurement of the flow of water in the River shall be made at the Plant and the kilowatt hours reduced to second feet, the manner or method of measurement to be determined by parties hereto, and that when such measurements are completed and data obtained, said measurements shall be used as a basis for carrying out this contract, and that Plaintiff shall report the shortage from day to day, based on the daily average, to the headquarters of the Bureau of Biological Survey at its office address in Bennett County, South Dakota, and that said Bureau of Biological Survey shall release to the Plaintiff from its ponds the equivalent of the shortage in second feet, said release of water by the Biological Survey to be made upon notice given by the Plaintiff.

The Bureau of Biological Survey further agrees with the Plaintiff that, in addition to the releases of water above provided for, it will from time to time, as conditions in its judgment will permit without detriment to said Project, release a sufficient additional amount of water over and above that required to produce 600,000 kilowatts annually, to enable the Plaintiff to recoup the losses heretofore sustained as set out in paragraph 11 hereof.

The Bureau of Indian Affairs on its part agrees with the Plaintiff and with the Bureau of Biological Survey to maintain accurate records of the amount of water taken out of said Little White River by its various pumping stations for irrigation and domestic purposes now in operation, and of all future irrigation developments, either pumping or gravity, which may be found necessary for the development and use of existing Indian lands in that watershed, and report same to the Plaintiff herein and to the Bureau of Biological Survey, and not to pump more water than is reasonably necessary for its various irrigation projects and to conserve such water to the end that all parties in interest may realize the largest possible benefit under this agreement.

Upon the execution of this agreement by all parties hereto and the approval of the same by the Secretary of Agriculture and Secretary of the Interior, Plaintiff agrees to dismiss the above entitled action, without costs to any of the parties thereto.

This contract is effective as of the date it bears.

Dated this 10th day of July, A. D. 1938.

W. C. HENDERSON
Acting Chief of Bureau

By _____
Director

Oct. 24, 1938

Approved: October 13, 1938

JOHN COLLIER
Commissioner of Indian Affairs

HARRY L. BROWN
Acting Secretary of Agriculture.

By _____

Approved: Oct. 26, 1938

HARRY SLATTERY
Acting Secretary of Interior

FRED W. SCHWARZ
Plaintiff

C. E. KELL and

WILLIAM WILLIAMSON
Attorneys for Plaintiff

GEORGE PHILIP
United States Attorney for
South Dakota
Attorney for the Defendants.

(Endorsed)--Filed Nov. 2, 1938, Roy E. Marker, Clerk

By C. C. Schwarz, Deputy

UNITED STATES OF AMERICA

ss:

-----District of South Dakota

I, ROY B. MARKER, Clerk of the United States District Court in and for the -----District of South Dakota, do hereby certify that the annexed and foregoing is a true and full copy of the original

.....Stipulation and Agreement for Settlement.....

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Sioux Falls, S. D. this 22nd day of May, A. D. 1939.

(Signed) ROY B. MARKER

Clerk

(SEAL)

By

Deputy Clerk

STATE OF IOWA)

COUNTY OF WOODBURY)

ss:

I, LORENA EHLERS, after being first duly sworn hereby certify that the foregoing is a true, complete and correct copy of certified copy of stipulation and agreement obtained from Roy B. Marker, Clerk of the United States District Court for the District of South Dakota, on May 22, 1939.

/s/ Lorena Ehlers

LORENA EHLERS

Sworn and subscribed to before me this 23rd day of May, 1939.

/s/ Mary C. Lenagh

NOTARY PUBLIC

My Commission expires July 4, 1939.

AGREEMENT

THIS AGREEMENT made and entered into this twenty-first (21st) day of April A.D. 1935, by and between Fred W. Schwarz and wife Emily Schwarz of White River, Mellette County, South Dakota, hereinafter known as Party of the First Part. Central Electric & Telephone Company, a corporation of Sioux City, Iowa, Party of the Second Part, and the United States of America, Party of the Third Part;

WITNESSETH: That for and in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, and payments hereinafter specified to be made, the parties hereto agree as follows:

1. It is agreed that the Party of the First Part is the owner of record of a certain water right, known as White River Hydro No. 1 located on the Northwest Quarter of Section 34 of Township 42 North of Range 29, West of the Sixth Principal Meridian in Mellette County, South Dakota and which is of record in the office of the State Engineer of the State of South Dakota and known as Application 253-2 and that the Party of the Second Part has an interest as sole Mortgagee in and to the said Water Right.
2. It is agreed that certain rights and interests in and under the said Water Right were made the subject of judicial proceedings in the United States District Court for the Western Division of the District of South Dakota, which judicial proceedings were dismissed upon a stipulation and agreement for settlement, a copy of which is hereto attached marked Exhibit "A", and made a part of this agreement for purposes of information, and hereinafter called "The Stipulation."
3. It is agreed that the Party of the Third Part is the owner and holder of water rights for use on the LaCreek Migratory Waterfowl Refuge in Bennett County, South Dakota, said water rights having been acquired subsequent to the rights of the Party of the First Part and being of record in the office of the State Engineer of the State of South Dakota and designated by the said State Engineer as Certificates of Withdrawal No. U. S. 2 and No. U. S. 3, which said water rights will not permit the said Party of the Third Part to take water below said Third Party's dam situated in Section 25, Township 37 North, Range 36 West of the Sixth Principal Meridian and now known as Dam No. 10 situated on

Lake Creek, as shown by the attached Exhibit "B".

4. It is agreed that the Parties of the First and Second Part hereby agree to waive any and all rights under the said Stipulation as against the United States of America and the said parties agree that the United States of America may so far as the First and Second Parties are concerned appropriate, withhold or otherwise divert any and all of the waters of the South Fork of White River, sometimes known as Little White River, to the point where the said river converges with Lake Creek; and also any and all waters of Lake Creek above the said Party of the Third Part's dam known as Dam No. 10, the site of which has hereinbefore been described, for the purposes of the Migratory Waterfowl Refuge constructed on said streams above the power plant owned by the Party of the First Part adjacent to his Water Right, and the said Parties of the First and Second Part hereby further agree that they will make no claim now or in the future against the United States of America for any shortage of water resulting from its withholding or otherwise diverting any and all of the waters herein referred to subject otherwise to limits of Third Party's rights as set out in paragraph No. 3.

5. It is agreed that if the Party of the Third Part shall so require proper records evidencing this partial waiver of rights shall be made by the Parties of the First and Second Part in the office of the State Engineer of the State of South Dakota, and on the records of Mellette County, South Dakota.

6. It is agreed that upon compliance with the terms of this agreement by the Parties of the First and Second Part that the United States of America will pay to them the sum of Twenty Thousand Dollars (\$20,000.) provided, however, that in order to permit the necessary administrative transfers, the United States of America shall be allowed not to exceed six (6) months from the date of execution of this agreement within which to make such payment.

7. It is agreed that from and after the last date of execution of this agreement by any one of parties hereto, the Parties of the First and Second Part, or either of them, shall have no right or claim against the Party of the Third Part by reason of the said Stipulation or by reason of any appropriation, diversion or withholding of the said waters subject to limits of paragraphs No. 3 and No. 4, it being the understanding and agreement of the parties hereto that any and all claims or rights for damages now or hereafter existing or accruing shall

be entirely liquidated by the payment of the said sum of Twenty Thousand Dollars (\$20,000.) as hereinbefore specified, and it is agreed that upon the execution of this agreement the same shall be binding upon the parties hereto, their respective heirs, executors, administrators, successors or assigns, and that time is of the essence of this agreement.

8. It is understood and agreed by and between the parties hereto that this agreement is made subject to the approval of the Board of Directors of the said Party of the Second Part, also subject to the Second Part obtaining any release from its Trust Indenture which may be found to be necessary, and it is further agreed that the Secretary of Agriculture or his duly authorized agent acting for the Party of the Third Part may have until the First (1st) day of August, 1939 in which to execute this agreement.

If the approval and release, if any, required by or for the Party of the Second Part are not obtained and this agreement duly executed on behalf of the Party of the Third Part on or before August 1, 1939, then this agreement is to be wholly null and void, and in that event nothing herein stated shall in any way affect any of the rights of the parties hereto as set out in the stipulations shown in Exhibit "A".

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the dates indicated.

WITNESSES:

FRED W. SCHWARZ & WIFE, EMILY SCHWARZ
(Party of the First Part)

/s/ K. L. Dalley

/s/ Fred W. Schwarz

/s/ Lorena Ehlers

/s/ Emily Schwarz

STATE OF IOWA)
COUNTY OF WOODBURY) SS

On this twenty-first (21st) day of April A.D., 1939, before me Mary Lenagh, a Notary Public in and for said county, personally appeared Fred W. Schwarz and Emily Schwarz, his wife, to me personally known and in my presence executed the above instrument, and after being severally sworn acknowledged to me that they executed the same freely for the purposes therein stated.

/s/ Mary C. Lenagh
Notary Public

My commission expires July 4, 1939.

ATTEST:

(SEAL)

/s/ H. A. Hanson
Assistant Secretary

CENTRAL ELECTRIC & TELEPHONE COMPANY
(Party of the Second Part)

By /s/ R. A. Phillips
Vice-President & General Manager

STATE OF IOWA)
) SS
COUNTY OF WOODBURY)

On this twenty-first (21st) day of April A.D., 1939 before me, Mary Lenagh, a Notary Public in and for said county, personally appeared R. A. Phillips and H. A. Hanson, to me personally known, who being by me severally sworn did severally say that they are Vice-President and General Manager, and Assistant Secretary respectively of the Central Electric & Telephone Company, and in my presence they respectively executed the above instrument and acknowledged the execution thereof to be the free act and deed of said corporation.

/s/ Mary C. Lenagh
Notary Public

My commission expires July 4, 1939.

The Secretary of Agriculture has executed this agreement on behalf of the United States of America, and has caused the Seal of the Department of Agriculture to be hereunto affixed on this _____ day of _____, 1939.

THE UNITED STATES OF AMERICA
(Part of the Third Part)

By _____
Secretary of Agriculture

DEED TO WATER RIGHT

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

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

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

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

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

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

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

The right to appropriate, withhold or otherwise divert out of the waters

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

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

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

AND, the said party of the second part hereby releases the property herein conveyed and described above from the lien of said mortgage, dated November 9, 1936, and recorded February 12, 1937, in Book 47 pages 313 and 319, in the office of the Register of Deeds of Mellette County, South Dakota.

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

Witnesses:

/s/ Tom Donahue

Witnesses

K. L. Daltz

Lorena Eblers

CORPORATE SEAL

State of South Dakota
County of Hughes

ss.

/s/ Emily Schwarz

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

CENTRAL ELECTRIC AND TELEPHONE COMPANY

By R. Phillips V. P.

ATTEST H. Hanson
Asst. Secretary-Treasurer

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

/s/ H. B. Stelaw
Notary Public

State of Iowa

ss.

County of Woodbury

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

/s/ Mary C. Lenagh
Notary Public

My Commission expires July 4, 1940

State of South Dakota
County of Hellette: SS

In County Court.

In the Matter of the Estate
of Fred W. Schwarz, deceased.

Petition for Probate
of Will

To the Honorable, C. E. Kell, Judge of the County Court of Hellette County,
State of South Dakota:

That Petition of Emily Schwarz, of the County of Hellette, State of South
Dakota, respectfully shows:

That on or about the twenty-fifth (25) day of September, 1939, at his home
near the town of White River, in the County of Hellette and State of South Dak-
ota, that the said deceased did then and there die; that the said deceased at
the time of his death was a resident of the County of Hellette and the State of
South Dakota; that the said deceased left estate in the County of Hellette and
State of South Dakota, the probable value and character of which, with the value
of all personal property and the amount of the probable annual, rents, issues
and profits of real estate, is as follows:

Personal Property:

Household goods, value \$100.00; One Buick car (Model
1938, value \$800.00; Deposit in the Hurdo Bank (Jones County
Bank) \$164.00.

Real Property:

The northwest quarter of the northwest quarter of the southwest
quarter of the northeast quarter of the southwest quarter of the
southwest quarter of the northwest quarter of the northeast
quarter of Section thirty-four, Township, forty-two and range
twenty-four in Hellette County, upon which stands a house and
various outbuildings, probably value of which is \$2,000.00

One Hydro-electric plant, located in the Little White River,
with dams, power plant and covering 65 acres, value \$22,000.00.

That the names, ages and residences of the Heirs, devisees and
legatees of the decedant, so far as is known to the petitioner, are:

Name	Post Office Address
Emily Schwarz, wife of deceased	Age 64 White River, S. Dak.
Oscar Schwarz, son of deceased	Age 20 White River, S. Dak.

That the said deceased left a will bearing date the ---day of September
1939, which is herewith presented for probate and which is alleged to be the
last will of the said deceased:

That Emily Schwarz, who is named as Executrix in said will, does not re-
nounce her right to Letters Testamentary and does consent to act as such Ex-
ecutrix;

Wherefore, your petitioner prays that due proceedings be had upon this
petition to the end that the said will may be proven and admitted to probate
and that Letters Testamentary issue to Emily Schwarz.

Dated this 6th day of October, 1939

Emily Schwarz
Emily Schwarz, Petitioner

State of South Dakota
County of Hellette: ss.

Emily Schwarz, being first duly sworn, on her oath deposes and says that she is the petitioner named in and who executed the foregoing petition; that she has read the same and knows the contents thereof, and that the same is a true of her own knowledge, except as to those matters therein stated upon information and belief as to which matters she believes it to be true.

Subscribed and sworn to before me this 6th day of October, 1939.

V. R. Branson
Clerk of Courts

County Court
Hellette (Seal)
County
South Dakota

2269

State of South Dakota ss
County of Hellette

In County Court:

I hereby certify that the within filed in the court on the 6th day of October A. D. 1939 and recorded in Vol. #1, Probate Calender records of said court on page 156.

V. R. Branson
Clerk of County Court

October 1, 1959

Summary of Water Rights Relationships Among

The Following Permits to Appropriate Water

253-2, Mr. Don Jones,	Power generation use
US 2-2, United States,	Waterfowl refuge use
US 3-2, United States,	Waterfowl refuge use
475-2, Arnold Corporation,	Irrigation use
476-2, Arnold Corporation,	Irrigation use
477-2, Arnold Corporation,	Irrigation use

This summary is for the purpose of explaining the pertinent factors concerning the water rights and water use along the Little White River, including its tributaries, from its headwaters to the Town of White River. The objective of this summary is to provide a basis for settlement of the continuing controversies among the holders of water rights.

All of the above water rights are held subject to preferences for water needs and uses by Indians under terms of treaties with the United States and for "domestic use" under provisions of State law.

Water rights 253-2, U. S. 2-2, U. S. 3-2 and 476-2 concern use of flows in the Little White River originating above the Town of White River. Water rights 253-2, 475-2 and 477-2 concern use of water originating in Spring Creek, a tributary of the Little White River. The relationships among these two groups of water rights holdings will be treated separately in this summary.

LITTLE WHITE RIVER

Water Right 253-2

Water rights records show that Permit 253-2 to appropriate 400 cubic feet per second of the flows in the Little White River at the Town of White River was granted to the Central West Public Service Company, Omaha, Nebraska, for electric power generating purposes on April 18, 1930. The Permit specified completion of works and application of water to beneficial use on or before April 18, 1931. On May 12, 1930 proof of completion of works was made. Proof of application of water to beneficial use was made on June 12, 1930. Water License 253-2 was issued June 9, 1930. The priority date is November 14, 1929. Supporting records indicate that the Central West Public Service Company purchased the power plant from the Town of White River in 1927 and that the plant started operation in about 1925. On February 10, 1937, the Central West Public

Service Company assigned their water right to Mr. Fred W. Schwarz, White River, South Dakota. Some time prior to July 10, 1938, Fred W. Schwarz brought action against the United States in the District Court of the United States concerning water use under water right 253-2 and U. S. 2-2 and U. S. 3-2. A Stipulation and Agreement for Settlement was negotiated among the litigants and filed with the Court on November 2, 1938. This agreement resulted in dismissal of the Court case. Pertinent provisions of this agreement provided that;

- (1) for the five year period immediately prior to construction of the LaCreek Migratory Waterfowl Refuge, the amount of beneficial use of water through the power plant was agreed to be 600,000 kilowatt hours annually or at the rate of approximately 70 kilowatt hours per hour.
- (2) the capacity of the power plant was 210 kilowatts per hour.
- (3) the United States agreed to release a sufficient amount of water to maintain a minimum daily production of not less than 70 kilowatts per hour, less any reduction that might be brought about by development of irrigation projects for Indian use of water, and to release additional quantities of water when possible to permit Fred W. Schwarz to recoup the kilowatt hours lost because of the operation of the Refuge, which was established at 359,000 kilowatt hours.

By contract, Fred W. Schwarz and Emily Schwarz, his wife, on April 21, 1939 sold a portion of their water rights to the United States (Department of Agriculture), which portion consisted of all flows originating in the Little White River and Lake Creek watersheds above the junction of these streams. This contract relieved the United States from its obligations under the above Stipulation and Agreement for Settlement.

On April 10, 1942 Emily Schwarz (Fred W. Schwarz deceased) assigned her water right to Oscar Schwarz. On August 5, 1954, notice was furnished that Oscar Schwarz, through Alva M. Kell, Trustee, sold the power plant to Don Jones, the present owner, on June 29, 1944.

Water Right 2-2

Water rights records show that withdrawal of all unappropriated water flowing in Lake Creek (also called LaCreek), a tributary of

the Little White River, was made under provisions of State law on October 16, 1934 in favor of the Bureau of Biological Survey, U. S. Department of Agriculture, for investigation of La Creek Migratory Waterfowl Refuge. On May 11, 1942, the Fish and Wildlife Service, U. S. Department of the Interior was designated to be the federal agency acting on behalf of the United States. Prior to July 10, 1938, Fred W. Schwarz, holder of water Right 253-2, brought action against the United States in the District Court of the United States. Charges were withdrawn, apparently, upon execution of a Stipulation and Agreement for Settlement among the litigants filed with the Court on November 2, 1938. (see summary under Water Right 253-2). By contract dated April 21, 1939, the United States for \$20,000 purchased a portion of the water rights held by Fred W. Schwarz under Water Right 253-2. This purchase covered all flows in the Little White River and Lake Creek which originate above the confluence of these streams. On May 22, 1945, Certificate of Construction of Works was issued wherein the amount of water for use at the La Creek Migratory Waterfowl Refuge was specified as 23,710 acre feet annually. A supplemental Certificate of Construction of Works was issued March 11, 1948. This Certificate included the water rights purchased by the United States from Emily Schwarz consisting of all rights under water right 253-2 to flows of Lake Creek originating above U. S. dam #10.

Water Right 3-2

Water rights records show that withdrawal of all unappropriated water flowing in the Little White River (also called the South Fork of the White River) above its junction with Lake Creek was made under provisions of State law on December 15, 1935 in favor of the Bureau of Biological Survey, U. S. Department of Agriculture, for investigation of La Creek Migratory Waterfowl Refuge. On May 11, 1942, the Fish and Wildlife Service, U. S. Department of the Interior was designated to be the federal agency acting on behalf of the United States. The Court action brought by Fred W. Schwarz, the Stipulation and Agreement through which the Court action was dismissed and the contract between Fred W. and Emily Schwarz and the United States, which are outlined in above summaries of water rights 253-2 and U. S. 2-2, apply to this water right (U.S.3-2) also. On February 10, 1948, Certificate of Construction of Works was issued wherein the amount of water to be diverted from Little White River for use at La Creek Migratory Waterfowl Refuge was specified as 1827 acre feet of storage water annually plus 843 acre feet of seasonal use and 60 cubic feet per second. A supplemental Certificate of Construction was issued on March 11,

1948 which included the water rights acquired from Emily Schwarz. This supplemental Certificate included the water rights purchased by the United States from Emily Schwarz consisting of all rights under water right 253-2 to flows of the Little White River originating above its confluence with Lake Creek.

Permit 476-2

Water rights records show that Permit to appropriate 4.48 cubic feet per second for irrigation use was granted July 9, 1958 by the South Dakota Water Resources Commission to the Arnold Corporation, Nanzel, Nebraska. During public hearings on July 9, 1958, Mr. Robert Burnett, representing the Rosebud Sioux Tribe of Indians, Mr. G. R. Landbloom, U. S. Bureau of Indian Affairs, and Messrs. Don Jones, Sr. and Don Jones, Jr., appeared before the Commission to protest the granting of water right Permits 475-2, 476-2 and 477-2. Action by the Commission on July 9, 1958 is stated in the following excerpt from the Commission minutes for this day.

"Arnold Corporation

475-2 - Application is for 6.0 cfs from Spring Creek and ground water to irrigate 1078 acres. Proof of Publication not received.

476-2 - Application is for 4.92 cfs from the Little White River to irrigate 345 acres. Proof of Publication not received.

477-2 - Application is for 3.2 cfs from ground water to irrigate 226 acres. Proof of Publication not received.

It was moved by Mr. Davis that these applications be approved subject to reconfirmation of Commission policies in this particular case by the Attorney General on non-interference with Indian rights subject to receipt of proof of publication and subject to deletion of Indian owned land from the application. Motion seconded by Mr. Ferris and unanimously carried."

Conditions associated with Commission approval were satisfied and Permits 475-2, 476-2 and 477-2 were issued on December 2, 1958. On December 4, 1958, Mr. Richard Jones and Mr. Don Jones Jr., on behalf of Mr. Don Jones, Sr., appeared before the Commission in further protest to the granting of the Arnold Corporation Permits. Mr. Richard Jones presented a protesting petition containing 37 signatures.

Permit 476-2 as issued appropriates 4.48 cubic feet per second instead of 4.92 cubic feet per second due to deletion of land to be irrigated. This Permit includes the limitation "The lands to be irrigated are within the apparent boundaries of the Rosebud Indian Reservation. Use of water granted by this Permit shall not interfere with Indian use of water." This Permit specifies that construction of works is to be completed on or before July 9, 1963 with at least one-fifth of the works to be completed on or before January 9, 1961. Proof of beneficial use of water is to be furnished on or before July 9, 1963.

Conclusion (Little White River)

1. Fred W. Schwarz sold a portion of his water right 253-2 to the United States and thereby relinquished his claim under water right 253-2 to use the waters originating in Lake Creek and the Little White River above the junction of these two streams.

2. After being used by the United States on the La Creek Migratory Waterfowl Refuge in accordance with water rights U. S. 2-2, U. S. 3-2 and the acquired portion of 253-2, a portion of this water returns to the Little White River watercourse. Water so returning becomes unappropriated water and is available for appropriation by applicants.

3. A portion of the unappropriated return flows from the La Creek Refuge was granted the Arnold Corporation by Permit to Appropriate Water 476-2.

4. Completion of water right acquisition, through inspection of construction and proof of application of water to beneficial use, will establish the amount of water to be used under Permit 476-2. This amount will be the least of three determinations, the amount specified in the Permit (4.48 cfs), the capacity of the diversion works or the amount expressed in cubic feet per second arrived at by dividing the acreage irrigated by 70. Within this amount, beneficial use of water for irrigation may be made when this or a greater amount of water plus river channel losses to the Arnold diversion points and plus downstream Indian use are flowing at the junction of Little White River and Lake Creek.

Basis for Settlement (Little White River)

Water rights records show that water use by the La Creek Migratory Waterfowl Refuge under water rights U. S. 2-2 and U.S. 3-2 is about 26,500 acre feet annually. Based upon 600,000

kilowatt hours of power production, the use of water at the White River power plant is about 42,000 acre feet annually. Irrigation water use under the Arnold permits will be about 500 acre feet annually. These amounts total 70,000 acre feet. To this must be added the indeterminate amount used by Indians.

The annual flows in the White River as measured near the Town of White River are tabulated below.

Water Year (Oct.-Sept.)	Max. (cfs)	Min. (cfs)	Flow Annual mean (cfs)	Annual. (Ac. ft.)
1950	2500	41	148	107,300
1951	509	29	128	92,550
1952	5220	7	185	134,500
1953	2440	17	189	137,000
1954	300	32	107	77,400
1955	1500	36	139	101,000
1956	621	22	100	72,790
1957	608	43	131	94,490
1958	603	36	128	92,530

These measurements do not include the use in the Refuge nor Indian use since the measurement is made after this water is used. On an annual use basis, there is ample water to meet present requirements plus some additional development.

There is not a record of past minimum power generation.

Based upon the average 70 kilowatt per hour production (600,000 Kwh annually) water flow requirements are about 60 cfs at the power plant. During the above period, the late summer and winter time produced less than this amount of flow at least once each year and quite often during some years.

In the interest of the most beneficial use of water for all purposes, everything possible should be done to alleviate these critical low flow periods. Some workable agreement between the water right holders may be possible.

SPRING CREEK

Water Right 253-2

The summary for this water right under LITTLE WHITE RIVER is applicable here since Spring Creek flows are tributary to the Little White River above the location of the power plant. References to the relationship to water rights U.S.2-2 and U.S.3-2 are not applicable here.

Permit 475-2

Water right records show that Permit to Appropriate Water in the amount of 6 cubic feet per second from Spring Creek and from a well for irrigation of 1078 acres of land was granted July 9, 1958 by the Water Resources Commission to the Arnold Corporation, Wenzel, Nebraska. Protesting presentations on behalf of the Rosebud Sioux Indian Tribe, the U. S. Indian Service and Mr. Don Jones, Sr., and action by the Commission are outlined under Permit 476-2, LITTLE WHITE RIVER.

This Permit specifies completion of works on or before July 9, 1963 with at least one-fifth of the work to be completed on or before January 9, 1961. Proof of beneficial use is required on or before July 9, 1963.

Permit 477-2

Water rights records show that Permit to Appropriate Water in the amount of 3 cubic feet per second from a well for irrigation of 210 acres of land was granted July 9, 1958 by the Water Resources Commission to the Arnold Corporation, Wenzel, Nebraska. Protests are summarized under Permit 476-2, LITTLE WHITE RIVER.

This Permit specifies completion of works on or before July 9, 1963 with at least one-fifth of the work to be completed on or before January 9, 1961. Proof of beneficial use is required on or before July 9, 1963.

Conclusions (Spring Creek)

A unique condition exists along Spring Creek at the proposed irrigation sites. Surface water flowing in Spring Creek is tributary to the Little White River. Practically all the ground water originating in Spring Creek Valley is tributary to Minnechadusa

Creek. Spring Creek surface flows into Little White River occur during snowmelt, heavy rainfall times and when the ground water table is significantly above the creek bed. When the ground water level is below the bed of Spring Creek, it flows into Minnehadusa Creek to the south. This relationship has been confirmed by test well construction.

Except for the immediate drawdown area around each of the two proposed irrigation wells, withdrawal of water from the wells will have no measurable effect upon ground water levels and will not reduce the surface flows in Spring Creek to which water right 253-2 has prior right. Unappropriated water is therefore available for the well irrigation under Permits 275-2 and 277-2.

Unappropriated water exists in the surface flows of Spring Creek during snowmelt and heavy rainfall periods since such flows usually occur at times when flows in Little White River at the Town of White River are greater than can be used by the power plant.

Unappropriated flows exist in the surface flows in Spring Creek whenever the groundwater table is high enough to replace the water taken. The amount of water granted under Permit 275-2 from this sources is 3.8 cubic feet per second. The diversion point is located far enough upstream so that sufficient distance is provided for ground water replacement.

Explanations of these conditions were presented during the public hearings before the Commission on July 9, 1958. They were again discussed at the meeting of the Commission on December 4, 1958. Copies of these parts of the Commission meeting minutes are attached to this Summary for information purposes.

Basis for Settlement (Spring Creek)

The Water Resources Commission must protect the prior water right 253-2 in administering water withdrawals under Permits 475-2 and 477-2. Observation wells for this purpose have been constructed. Data from these wells and perfection of water rights under Permits 475-2 and 477-2 (construction of works and application of water to beneficial use) will provide the information necessary to limit, if necessary, withdrawal of surface water from Spring Creek in order to protect the prior right 253-2.

ADDENDUM

Excerpts from the Minutes of the meetings of the Water Resources Commission held on July 9, 1958 and December 4, 1958.

July 9, 1958

HEARINGS

475-2, 476-2, 477-2 - Arnold Corporation

Robert Burnett, President of the Rosebud Sioux Tribe appeared before the Commission in objection to application 475-2, 476-2 and 477-2, the Arnold Corporation.

Robert Burnett: I appear before this Commission as president of the Rosebud Sioux Tribe and in behalf of the governing body of the Tribe. I am here to question the jurisdiction of this Commission. We do not think that you have the jurisdiction over the water rights on the reservation.

In the Act of March 2, 1889 the Rosebud Reservation was set up for the undisturbed use of the Rosebud members.

Mr. Burnett quoted Article 22 Constitution of the U.S.

We do not think that you can overlook our Constitution.

Also I would like to question the Commission as to the scientific facts on the availability of water in connection with this. You have facts about White River but not on Spring Creek. I believe the appropriation as requested is in excess as to what there is in that creek.

I would also like the Commission to take a look at a Court Case held in Federal Court upon which a decision was reached.

There are other members of our tribe who have land holdings in this same area. In the near future the Arnold Corporation will be in Federal Court, we claim they do not hold title to those lands. So you may be making appropriation of water on lands that do not belong to this Corporation.

In reply to Mr. Taylor's question on more definite information on the Court Case, Mr. Burnett answered that it was Swartz versus the Tribe and that it was in the latter 30's or first part of the 40's and has bearing upon the water rights of the Little White River.

Mr. Grimes: Some of the objections you have listed as to whether or not State Water Laws apply to Indian Reservations have been

questions between the Federal Government and the States for many years.

These questions have not been resolved even though they have been considered by high policy makers in government. In part they remain unanswered because of differing interpretations of Federal laws which have not been resolved by Congress although proposed legislation is now in committee. In part the questions result from Federal agencies policy interpretations of decisions of the United States Supreme Court. Even now additional cases are before the Supreme Court. In part the questions arise because of the lack of definitions as to the treaty obligations of the United States to Indians and Indian Tribes. In part, also, your questions concern the meaning of our Federal and State Constitutions.

These questions face us when considering Federal water resource developments involving local sponsorship. Irrespective of which Federal agency has jurisdiction, the contract between the United States and the local sponsor covering the project, contains provisions through which the local sponsor assumes full liability for all damages which may result from construction, operation or maintenance of the project. Such provisions are in these contracts because the Federal Government assumes no jurisdiction over individual property rights under the powers granted by the Constitution, Indian rights excepted, perhaps, through the provisions of international treaty obligations. State Government then becomes the highest level of legislative government concerned with property rights. The State water laws may be considered a discharge of that responsibility because they provide for acquisition of property rights in public water supplies and protection for investments made in water supply facilities.

Your questions come up when States negotiate inter-state compacts concerning water. Such a compact is now being negotiated between the States of Nebraska, South Dakota and Wyoming concerning the waters of the Niobrara River drainage basin. This drainage basin includes a portion of your Rosebud Indian Reservation. Compact negotiations involve such questions as; what are the boundaries of the Indian Reservation? - do the obligations of the United States apply to non-Indian owners of land or to the Indians only? - just what are the responsibilities of the United States under the treaty? Specific answers to these questions are necessary because the provisions of the compact are not binding in any instance involving international treaty provisions.

Those of us concerned must consider your questions when administering State water laws. We must recognize that State laws do

not apply in cases of Federal jurisdiction. Where South Dakota Water laws do have jurisdiction, however, the Water Resources Commission is assigned the responsibility to carry forward the provisions of such State laws.

I have spent some time here with these explanations because I am convinced that understanding of the problems brought about by the lack of answers to these questions is the best way to get them answered. Pending resolution of these high level national water policies, the Water Resources Commission must take action on the water right applications directed to them. The Commission does not believe that they can discharge their obligations to the people of South Dakota by inaction or deferment pending settlement of these national controversies. The Commission recognizes the limitations of the jurisdiction of State water laws where Federal Indian Treaties are involved. We do not consider that the Indian treaties cover non-Indian owners or land owned by non-Indian owners within an Indian reservation. We believe that such non-Indian property owners are entitled to the rights and protection offered by State laws since Federal jurisdiction does not include them. We realize that water rights acquired under provisions of State laws cannot adversely affect Indians use of water. In case of conflict, the holder of State water rights must curtail his use of water to the extent necessary. We believe, however, that anyone, desiring to use water which, otherwise, would flow unused, may acquire the privileges and protection of the South Dakota water laws subject to the provisions of such laws. In fact, we consider that a non-Indian landowner within the boundaries of an Indian Reservation is subject to the provisions of the State water laws. We believe that these policies of the Commission administered with good judgement is equitable to everyone concerned.

We are pleased that you have given us the benefit of your position concerning the water right application by Mr. Arnold. You are assured that the Commission appreciates fully the rights of Indians to use of water.

Mr. Burnett: If approval is granted to the Spring Creek application what would happen if an Indian filed below?

Mr. Grimes: If an Indian wished to obtain water rights under State laws he would have the same rights and privileges as any other applicant.

I might mention also, that Mr. Arnold has deleted from his application those lands which are owned by Indians. I believe this was

done because of questions raised by the Indian Service.

I might also add here that Mr. Arnold's application does not include water storage facilities. This means that he will use flood flows--that is flows of water during periods when there is excess water in the creek. The State water laws anticipate that new water rights will be issued when there is unused water available. The water rights of the Arnold Corporation, if granted, will include only those waters which are in excess of prior water rights use downstream and use of water by Indians.

Mr. Burnett: The type of soil is pure sand - I never have seen quick overflow - their water right is going to be very limited.

Mr. Cronin asked Mr. Burnett just what the objection was.

Mr. Burnett: Excessive water appropriation might hurt the rest of the people in that area.

Mr. Bigger: In case this permit is granted what assurance can we give these people that their water rights will be respected?

Mr. Grimes: At any time there is a shortage of water, the Arnold Corporation will have to curtail operation if water is needed for Indian use or for use by prior water right holders.

Mr. Ferris: What about ground water survey?

Mr. Grimes: We have observation wells downstream from the Indian Reservation. Spring Creek has only had spot checks of surface water measurements which must be correlated with stream gaging records.

Mr. G. R. Landbloom, E. W. Barrett, G. W. Wilcox, F. W. Pdersea and C. R. Myer of the Indian Bureau, Aberdeen, South Dakota also appeared in objection to the Applications of the Arnold Corporation

Mr. Landbloom, Assistant Director of the Aberdeen Land Area Office of the Indian Service presented (Exhibit A herewith attached) "Statement of the Bureau of Indian Affairs before the South Dakota Water Resources Commission at the Hearings on the Applications of the Arnold Corporation for waters for Irrigation Purposes". He then commented on the statements made by Mr. Grimes as very interesting and that he assumed they will be made a part of the Arnold Permits. He also said that he assumed that such statements were the opinion of the Water Resources Commission and the Attorney General and various other state organizations. He asked for a copy of Mr. Grimes statements.

IV.

Mr. Grimes again stated that if the Arnold Corporation interfered with Indian use the Corporation would have to curtail irrigation. He asked Mr. Landbloom if Mr. Landbloom did not feel that the Arnold Corporation should be entitled to the use of that water as long as full protection is provided for the Indian's use of water.

Mr. Landbloom stated he appreciated the fact that we have a problem and he was only acting as part of his job.

Don Jones, Jr. and Don Jones, Sr. also appeared in objection to the Arnold Applications.

Don Jones, Jr.: There is on file with the State, a water right on the hydroelectric power plant on the Little White River owned by my father (253-2 Central West Public Service Co.). It is listed as 400 cfs. We are wondering how and why water rights are being let above us without notifying us. We just stumbled across this.

Mr. Grimes: In actual fact the publication of notice of Mr. Arnold's application for water rights is a notification to all concerned. We watch very closely that the water rights granted upstream do not interfere with basic flows. Those considerations go into any action taken by the Commission. Power and Irrigation use have the same standing under our Law.

Don Jones, Jr.: Whose responsibility is it to check whether flow is adequate?

Mr. Grimes: The Water Resources Commission staff evaluates the availability of unappropriated water prior to granting a permit and administers the use of water under provisions of the water laws among the water right holders.

Don Jones, Jr.: Just how could you be assured that when he starts he won't interfere?

Mr. Grimes: We have a pretty good idea from the inspection of the constructed capacity of the works. Also, we have objections from other water right holders when they believe that their water rights are being interfered with. Will you state your objection?

Don Jones, Jr.: We have a prior water right valid for many years and do not want any upstream water rights to interfere.

Mr. Grimes: Your water right is for power generating purposes

from Little White River flows at White River. How much of the 400 cubic feet per second that you mentioned do you divert through your power plant?

Mr. Jones, Jr.: Well I don't know exactly. We run the stream through the plant. I would say that we come pretty close to it.

Mr. Grimes: Normally the amount of water used in a power plant varies considerably because the demand for electricity varies during the day and seasons of the year. Don't you find that your use of water varies in this way?

Mr. Jones, Sr.: Not so much. We have a contract with the REA so that they take all that we produce.

Mr. Grimes: You do spill water over the dam, do you not?

Mr. Jones, Jr.: Yes, once in a while. Mostly the water overflows during snow melt time when the ground is frozen. The Arnold irrigation will not do any good at that time.

Mr. Cronin: Are there any other questions or statements--Thank you very much Mr. Jones.

Mr. Ed Arnold appeared in behalf of his applications. Mr. Grimes asked Mr. Arnold if it was the intention of the Corporation to use water whenever it was in the Creek.

Mr. Arnold answered that it was the idea to irrigate with a sprinkler system to get alfalfa established - to go from one spot to another with the sprinkler. As far as irrigating the year around he said there just wasn't any water there. He commented that 70% of the water out of Spring Creek goes into Nebraska and that they had no way of storing water and that if it seemed advisable they would put in wells in a few of the spots.

Mr. Arnold was reminded of the 3 year period non-use forfeiture. He said he knew of that and asked if some of the ground water test wells couldn't be used as observation wells. Mr. Grimes replied that we would like that very much and explained how the observation wells were drilled.

Mr. Cronin asked how far it was to any neighbors wells and Mr. Arnold replied about 6 miles to Indian neighbors and some others only 1½ miles.

December 4, 1958

The following names were registered by the group appearing before the Water Resources Commission in objection to the Water Rights approved for the Arnold Corporation on Spring Creek, a tributary of the Little White River, No's. 475-2, 476-2 and 477-2.

Don Jones, Sr., White River	C. N. Visely, Moshier
Paul Monroe, White River	Howard Richter, Wood
Don Jones, Jr., White River	Ted C. Johnson, White River
Pete Nohrenberg, White River	Einer Petersen, White River
Richard Jones, White River	L. A. Iwan, White River

Chalmer R. Myer, General Engineer, U. S. Bureau of Indian Affairs was also present.

Mr. Richard Jones acted as spokesman for his brother, the owner of the Central West Public Utilities Hydroelectric Plant at White River. He stated that it was felt that any diversion by the Arnold Corporation or any other upstream diversion would be a violation of the Water Right #253-2 held by the Central West Public Utilities Hydroelectric plant which authorizes use of 400 cubic feet per second. He further stated that this water right had been adjudicated by the Court and that it was believed that if the Arnold Corporation was allowed to take any water out of Spring Creek he would be taking the flow out of Little White River and would be cutting into the 400 cubic feet per second right held by the hydroelectric plant.

At the request of Acting Chairman Cronin, Mr. Grimes explained in detail the reasons for the conclusion reached by the Water Resources Commission to the effect that the water rights granted to the Arnold Corporation would not effect the flows of Little White River at the hydroelectric plant at the Town of White River.

At the sites of the Arnold Corporations' proposed irrigation diversions, ground water flows into the Minnechadusa Creek valley. During lower surface water stages in Spring Creek, ground water is the main contributing source. During higher stages in Spring Creek, some of the surface waters contribute to the ground water supply. The amount of the interchanges of surface and ground waters depends upon the elevation of the water surface in Spring Creek and the elevation of the ground water table. These natural forces are changing continuously.

The Arnold Corporations's proposed diversions from Spring Creek will, of course, lessen the surface flows at that point.

Downstream, however, the natural forces controlling the surface and ground water flows are changed by the diversion of surface flows. Natural adjustments start immediately. Increased ground water appears as surface flow. Given enough distance of adjacent surface and ground water contact, natural balance is restored and the surface water flows become the same as though no diversion of surface flows was made, providing that the diversion of surface water is not excessive. By its approval of the Permits to appropriate Water by the Arnold Corporation, the Water Resources Commission determined that there was unappropriated water available to the Corporation at the locations proposed in the application. This means that the Water Resources Commission believes that the withdrawal of water by the Corporation in the amount specified in the Permits will not adversely affect other water rights in the Little White River watershed, including the power plant rights at the town of White River, nor other water rights in the Minnechadusa Creek watershed. It should be understood, of course, that, if the irrigation withdrawals by the Arnold Corporation do interfere with prior water rights, the Water Resources Commission is required to restrict the Arnold Corporation's use in accordance with the State water laws.

It is because of the natural relationships between surface and ground water at the proposed diversion points and the natural flow of ground water into the Minnechadusa Creek watershed that the Arnold Corporations Permits to appropriate Water were approved.

In answer to Mr. Jones question as to who makes the determination when questions arise concerning water use, Mr. Grimes stated that the Water Resources Commission has this responsibility under provisions of the State water laws and also, that the cases may be taken to the Courts for determination of the respective rights of water users. It is for the purpose of obtaining the data necessary for administration of the Arnold Corporations's water use as well as for information needed in Niobrara River Compact negotiations with Nebraska that the Water Resources Commission plans to install ground water measurement wells in the Minnechadusa Creek and Spring Creek valleys.

In answer to the complaint that there had been other applications refused and Arnold's approved, Mr. Grimes again pointed out that it was the special relationships between surface and ground waters in the area that resulted in approval of the Arnold permits.

When asked why the Game refuge lake cuts down the flow in the Little White River, Mr. Grimes explained that it was the formation of non-porous materials at the lake site and the evaporation from the large lake surface causing appreciable loss of water.

Mr. Don Jones, Sr., stated that they had knowledge of Arnold's diverting water for several years. He said that it has been plainly visible for the last two years at the plant because the river will flow steady for a few days and then drop.

In answer to the question of why observation wells hadn't been put down before the Arnold water rights were approved, it was explained that the observation wells are put in as administration after the fact, not as investigation before the fact and that the Water Law provides that later priority use of water will have to be curtailed if adverse conditions arise. It would be helpful to the Commission to have observation wells and stream measurements to a greater extent than now exist. However, this costs sizable amounts of money and the Legislature has not seen fit to make the extra investments.

It was commented that there was a possibility that the Federal Government would build a dam on Little White River four miles above the Town of White River and in answer to the question "Would they have to buy Water Rights from Mr. Arnold?" Mr. Grimes said no, but that prior water rights including the power plant and Arnold rights would have to be respected in the building of such a Federal irrigation project. If, by some chance, the Federal project required the water now covered by State Water rights, just compensation would have to be paid for the taking.

Don Jones, Jr. questioned Mr. Grimes about certified copies of the Arnold applications sent to him on July 14th after their approval on July 9th. Mr. Grimes explained that the copies sent were the current records and were necessarily incomplete because the Permits were approved subject to Mr. Arnold's completion of conditions on July 14. The status of the certified copies were explained in the transmittal letter to Mr. Jones. Mr. Grimes further stated that the Permits were now in process of completion, Mr. Arnold having met the conditions within the past two or three days.

Mr. Richard Jones stated that it was his understanding that the water for Arnold's water rights would actually come from the Minnechadusa watershed, Mr. Grimes answered that such would be the effect of the Arnold diversions.

Mr. Richard Jones presented for the record, Petitions in Protest of the Arnold Permits, signed by individuals from the Town of White River.

Some Flow Records of Little White River and LaCreek

- A. Little White about 12 miles upstream with confluence with La Creek
- B. La Creek about 12 miles upstream with confluence with Little White
- C. La Creek about 2 miles upstream with confluence with Little White
- D. Little White about 20 miles downstream with confluence with La Creek
- E. Little White near Rosebud
- F. Little White below City of White River

DATE	Monthly Average Flow in C.F.S.						F
	A	B	C	A & C	D	E	
July-1962					86.5	211.	574.
August	10.4	17.0	10.4	28.8	44.1	96.8	110.
September	9.12	17.3	3.39	12.5	26.6	73.3	74.3
October	12.1	19.1	3.59	15.7	39.6	82.2	90.6
November	17.9	23.1	18.8	36.7	44.8	99.9	105.0
December	16.0	20.2	22.7	38.7	57.1	110.	111.
January-1963	7.4	17.6	9.0	16.4	36.8	89.7	93.2
February	20.0	24.4	18.0	38.0	62.8	104.	105.
March	34.1	26.4	39.2	73.3	89.5	169.	178.
April	27.7	23.3	29.5	57.2	77.9	155.	174.
May	18.5	19.0	13.7	32.2	52.7	119.	133.
June	47.5	20.6	11.3	58.8	108.	171.	198.
July	11.5	15.5	7.64	19.1	28.0	72.3	76.4
August	7.51	14.9	1.16	8.7	24.6	56.2	61.1
September	10.7	17.9	0.30	11.0	25.1	70.4	71.3
October	11.5	19.8	6.7	18.2	29.8	77.1	73.4
November	14.2	18.3	14.3	28.5	42.7	91.3	88.8
December	8.0	18.1	9.0	17.0	30.8	64.2	55.2
January-1964	7.2	19.9	19.2	26.4	26.5	80.2	71.9
February	10.8	20.7	30.1	40.9	36.5	93.6	90.3
March	24.0	26.7	12.8	36.8	51.5	101.	98.2
April	41.4	31.6	30.2	71.6	91.9	169.	179.
May	31.6	23.0	36.6	68.2	94.0	148.	163.
June	22.9	22.0	14.9	37.8	62.0	119.	165.
July	10.4	13.5	14.9	25.3	38.8	85.4	84.9
August	5.38	12.9	2.06	7.5	18.6	48.6	49.1
September	6.74	15.6	1.16	7.2	22.3	56.1	53.3
October	10.5	16.9	1.07	11.6	21.3	63.9	56.9
November	9.7	16.3	3.99	13.7	25.6	74.0	67.3
December	8.3	14.7	18.9	27.2	21.9	70.6	69.4
January-1965	9.1	19.8	20.6	29.7	35.0	79.7	79.8
February	12.3	17.1	21.8	43.1	42.4	95.4	86.8
March	18.7	20.5	7.76	26.5	36.0	98.9	103.
April	34.6	22.3	0.09	34.7	52.7	107.	117.
May	30.2	23.8	5.15	35.4	52.2	103.	118.
June	55.0	21.5	19.	74.7	74.4	109.	125.
July	39.5	17.4	36.4	75.9	105.	163.	155.
August	9.83	15.3	19.9	29.7	43.3	78.1	71.7
September	13.5	19.5	10.5	24.0	39.8	79.8	76.0

Some Flow Records of Little White River and LaCreek (Continued)

DATE	Monthly Average Flow in C.F.S.						
	A	B	C	A & C	D	E	F
June (Average)	41.8	21.3	15.3	57.1	81.5	133.	162.
July (Average)	20.5	15.1	19.6	40.1	66.8	135.	222.
August (Average)	8.3	15.0	8.3	16.6	33.6	70.	72.7
September (Average)	10.0	17.6	3.8	13.8	28.4	69.5	68.7

Some Flow Records of Little White River and La Creek

- A. Little White about 12 miles upstream with confluence with La Creek
- B. La Creek about 12 miles upstream with confluence with Little White
- C. La Creek about 2 miles upstream with confluence with Little White

Monthly Average Flow in C.F.S.

DATE	A	B	C	A & C
March-193	31.0	23.6	10.1	41.1
April	25.6	22.9	26.0	51.6
May	30.4	22.5	42.4	72.8
June	12.6	16.1	12.6	25.2
July	9.40	15.8	21.5	30.9
August	3.42	13.1	37.6	41.0
September	5.50	15.6	17.2	22.2
October	8.60	15.8	23.8	32.4
November	11.6	14.5	17.6	29.2
December	7.2	7.4	17.2	24.4
January-1939	12.0	15.0	20.9	32.9
February	11.4	11.1	14.9	26.3
March	45.0	26.5	24.9	69.9
April	25.8	18.9	.17	26.0
May	37.9	9.99	.03	37.9
June	11.4	8.8	.03	11.4
July	7.91	10.9	.24	8.1
August	4.91	13.3	.08	5.0
September	4.87	13.7	.11	5.0
October	9.8	17.9	0	9.8
November	11.9	20.8	0	11.9
December	11.2	23.4	0	11.2
January-1940	5.5	13.4	0	5.5
February	8.5	21.2	0	8.5
March	33.6	26.9	.06	33.7
April	22.7	25.2	15.8	38.5
May	12.2	14.6	9.72	21.9
June	5.65	11.3	.56	6.21
July	2.01	10.3	3.58	5.59
August	1.80	15.7	4.88	6.68
September	5.46	15.3	2.40	7.86
June	9.9	12.1	4.4	10.9
(Average)				
July	6.4	12.3	8.4	14.8
(Average)				
August	3.4	14.0	14.2	14.2
(Average)				
September	5.3	14.9	6.6	11.7
(Average)				



Department of Water & Natural Resources

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

April 15, 1985

John Didler
White River SD 57579

Notice

Re: Violation of Requirement To Submit 1984 Irrigation Questionnaire

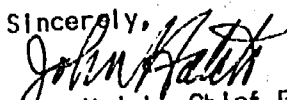
Our records indicate that the 1984 Irrigation Questionnaire has not been submitted for Permit No(s) 884-2. The request for the Questionnaire was dated October 17, 1984. The Water Management Board has directed that owners of water permits who have not submitted 1984 Irrigation Questionnaires be given 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). 884-2 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: John Didler
White River, SD 57579

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

SUBJECT: Amendment to Water Permit No(s). 884-2.

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). 884-2 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
623 East Capitol
Pierre, South Dakota 57501-3181

Attachment to Water Permit No(s). 884-2

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). 884-2 to add the following qualification:

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



Department of Water & Natural Resources

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

March 23, 1987

JOHN DIDIER
SR 77 BOX 504
WHITE RIVER, SD 57579

NOTICE

Re: Violation of Water Permit No(s). 884-2

Our records indicate that the 1986 Irrigation Questionnaire has not been received for Permit No(s). 884-2. 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). 884-2 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). 884-2 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

May 14, 1987

NOTICE OF ONE YEAR SUSPENSION OF WATER PERMIT

TO: JOHN DIDIER
SR 77 BOX 504
WHITE RIVER, SD 57579

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

John Hatch

SUBJECT: One Year Suspension Of Water Permit No(s). 884-2 If
The 1986 Irrigation Questionnaire Is Not Received By
June 1, 1987

Pursuant to the provisions of the Notice dated March 23, 1987,
and following the Hearing May 6, 1987, the Water Management Board
ordered:

That Water Permit No(s). 884-2 be **SUSPENDED** until December 31,
1987 unless the required 1986 Irrigation Water Use Questionnaire
is received by June 1, 1987.

Suspension of a permit means water may not be pumped during the
1987 Irrigation Season. Decisions of the Board may be appealed
to the Circuit Court and the Supreme Court as provided by law.



Department of Water & Natural Resources

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

May 29, 1987

Permit No. 884-2

John Didier
SR 77 Box 504
White River, SD 57579

Dear Mr. Didier:

I am writing to acknowledge receipt of your 1986 Irrigation Questionnaire. A notice was sent to you May 14, 1987 regarding the Board action taken May 6, 1987 to suspend your permit if the 1986 irrigation questionnaire was not received before June 1, 1987.

You may disregard the May 14 notice. With receipt of your 1986 questionnaire, your permit will not be suspended.

If you have any questions, please contact us.

Very truly yours,

A handwritten signature in cursive script that reads "John Hatch".

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

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

3. Article Addressed to:

4. Article Number
P576 309 763

Type of Service:

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

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5. Signature - Addressee
X

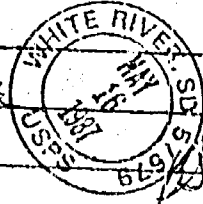
6. Signature - Agent
X. *Theresa Bonds*

7. Date of Delivery
5/16/87

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Feb. 1986

DOMESTIC RETURN RECEIPT



#884-2

 **Department of
Water & Natural Resources**

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

February 17, 1989

John Didier
SR 77, Box 504
White River, SD 57579

Dear Mr. Didier:

On October 6, 1988, the Water Management Board adopted rules to implement a 1988 law for application of chemicals through irrigation systems. The rules establish equipment standards, performance standards and installation requirements for irrigation systems that apply chemicals (fertilizers, insecticides, or herbicides) with irrigation water.

You have indicated on your 1988 Water Management Board Irrigation Questionnaire that you do apply chemicals with irrigation water. A copy of the new rules for chemigation are enclosed for your information.

The new standards include:

- * a check valve between the irrigation pump and the point of chemical injection;
- * a vacuum relief valve on top of the pipeline between the irrigation pump and the irrigation pipeline check valve;
- * a low-pressure drain on the bottom of the pipeline between the irrigation pump and the irrigation pipeline check valve;
- * a chemical injection line check valve between the chemical injection pump and the point at which the chemical is injected into the irrigation line; a second check valve is required if the chemical injection pump is not a positive displacement pump;
- * an interlock system which ensures that the chemical injection pump will stop whenever the irrigation pump stops;
- * an inspection port between the irrigation pump and the check valve on the irrigation line;

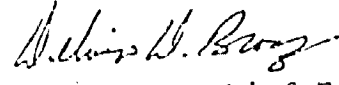


Each of these equipment requirements are discussed more thoroughly in Sections 74:02:09:05 through 74:02:09:10 of the enclosed rules. Appendix A contains diagrams of the arrangements of these anti-pollution devices.

The equipment must be installed according to the manufacturer's specifications, calibrated, and maintained in good working condition. All chemical product labels must be followed and warning signs must be posted. These rules also require reporting of all spills, accidents, and system malfunctions. A 24-hour telephone number is provided.

The chemigation rules contain notification and record keeping requirements. Prior to using chemigation, notification must be given to the Chief Engineer on the enclosed Form 1C. Information that must be provided in this notification includes the water permit or right number, the name, address, and telephone number of the water permit or right holder and of the system operator, and the legal description of the lands on which the system is located. A record of the name, quantity, dates and hours of each chemical applied must be provided to the Chief Engineer on Form 2C. A copy of this form is also enclosed for your information. It will be mailed with the annual irrigation questionnaire and must be returned with the questionnaire by the date specified. If you have any questions regarding these rules or need additional copies of the forms, please contact Susan Bowar, Water Rights Engineer (605-773-3352).

Very truly yours,


for JOHN HATCH, Chief Engineer
Water Rights Division

**SOUTH DAKOTA Department of
Water & Natural Resources**

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

February 9, 1990

MRS. JOHN DIDIER
SR 77 BOX 504
WHITE RIVER, SD 57579

NOTICE

RE: Violation of Water Permit No(s). 884-2

Our records indicate that the 1989 Irrigation Questionnaire has not been submitted for Permit No(s). 884-2. The request for the Questionnaire was dated October 13, 1989. The Water Management Board had directed that owners of water permits who have not submitted the 1988 Irrigation Questionnaire be given notice of permit violation and a hearing to be held by the Board. The hearing will be held to determine action to be taken by the Board for violation of Water Permit No(s). 884-2 qualification:

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

The hearing will be held at 8:30 am, March 7, 1990 at the Howard Johnson's, Roosevelt-Jefferson Room, I-90 at LaCrosse, Rapid City SD.

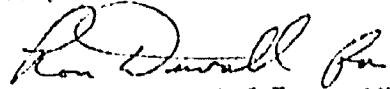
The hearing will be conducted pursuant to the provisions of SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to procedures contained in SDCL 1-26. Following the hearing, the Water Management Board can:

1. Suspend Permit No(s). 884-2 until the 1989 Irrigation Water Use Questionnaire is submitted or for a period of up to one year;
2. Postpone any action;
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 is received in this office before the March 7th hearing date, you will no longer be in violation of your permit and your name will be deleted from the agenda for the hearing.

Very truly yours,


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

 **Department of
Water & Natural Resources**

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

February 23, 1990

884-2

Mrs. John Didier
SR 77, Box 504
White SD 57579

Dear Mr. Didier:

I am writing to acknowledge receipt of your 1989 irrigation questionnaire for Water Permit No. 884-2. You may disregard the February 9, 1990 Notice of failure to submit the 1989 irrigation questionnaire. Your questionnaire was received prior to the March Water Management Board meeting and your name was deleted from the agenda pertaining to the hearing.

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

Sincerely,

Ron Duvall

RON DUVALL
Natural Resources Engineer
Water Rights Division

South Dakota

DEPARTMENT OF WATER & NATURAL RESOURCES

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

GREAT FACES. GREAT PLACES.

February 1, 1991

JOHN DIDIER
SR 77 BOX 504
WHITE RIVER SD 57579

NOTICE

RE: Violation of Water Permit No(s) 884-2

Our records indicate that the 1990 Irrigation Questionnaire has not been submitted for Permit No(s) 884-2. The request for the Questionnaire was dated October 12, 1990. The Water Management Board has directed that owners of water permits who have not submitted the 1990 Irrigation Questionnaire be given notice of permit violation and a hearing to be held by the Board. The hearing will be held to determine action to be taken by the Board for violation of Water Permit No(s) 884-2 qualification:

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

The hearing will be held at 9:15 am, February 27, 1991, at the Governor's Inn in the meeting room, 700 West Sioux Avenue, Pierre SD.

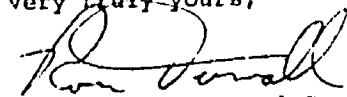
The hearing will be conducted pursuant to the provisions of SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to procedures contained in SDCL 1-26. Following the hearing, the Water Management Board can:

1. Suspend Permit No(s) 884-2 until the 1990 Irrigation Water Use Questionnaire is submitted or for a period of up to one year;
2. Postpone any action;
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 is received in this office before the February 27th hearing date, you will no longer be in violation of your permit and your name will be deleted from the agenda for the hearing.

Very truly yours,



Ron Duvall, Natural Resources Engineer IV
Water Rights Division
605 773-3352



884-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

January 14, 2004

NOTICE

TO: THERESA DIDIER BENDA, HCR 77 BOX 504, WHITE RIVER, SD 57579
FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2003 Irrigation Questionnaire(s)

Our records indicate that the 2003 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 884-2. The request for the Questionnaire was dated October 17, 2003. The Water Management Board has directed that owners of water permits who have not submitted the 2003 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 884-2 qualification:

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

The hearing will be held at 8:30 am, March 3, 2004 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, 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) 884-2 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 27, 2004**, 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.



884-2

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Current Status

You entered 2301 3460 0000 8515 7711

Your item was delivered at 11:06 am on January 15, 2004 in WHITE RIVER, SD 57579. The item was signed for by T BENDA.

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SIGNATURE CONFIRMATION NUMBER:
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THERESA DIDIER BENDA
HCR 77 BOX 504
WHITE RIVER SD 57579

Waiver of Signature ☐ YES ☐ NO

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www.state.sd.us/denr

January 26, 2004

884-2

Theresa Didier Benda
HCR 77 Box 504
White River SD 57579

Dear Ms. Benda:

I am writing to acknowledge receipt of your 2003 irrigation questionnaire. You may disregard the January 14, 2004, "Notice" concerning reporting requirements for Water Right No. 884-2.

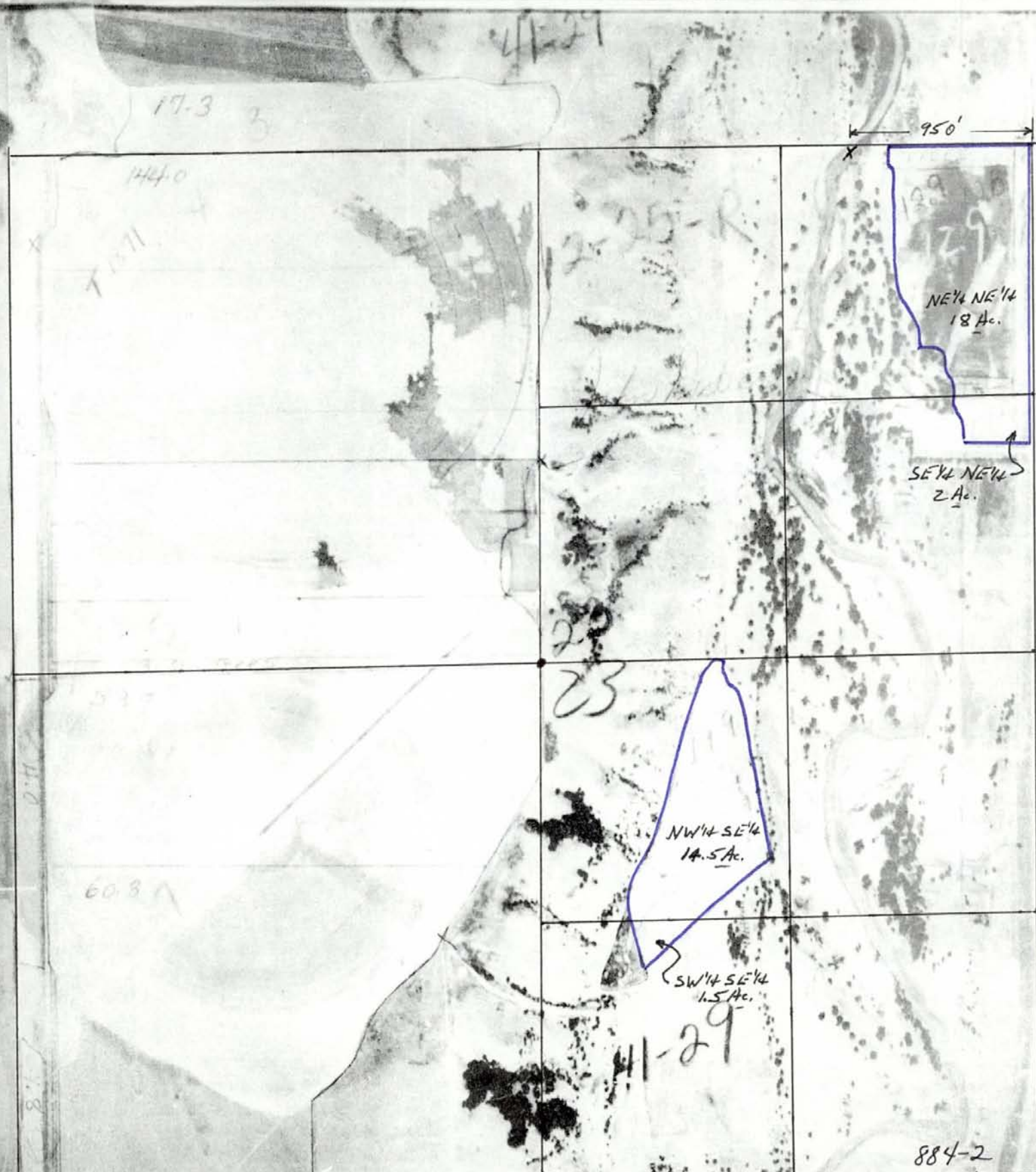
The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

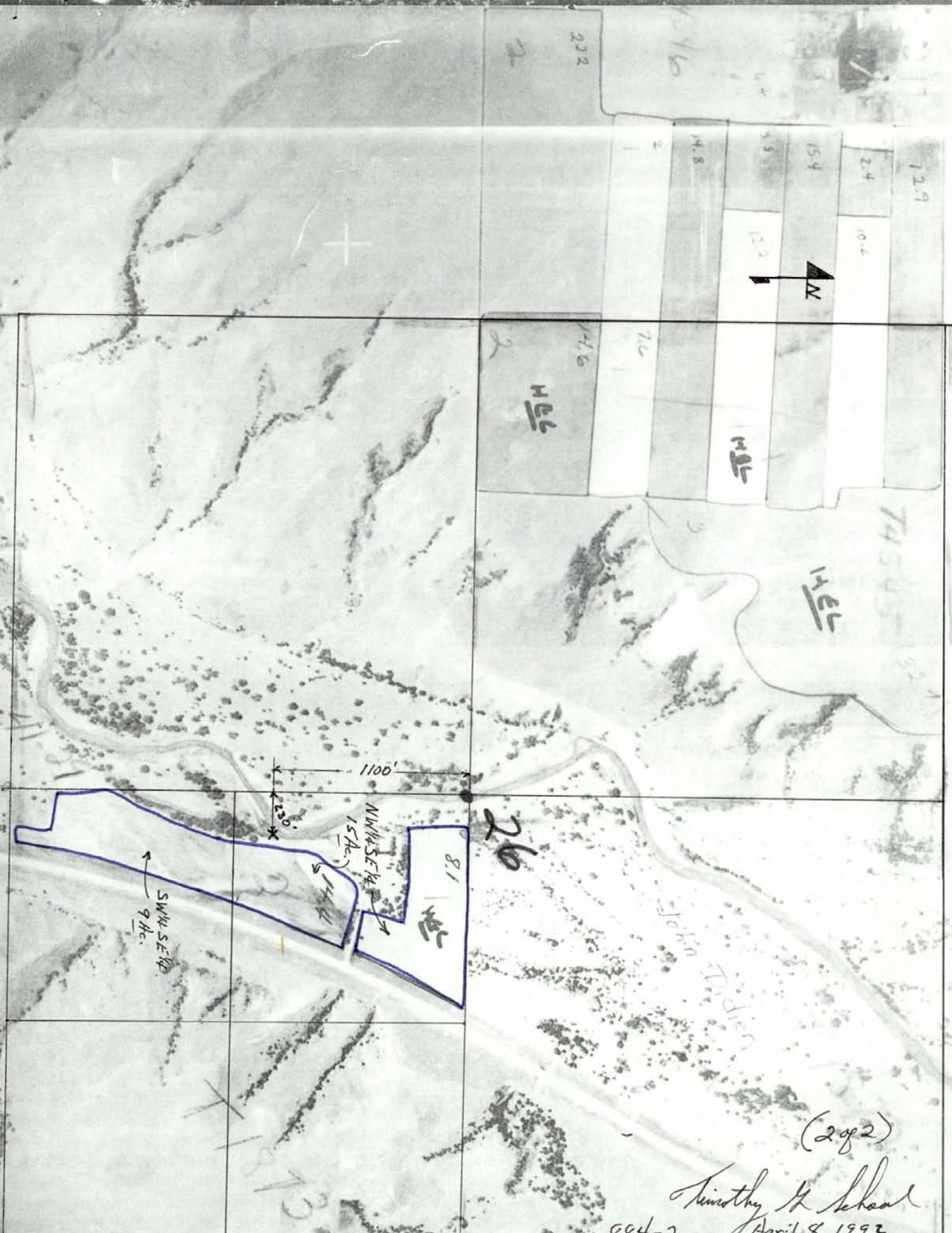
Sincerely,

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

NOT TO SCALE



884-2
(1 of 2 maps) Timothy L. School
April 8, 1992

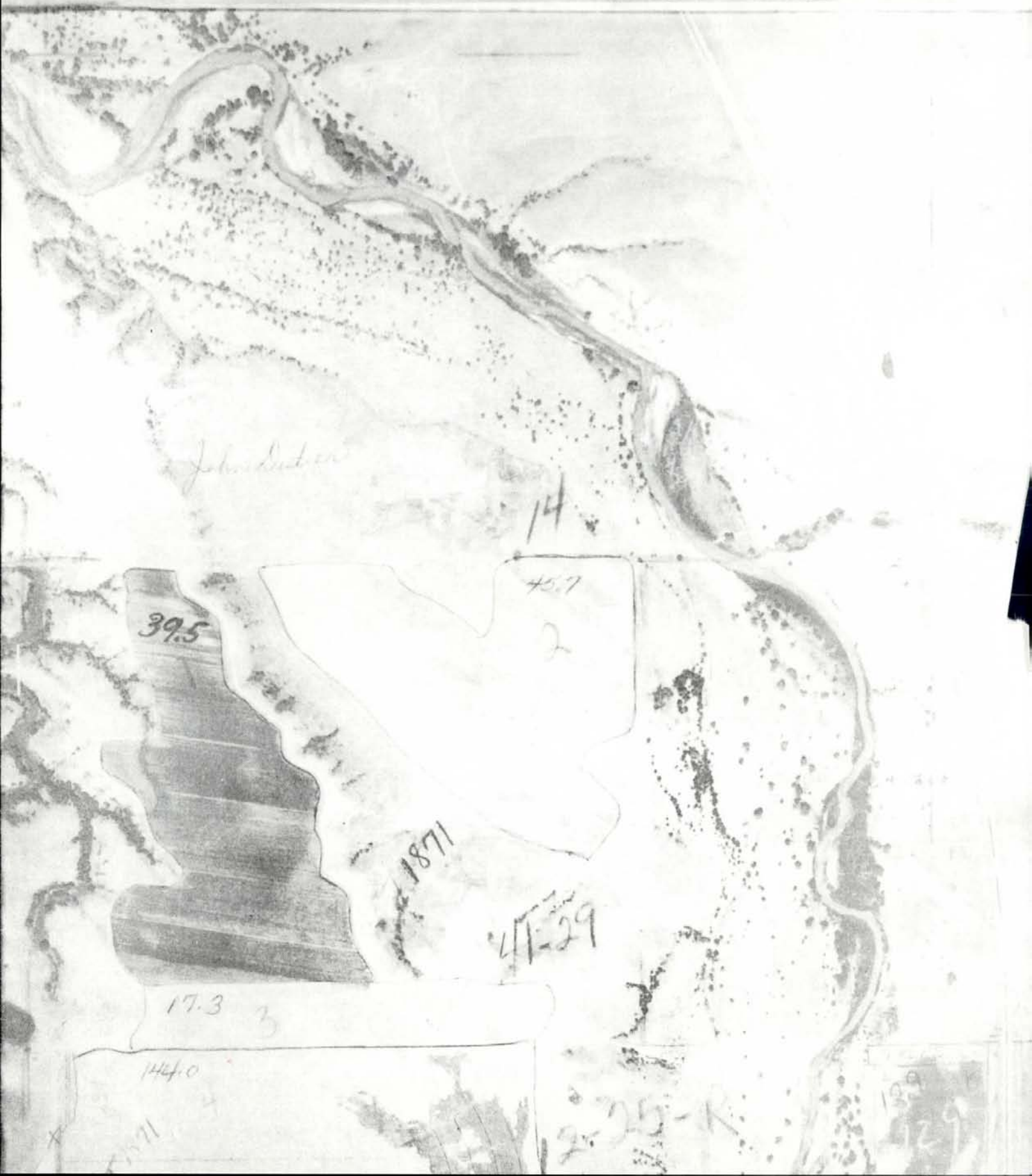


(292)

Timothy H. Shear
April 8, 1992

884-2

NOT TO SCALE





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January 18, 2008

NOTICE

TO: THERESA DIDIER BENDA, 26829 US HWY 83, WHITE RIVER, SD 57579 7910

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2007 Irrigation Questionnaire(s)

Our records indicate that the 2007 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 884-2. The request for the Questionnaire was dated October 19, 2007. The Water Management Board has directed that owners of water permits who have not submitted the 2007 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 884-2 qualification:

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

The hearing will be held at **10:00 am, March 11, 2008** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, 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) 884-2 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 **March 3, 2008**, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352. If you prefer, you can complete the questionnaire on-line at the following link:

<https://www.state.sd.us/eforms/secure/eforms/E0455V6-IQ.pdf>

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.

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Internet Web Site

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THERESA DIDIER BENDA
26829 US HWY 83
WHITE RIVER SD 57579 7910

Waiver of Signature ☐ YES ☐ NO

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www.state.sd.us/denr

January 28, 2008

884-2

Theresa Didier Benda
26829 US Hwy 83
White River SD 57579-7910

Dear Ms. Benda:

I am writing to acknowledge receipt of your 2007 irrigation questionnaire. You may disregard the January 18, 2008, "Notice" concerning reporting requirements for Water Right No. 884-2.

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



884-2
DEPARTMENT of ENVIRONMENT
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January 23, 2009

NOTICE

TO: THERESA DIDIER BENDA, 26829 US HWY 83, WHITE RIVER, SD 57579 7910
FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2008 Irrigation Questionnaire(s)

Our records indicate that the 2008 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 884-2. The request for the Questionnaire was dated October 24, 2008. The Water Management Board has directed that owners of water permits who have not submitted the 2008 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 884-2 qualification:

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

The hearing will be held at **10:00 am, March 11, 2009** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, 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) 884-2 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 **March 6, 2009**, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352. If you prefer, you can complete the questionnaire on-line at the following link:
<https://www.state.sd.us/efrms/secure/efrms/E0455V7-IQ.pdf>

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.



884-2

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SIGNATURE CONFIRMATION NUMBER:
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THERESA DIDIER BENDA
26829 US HWY 83
WHITE RIVER SD 57579 7910

Waiver of Signature ☐ YES ☐ NOPostmark
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www.state.sd.us/denr

January 29, 2009

884-2

Theresa Didier Benda
26829 US Hwy 83
White River SD 57579 7910

Dear Ms. Benda:

I am writing to acknowledge receipt of your 2008 irrigation questionnaire. You may disregard the January 23, 2009, "Notice" concerning reporting requirements for Water Right No. 884-2.

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,

A handwritten signature in cursive script that reads "Genny McMath".

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



884-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
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PIERRE SOUTH DAKOTA 57501-3182
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January 22, 2010

NOTICE

TO: THERESA DIDIER BENDA, 26829 US HWY 83, WHITE RIVER, SD 57579 7910

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

A handwritten signature in black ink, appearing to read "Ron Duvall".

SUBJECT: Reporting Requirement for 2009 Irrigation Questionnaire(s)

Our records indicate that the 2009 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 884-2. The request for the Questionnaire was dated October 16, 2009. The Water Management Board has directed that owners of water permits who have not submitted the 2009 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 884-2 qualification:

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

The hearing will be held at **10:00 am, March 10, 2010** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, 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) 884-2 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 **March 5, 2010**, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <https://denr.sd.gov/iq.aspx>

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.



884-2

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SIGNATURE CONFIRMATION NUMBER: 2303 2160 0000 0802 8696

THERESA DIDIER BENDA
26829 US HWY 83
WHITE RIVER SD 57579 7910

Waiver of Signature ☐ YES ☐ NO

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**DEPARTMENT of ENVIRONMENT
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JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

January 26, 2010

884-2

Theresa Didier Benda
26829 US Hwy 83
White River SD 57579 7910

Dear Theresa:

I am writing to acknowledge receipt of your 2009 irrigation questionnaire. You may disregard the January 22, 2010, "Notice" concerning reporting requirements for Water Right No. 884-2.

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,

A handwritten signature in cursive script that reads "Genny McMath".

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



884-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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www.state.sd.us/denr

January 24, 2014

NOTICE

TO: THERESA DIDIER BENDA, 26829 US HWY 83, WHITE RIVER, SD 57579 7910
FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2013 Irrigation Questionnaire(s)

Our records indicate that the 2013 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 884-2. The request for the Questionnaire was dated October 18, 2013. The Water Management Board has directed that owners of water permits who have not submitted the 2013 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 884-2 qualification:

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

The hearing will be held at **9:00 am, March 6, 2014** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, 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) 884-2 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 **March 3, 2014**, you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

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.



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www.denr.sd.gov

January 30, 2014

884-2

Theresa Didier Benda
26829 US Hwy 83
White River SD 57579 7910

Dear Ms. Benda:

I am writing to acknowledge receipt of your 2013 irrigation questionnaire.

You may disregard the January 24, 2014, "Notice" concerning reporting requirements for Water Right No. 884-2. 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,

A handwritten signature in cursive script that reads "Genny McMath".

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



884-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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January 16, 2015

NOTICE

TO: THERESA DIDIER BENDA, 26829 US HWY 83, WHITE RIVER, SD 57579 7910

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2014 Irrigation Questionnaire(s)

Our records indicate your 2014 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 884-2. The request for the Questionnaire was dated October 17, 2014. The Water Management Board has directed that owners of water permits who have not submitted the 2014 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 884-2 qualification:

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

The hearing will be held at **10:00 am, March 4, 2015** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, 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) 884-2 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 before the **March 4, 2015** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

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.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182

February 2, 2015

884-2

Theresa Didier Benda
26829 US Hwy 83
White River SD 57579 7910

Dear Ms. Benda:

I am writing to acknowledge receipt of your 2014 irrigation questionnaire.

You may disregard the January 16, 2015, "Notice" concerning reporting requirements for Water Right No. 884-2. 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,

A handwritten signature in cursive script that reads "Genny McMath".

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



884-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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January 15, 2016

NOTICE

TO: THERESA DIDIER BENDA, 26829 US HWY 83, WHITE RIVER, SD 57579 7910

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2015 Irrigation Questionnaire(s)

Our records indicate your 2015 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 884-2. The request for the Questionnaire was dated October 23, 2015. The Water Management Board has directed that owners of water permits who have not submitted the 2015 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 884-2 qualification:

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

The hearing will be held at **Thursday, March 3, 2016 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, 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) 884-2 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 before the **March 3, 2016** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

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.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
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PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

February 19, 2016

884-2

Theresa Didier Benda
26829 US Hwy 83
White River SD 57579 7910

Dear Ms. Benda:

I am writing to acknowledge receipt of your 2015 irrigation questionnaire.

You may disregard the January 15, 2016, "Notice" concerning reporting requirements for Water Right No. 884-2. 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
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us



884-2
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and NATURAL RESOURCES

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January 23, 2020

NOTICE

TO: THERESA DIDIER BENDA, 26829 US HWY 83, WHITE RIVER, SD 57579 7910
FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2019 Irrigation Questionnaire(s)

Our records indicate your 2019 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 884-2. The request for the Questionnaire was dated October 18, 2019. The Water Management Board has directed that owners of water permits who have not submitted the 2019 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 884-2 qualification:

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

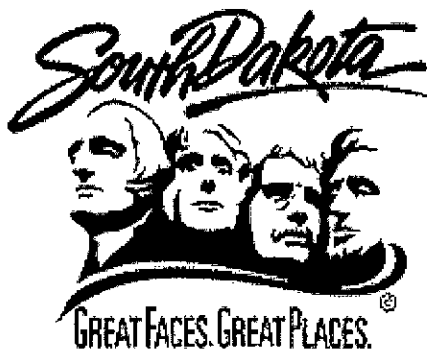
The hearing will be held at **Wednesday, February 26, 2020 at 8:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant 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) 884-2 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 before the **February 26, 2020** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://denr.sd.gov/iq> using this password: ENGYDX**

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.



DEPARTMENT of ENVIRONMENT
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PIERRE SOUTH DAKOTA 57501-3182
www.denr.sd.gov

January 29, 2020

884-2

Theresa Didier Benda
26829 US Hwy 83
White River SD 57579 7910

Dear Ms. Benda:

I am writing to acknowledge receipt of your 2019 irrigation questionnaire.

You may disregard the January 23, 2020, "Notice" concerning reporting requirements for Water Right No. 884-2. 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,

A handwritten signature in cursive script that reads "Genny McMath".

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