

No. *U.S. 1511-2*

Office of State Engineer
DOCUMENT FILE

*U.S. Dept. of Interior
Bureau of Indian Affairs
Fort Sill
Little White River*

Form A

CERTIFICATE OF WITHDRAWAL
of
WATER FOR APPROPRIATION
to the
UNITED STATES OF AMERICA
DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS

Withdrawal No. US 511

West Side

Little White River Project
Name of Project

Hellgate
County

Water Division No. 2

Little White River Water District

Little White River
Source of Appropriation-Stream

The United States of America, Department of Interior, Bureau of
Indian Affairs, having filed "Notice of Intention" to
utilize certain heretofore unappropriated public waters of the State of South
Dakota, in accordance with the requirements of the statutes of the State of South
Dakota, such statutes and authority being contained in Section 61.0137 1939
Revised Code of South Dakota, now therefore;

This is to certify that there is hereby reserved, of the heretofore unappro-
priated waters of _____, the annual amount of _____ acre-
feet of water to maintain storage in _____ reservoir created
by damming said stream at a point
feet distant from the _____ Corner of Section _____, Township _____, Range _____.
The purpose of such storage is _____

This is to certify that there is hereby reserved, of the heretofore unappro-
priated waters of Little White River a maximum of 18 cubic feet
per second to be diverted through the West side ditch, canal
or pipeline at a point located on the Left bank
_____ feet distant from the _____ Corner of Section 28
Township 1200, Range 43W, NE for the purpose of irrigation of lands as shown
on map, during the months of March to October inclusive

This certificate and withdrawal shall in no manner prejudice, alter, amend
or affect the rights of any prior appropriator or prior appropriation of water,
nor of any application for appropriation pending on the date of this certificate,
but the rights and privileges of any and all such prior appropriators or appli-
cants for appropriation of water shall remain inviolate and intact, the same as
if the within withdrawal had not been made.

This certificate shall be and is subject to cancellation in accordance with
the provisions of the statutes hereinbefore referred to and under the authority
of which this certificate is issued.

In accordance with the provisions of the statutes hereinbefore referred to,
this certificate is executed at the State Capitol at Pierre, South Dakota, this
3rd day of February 1940.

State Engineer

STATE OF SOUTH DAKOTA
Notice of Appropriation

RECEIVED
JAN 31 1940
OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

In accordance with the provisions of Section 8243 of the Compiled Laws of the State of South Dakota, 1929, you as State Engineer of the State of South Dakota, are hereby notified that the United States of America, acting by and through me, C. R. Whitlock, Superintendent of the Rosebud Indian Reservation located in Mellette County, South Dakota, duly authorized by Harold I. Ickes, Secretary of the Interior, for this purpose, intends to utilize certain amounts of the waters of streams flowing in and through the State of South Dakota for certain specified purposes on definitely described tracts of land within said State, hereinafter set forth in detail, together with plans of the proposed works, which information is hereto attached, marked "Exhibit A", and made a part hereof; and the request is hereby made that the waters hereinafter described be withheld from entry and not subject to further appropriation in accordance with the provisions of the Compiled Laws of the State of South Dakota, 1929.

The purpose of the appropriation of the waters of these streams is for the use of the Indians residing on the Rosebud Indian Reservation, South Dakota, for the irrigation of lands under an irrigation system to be constructed by the United States.

By this aforesaid Notice of Appropriation, the United States is not seeking to establish a date of priority to the use of the waters described in "Exhibit A" attached hereto. Notice is hereby given you that the United States is not waiving any legal rights it may claim to the date of priority to its use of the waters or the quantity of the waters of these streams pursuant to Federal Statutes and decisions of the United States Courts.


Superintendent Rosebud Indian Reservation
South Dakota.

ROSEBUD AGEN
RECEIVED
JAN 27 1940
SOUTH DAKOTA

STATE OF SOUTH DAKOTA,)
COUNTY OF MELETTE.)

SS.

RECEIVED
JAN 31 1940

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

C. R. Whitlock, being first duly sworn, on his oath, deposes and says: that he is the Superintendent of the Rosebud Indian Reservation, residing at Rosebud, South Dakota; that he has been duly authorized by Harold L. Ickes, Secretary of the Interior, to make and file the foregoing Notice of Appropriation; that in his official capacity as such Superintendent and pursuant to authority therein vested by said Secretary of the Interior, he has hereunto subscribed his name to the above instrument.

C. R. Whitlock

Subscribed and sworn to before me this 29th day of Jan., 1940.

Ray M. Holt
Notary Public for the State of South Dakota.
Residing at Pierre, South Dakota.
My commission expires Nov. 21, 1942.

"EXHIBIT A"

I. Schedule of Diversions of Water for Irrigation Purposes
on lands of the Rosebud Indian Reservation, South Dakota.

II. Plan of Irrigation Development at the Rosebud Indian Reservation,
South Dakota.

RECEIVED
JAN 31 1907

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

SCHEDULE OF DIVERSIONS OF WATER FOR IRRIGATION PURPOSES ON THE
LITTLE WHITE RIVER PROJECT -- ROBERTO INDIAN RESERVATION, SOUTH DAKOTA

SOURCE OF WATER		QUANTITY OF WATER		POINT OF DIVERSION		LAND IRRIGATED
Name of Stream	Area-Acre-Feet	Rate of Diversion : Cubic Feet per second	Second of Time	Bank : Bearing : Distance : Feet	From Public Survey Corner	Description of the land irrigated.
South Fork: White River (Little White River)	6000 (2)	40	Left	S 65° W 1200'	N. J. Corner of Sec. 26, T. 43 N., R. 28 W. of 6th E. M., Bellefonte County, South Dakota.	A part of sections 26, 22, 15, 16, 10, 9, 8, 7, & 4, T. 43 N., R. 26 W., and a part of Sec. 12, of T. 43 N., R. 29 W., of 6th P. M., Bellefonte County, South Dakota

Kind of Diversion

A diversion dam of steel sheet piling, to raise the water level of river approximately one (1) foot, and concrete headworks with two (2) 30", corrugated metal pipes with steel gates and with series of flashboards in front of gates, to allow for skimming off the top of clear water, thus keeping out sand.

RECEIVED

JAN 31 1940

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

August 28, 1940

C. M. Whittleck
Superintendent
Rosebud Indian Agency
Rosebud, South Dakota

Dear Sir:

This will acknowledge receipt of your letter of August 26th inclosing "Notice of Appropriation" and exhibits in connection with a request for withdrawal of certain waters of Little White River from further appropriation.

I call your attention to withdrawal No. U.S. 611 issued by this office under date of February 3, 1940 in consideration of "Notice of Appropriation" received January 31, 1940 from the Rosebud Indian Agency. This former notice embraces the same area as contained in the present notice and although the point of diversion and amount requested are slightly different the two requests overlap throughout.

If it is the intention to supersede the original request with the one just received, our signed "certificate of Withdrawal" No. 611 should be returned to this office, after which a withdrawal will be issued for the new notice and request.

As to the amount of water to be withdrawn, I am not sure what statutory authority the State Engineer may have in fixing this amount but it would seem unfair to the individual appropriator to withdraw a greater amount per acre from appropriation than we are allowed to issue to such individuals under the code limitation of 1 cu. ft. per sec. for each twenty acres. (Sec. 61.014C)

If I have read the information presented correctly, you are requesting withdrawal of 30 cu. ft. per sec. for irrigation of a possible 1273.1 acres or one cu. ft. per sec. for each 42.4 acres, or in other words, the maximum amount allowed for appropriation under the South Dakota code for 1273 acres is 18 plus cu. ft. per sec.

I would be glad to have the opinion of your Council on that point if he would care to give it.

Very truly yours,

DEAN W. LOUCKS
State Engineer

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
FIELD SERVICE

Rosebud Indian Agency
Rosebud, South Dakota
August 26, 1940

RECEIVED
AUG 28 1940

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

State Engineer
State of South Dakota
Capitol Building
Pierre, South Dakota

Dear Sir:

We are enclosing herewith notice of appropriation of waters from the Little White River to be used on the proposed Two Kettle irrigation project. This notice of appropriation has been prepared at the Indian Irrigation Office, Billings, Montana, and we trust you will find same in order for approval.

Yours very truly,

C. R. Whitlock
C. R. Whitlock
Superintendent

WAB:1A.74
Encls.

February 3, 1940

Re: U. S. Withdrawal
West Side
Little White River Project

C. E. Whitlock, Supt.
U. S. Dept. of Interior
Rosebud Indian Agency
Rosebud, South Dakota

Dear Sir:

This will acknowledge receipt of your letter of January 28th enclosing Notice of Intention to appropriate certain waters of Little White River by the U. S. Dept. of the Interior in Mallett County, together with a schedule of diversions and plan of irrigation development.

We are enclosing, herewith, our Certificate of Withdrawal of Water for Appropriation in the amount of 13 cu. ft. per sec. which is the maximum amount which we are authorized to appropriate for the irrigable acreage indicated on the map. Re Sec. 61.0140 of the State Code.

Very truly yours,

Dean W. Loucks,
State Engineer.

EWL:dn
enc.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
FIELD SERVICE

Rosebud Indian Agency
Rosebud, South Dakota
September 24, 1940

RECEIVED
1940

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Mr. Dean W. Loucks, State Engineer
Pierre, South Dakota

Dear Mr. Loucks:

Acknowledging your letter of August 23 concerning "Notice of Appropriation" with request for withdrawal of certain waters from the Little White River, I wish to advise that I have referred this matter to Mr. W. S. Hanna, District Engineer of Indian Irrigation Service at Billings, Montana. I am now in receipt of a letter from Mr. Hanna, in which he advises two notices have been submitted for this same project. It is his suggestion that the second notice be withdrawn and the first notice corrected to conform with our request as outlined in the second notice. A copy of Mr. Hanna's letter is enclosed herewith for your information.

Yours very truly,

C. R. Whitlock
C. R. Whitlock
Superintendent

CRW:LA.14

COPY

Billings, Montana
September 7, 1940

Mr. C. R. Whitlock, Superintendent
Rosebud Indian Reservation
Rosebud, South Dakota

Dear Mr. Whitlock:

We have your letter of September 4 concerning Notices of appropriation, submitted to the State Engineer of South Dakota, of waters of Little White River for the Two Kettle Project. With your letter was enclosed the State Engineer's letter of August 28. This is being returned to you herewith.

It appears that two Notices have been submitted to the State Engineer for this same project and that certificate of withdrawal, No. U. S. 511, was issued by him pursuant to the first Notice on February 3, 1940. It is evident that both your office and our office had forgotten about the first Notice in submitting the second Notice to the State Engineer's office.

Since the State Engineer now questions the amount of water which it is proposed to withdraw in connection with the second Notice (although he did not question this feature in issuing the certificate of withdrawal pursuant to the first Notice), it is believed that the second Notice should be withdrawn and that we should merely request a correction of the first. Since the data given will be in line with those disclosed by more recent careful studies, in making this request for a modification of the original certificate of withdrawal, it is believed that Mr. Loucks will favorably consider the following in explanation of his question as to the advisability of withdrawing from appropriation at a rate of more than 1 second foot per 70 acres.

Section 61.0140 of the South Dakota Code states: "In the issuance of permits to appropriate water for irrigation or in the adjudication of rights to the use of water for such purpose the amount allowed shall not be in excess of the rate of one cubic foot of water per second for each seventy acres, or the equivalent thereof, delivered on the land for a specified time in each year."

Continuous diversion of 1 cubic foot for 70 acres during the growing season of, say, 150 days during the period of April 15 to September 15 would amount to approximately 4.3 acre feet per acre which for the 1,273 acres estimated by Mr. Loucks would amount to a total allowable seasonal diversion of approximately 5,450 acre feet per season. It will be noted that the revised Notice requests a diversion of only 3,500 acre feet for the season which is only 64% of that which would be allowed under the provisions of the State law for the gross area of the project.

Mr. C. R. Whitlock

September 7, 1940

It is well understood that a rate of one second foot would not be adequate to irrigate 70 acres as the season requirement varies from a low demand during the first part of the season to a relatively high demand during the middle part of the season, returning again to a low demand during the latter part. Farmers of the Code undoubtedly recognized this in devising the law inasmuch as they stated, "***the amount allowed shall not be in excess of the rate of one cubic foot of water per second for each seventy acres, or the equivalent thereof,***".

Our final figures indicate that 1,000 acres will be irrigable under this project and we estimate that $3\frac{1}{2}$ acre feet per acre at the point of diversion will be required to satisfactorily produce a crop. This is the basis of the 3,500 acre feet as set out in the revised Notice. In order to satisfactorily irrigate the land, it is estimated that there will be one 35-day period during the season which will require the diversion of at least one acre foot per acre. In order to irrigate the thousand acres, 28.5 acre feet per day must be diverted and, based on 12-hours operation per day, this would require the diversion of approximately 30 second feet. This, of course, would be the maximum rate of diversion and would in no case be continuous throughout the 150-day season but might be continuous for 35 days if the water were available and the demands of other water users having prior rights permitted.

In view of the fact that all the correspondence relating to these Notices of Appropriation between the State Engineer and the Office of Indian Affairs has been handled by you, we feel that it would be advisable for you to answer Mr. Louck's letter. It is hoped that there is sufficient information given herein to enable you to do so. In the event more information is required, we will be glad to help you insofar as we are able.

Very truly yours,

W. S. Hanna
District Engineer

Encl.
WHF/cu