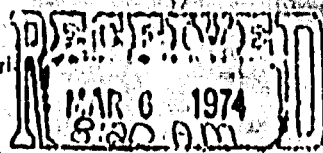


1174-2

1. Considered 7-17 1974
2. Name of Applicant DANIEL J. & TERRILL A. BRINDA
3. Post Office Address VALENTINE, NEBRASKA
4. Amount of water claimed 3.5
5. Source of water supply GROUND WATER
6. Water to be used for IRRIGATION
- Acres to be irrigated 800
7. Water to be diverted and used in TOWNSHIP County
about 12W, 10S miles of MISSION
8. Proof of Publication Received 6-17-74
Not Received _____
9. Application Approved _____
Subject to _____
Not Approved _____
Action deferred _____
10. Remarks:

Map No. 998-2 Water Division No. 2 KEYAPAH RIVER District 1
(Blanks to be Filled by the Engineer for the W. R. C.)



APPLICATION FOR PERMIT

STATE WATER RIGHTS COM.
PIERRE, SOUTH DAKOTA

To Appropriate Water within the State of South Dakota

(NOTE--Draw a line through items not applicable)

Howard & Judith Schmidt

1. Name of Applicant Daniel E. Brinda ~~Howard & Judith Schmidt~~
Postoffice address Mission Route - Valentine State Nebraska 69301
If a corporation show date and place of incorporation _____
2. Method of accomplishing work (contract, employment of others, or by direct labor) employment of others
3. Name of diversion work Brinda Irrigation Project
4. Amount of water claimed (cubic feet per second) 3.5 cfs
5. Source of water supply 4 Wells
6. Location of point of diversion NE 1/4 Sec. 21, SW 1/4 Sec. 22, NW 1/4 Sec. 27 and NE 1/4 Sec. 27 T32N, R28W of the 6th P.M.
Todd County South Dakota
7. Annual period or periods during which water is to be used Spring to fall
8. Use to be made of water, (irrigation, industrial, municipal, commercial, recreation, etc.) irrigation
9. For irrigation use, Total number of acres to be irrigated 800.0

List below each forty acre subdivision, or lot, or fraction thereof and show number of acres to be irrigated in each.

Land Description	No. Acres Irr.	Land Description	No. Acres Irr.
NE 1/4 Sec. 21	160.0	NW 1/4 Sec. 27	160.0
SE 1/4 Sec. 21	160.0	E 1/2 NE 1/4 Sec. 27	80.0
S 1/2 NW 1/4 Sec. 22	80.0		
SW 1/4 Sec. 22	160.0		

Attach sheet if more space is needed

10. Time required to complete construction of water supply system max 5 years. Additional time required to complete application of water to the proposed beneficial use max 4 years.
11. Choice of newspaper for Notice of Intent to Appropriate Water publication Todd Valley Tribune
12. Principal Features of the Proposed Water Supply System.

A. Works proposed to divert water from its natural source.

B. Works proposed to transport water to place of use.

C. Works proposed to apply water to beneficial use.

Estimated Total Cost \$ _____

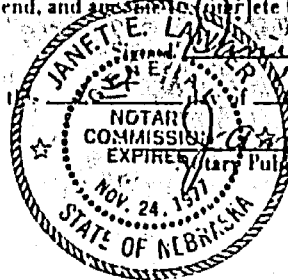
Attachments: Attach Form 2A if diversion is by a well or dugout, or if storage of water, is proposed. Attach map.
(See instructions concerning preparation.)

STATE OF SOUTH DAKOTA

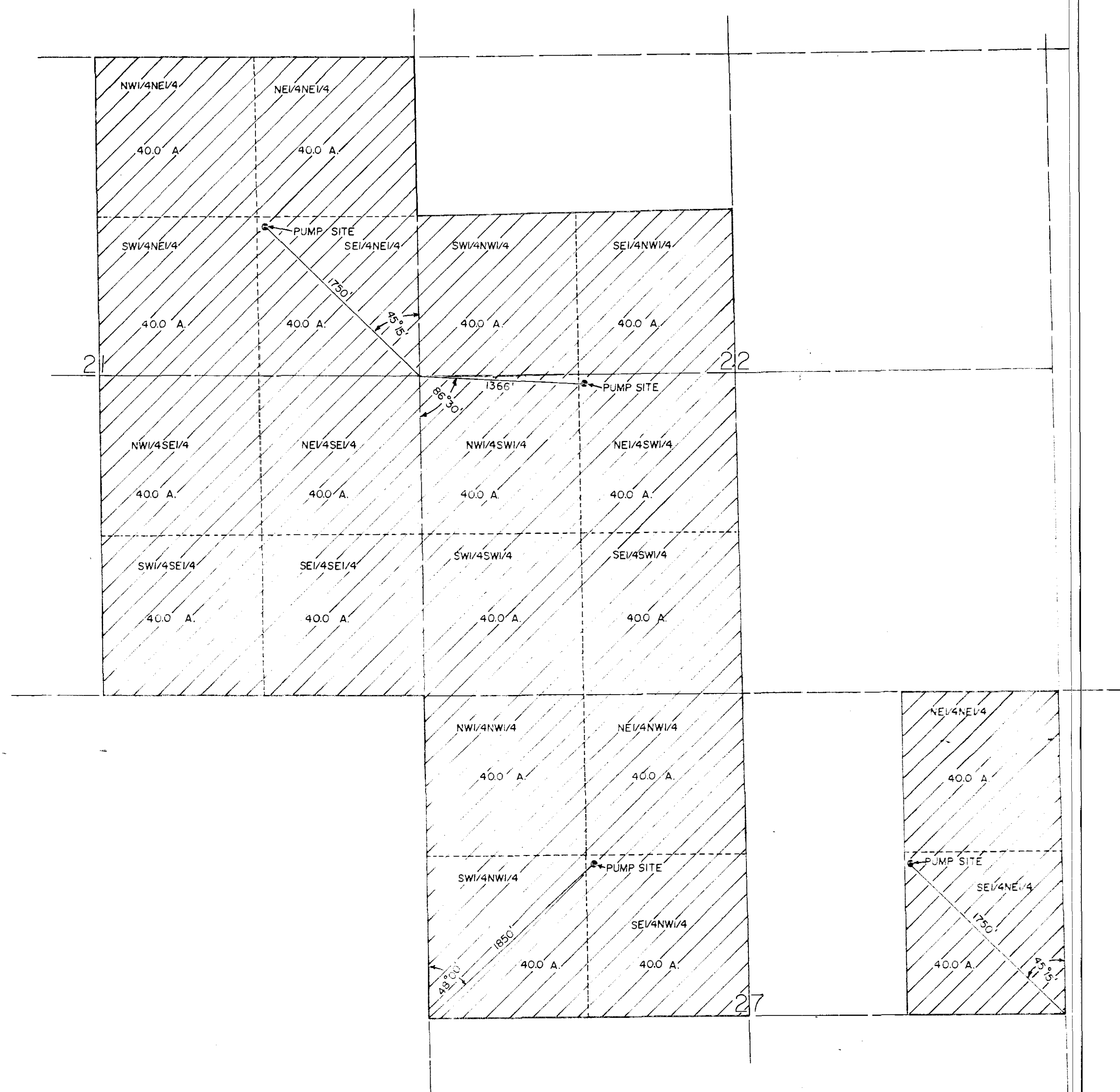
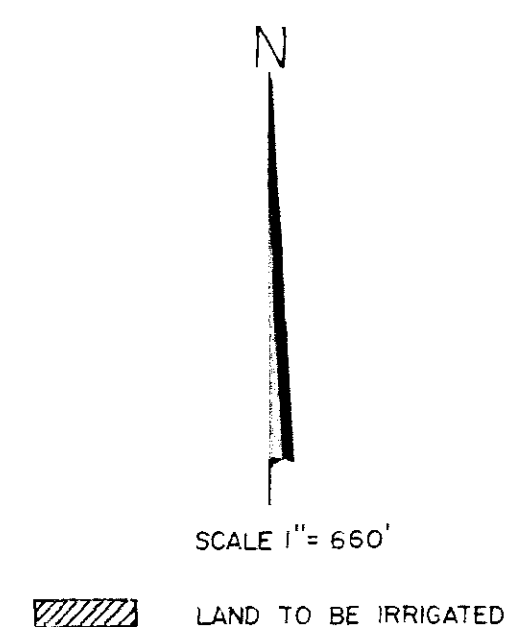
County of Todd

I, Daniel J. Brinda the applicant, certify that I have read the foregoing application and have examined the attached map and that the matters therein stated are true and that I intend, and cause to be completed, the necessary construction.

Subscribed and sworn to before me this



Daniel J. Brinda
March 1974
Janet E. Lawler
Notary Public (or other qualified officer)



LOCATION	SECTION	TOWNSHIP	RANGE	ACRES
NW1/4NE1/4	21	37N	28W	40.0
NE1/4NE1/4	21	37N	28W	40.0
SW1/4NE1/4	21	37N	28W	40.0
SE1/4NE1/4	21	37N	28W	40.0
NW1/4SE1/4	21	37N	28W	40.0
NE1/4SE1/4	21	37N	28W	40.0
SW1/4SE1/4	21	37N	28W	40.0
SE1/4SE1/4	21	37N	28W	40.0
SW1/4NW1/4	22	37N	28W	40.0
SE1/4NW1/4	22	37N	28W	40.0
NW1/4SW1/4	22	37N	28W	40.0
NE1/4SW1/4	22	37N	28W	40.0
SW1/4SW1/4	22	37N	28W	40.0
SE1/4SW1/4	22	37N	28W	40.0
NW1/4NW1/4	27	37N	28W	40.0
NE1/4NW1/4	27	37N	28W	40.0
SW1/4NW1/4	27	37N	28W	40.0
SE1/4NW1/4	27	37N	28W	40.0
NW1/4NE1/4	27	37N	28W	40.0
NE1/4NE1/4	27	37N	28W	40.0
TOTAL				800.0

ENGINEER'S CERTIFICATE

I, ROBERT SCHROEDER, A SOUTH DAKOTA REGISTERED PROFESSIONAL ENGINEER NUMBER 1797, CERTIFY THAT THIS PLAT IS A TRUE AND CORRECT DELINEATION OF PUMP SITES LOCATED IN SECTIONS 21,22,27 T37N R28W 6th PM. TODD COUNTY, SOUTH DAKOTA. THE ABOVE DESCRIBED LAND BEING OWNED BY DANIEL J. BRINDA & TERRILL A. BRINDA.

DATE: 2-13-74

Robert Schroeder
ROBERT SCHROEDER PE - 1797

ACKNOWLEDGEMENT

STATE OF NEBRASKA)
COUNTY OF CHERRY)SS

ON THIS 13th DAY OF Febr. 1974, BEFORE ME, A NOTARY PUBLIC, DULY COMMISSIONED AND QUALIFIED IN AND FOR SAID COUNTY, APPEARED ROBERT SCHROEDER WHO IS PERSONALLY KNOWN TO ME TO BE THE SAME AND HE ACKNOWLEDGED THE SIGNING OF SAID ENGINEER'S CERTIFICATE TO BE HIS VOLUNTARY ACT AND DEED, WITNESS MY HAND AND OFFICIAL SEAL THE AFORESAID DATE.

MY COMMISSION EXPIRES: NOVEMBER 24, 1977.

Janet E. Lawler
NOTARY PUBLIC

WATER RIGHT APPLICATION APPROVAL

Howard & Judith Schmidt

The Water Resources Commission hereby approves Water Right Application No. 1174-2

~~DANIEL L. TERRILL A. BENIPA~~
(Applicant)

MISSION ROUTE, VALENTINE
(Post Office Address)

NEBRASKA, 69201 With the following modifications:
(State)

The irrigation wells approved under this Permit ^{ARE} ~~is~~ located near domestic wells which may obtain water from the same aquifer. The irrigation well owner, under this Permit, shall control his irrigation withdrawals so there is not a reduction of needed water supplies in existing domestic wells.

Date of first receipt of application MARCH 6 19 74
Date of return to applicant for correction, amendments or changes required MARCH 12 19 74
Date of receipt of corrected application JUNE 3 19 74
Applied JULY 17 19 74 Recorded in Book 13 Page 48

WATER RIGHT PERMIT NO. 1174-2

The Water Resources Commission hereby grants and issues this Water Right Permit No. 1174-2 authorizing the construction of the water use system and the putting of water to beneficial use as stated in the Application and as modified in the Water Right Application approval, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is JUNE 3 19 74
2. The equivalent of at least one-fifth of the work above specified is to be completed on or before JANUARY 17 19 76
3. The whole of said work be completed on or before JULY 17 19 79
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is JULY 17 19 83
5. The water appropriated shall be used for the purpose of IRRIGATION
6. 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.
7. The amount of the appropriation herein granted shall not exceed 3.5 cubic feet per second; neither shall it exceed the capacity of the above described water supply system, nor shall it exceed the amount of water needed for beneficial uses served, and if for the irrigation purposes, said appropriation must be limited to not more than 3 acre feet per acre per year and 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 17 19 83; said water to be used during the following described annual period: SPRING TO FALL

Witness my hand this 4TH day of SEPTEMBER 19 74

WATER RESOURCES COMMISSION

By: Donald Drinnell
Chief Engineer, Executive Officer

Certificate of Construction Issued _____, 19 _____

Water License Issued _____, 19 _____

Form 2A - Wells, Dugouts or Water Storage Dams (Supplement to form 2)

12. Principal Features of the Proposed Water Supply System (continued.)

D. Well Information or Estimates

(1) Drill Hole, Diameter 18", Depth 180'
(2) Casing, Type Steel Diameter 12" Thickness 3"
(wood, concrete, steel, etc.)
(3) Perforated Screen.
Type Punched, Diameter 12", Length 30'
(4) Gravel Pack, Thickness 3", Length of gravel pack 100'

E. Dugout Information or Estimates.

(1) Surface dimensions _____, Depth _____

F. Fill out for Either a Well or a Dugout.

(1) Water Bearing Materials. (Please attach a copy to test well log if available.)

Character of Water bearing materials Coarse Sand

Depth to top of water bearing material 100'

Depth to bottom of water bearing material 170'

Thickness of water bearing material 70'

Depth to water (ground surface to water level) 80'

(2) Distance to nearest existing household or livestock watering wells.

On same owner's property 180 rds. On property owned by others 225 rds.

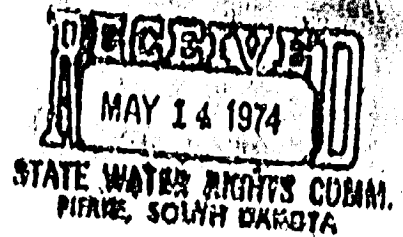
G. Water Storage Dams. None

If the proposed water use system contains one or more water storage dams, please show in the space below, the height, maximum water depth, surface area and storage capacity of each storage dam. The location of each water storage dam should be shown on the water right map.

Note: Information Estimated.

Daniel G. Brinda
Signature of Applicant

May 8, 1974



Mr. Daniel J. Brinda
Miesior, SD 57555

Dear Mr. Brinda:

The WI-1 form and the application for water use permit have been received. These are being forwarded to the State Conservation Commission along with a copy of the water analysis and this letter.

This is an excellent water and should give no trouble whatever in irrigation of the soils which you have or of any soil. It is even better than Missouri River water and is low in salt and sodium hazards.

I'm enclosing a copy of Extension Circular 634 with some information about irrigation and drainage requirements. Your sample of water is depicted by the encircled red cross in the quality chart on the back cover of this circular.

Sincerely,

Lawrence Q. Fine

Lawrence Q. Fine
Water Quality Lab

7-111

Enclosures

CC: State Conservation Commission
Kernath Stephens, Todd County Agent
Darrel Pahl



REPORT OF ANALYSIS
Water Quality Laboratory
Water Resources Research Institute
South Dakota State University
Brookings, South Dakota 57006

Submitted by: Don Brinda
Address: Mission, South Dakota
57555

Date Rec'd April 24, 1974

Sample No. 74-228

Identification _____

WATER ANALYSIS

Calcium (Ca)	60	ppm*	3.00	me/l**
Magnesium (Mg)	6	ppm	0.49	me/l
Sodium (Na)	4	ppm	0.18	me/l
Potassium (K)	8	ppm	0.20	me/l
Sulfate (SO ₄)	0	ppm	0.00	me/l
Nitrate (as N)		ppm		me/l
Chloride (Cl)	6	ppm	0.17	me/l
Bicarbonate (HCO ₃)	190	ppm	3.12	me/l
Carbonate (CO ₃)		ppm		me/l
Iron (Fe)		ppm		me/l
Fluoride (F)		ppm		me/l
Hardness (EDTA as CaCO ₃)		ppm		g.p.g.***
Alkalinity (Methyl Orange)	156	ppm (as CaCO ₃)		
Alkalinity (Phenolphthalein)	0	ppm (as CaCO ₃)		
Electrical Conductivity	298	micromhos per cm at 25° C.		
Sodium Adsorption Ratio	0.14			
Sodium	4.66	% of cations		
Residual sodium carbonate	0.00	me/l		
pH	7.65			
Others:				

*ppm=parts per million

**me/l=milliequivalents per liter

***g.p.g.=grains per gallon

COMMENTS: Total cations 3.36 me/l
Total anions 3.29 me/l

Please fill in the enclosed questionnaire and return with your payment.

By: Shirley Litten

Service Performed

Amount Due

Irrigation analysis

\$6.00

Make checks payable to: Water Quality Laboratory

Cut along dotted line and return the lower portion with payment

Sample No. 74-228

Amount Enclosed \$

Signed

Conservation
Commission
Form No. 1

STATE CONSERVATION COMMISSION
SUPPORTING INFORMATION
FOR APPROPRIATION OF GROUND WATER IN ACCORDANCE
WITH SECT. 46-6-3 AS AMENDED
(This Form Required for Proposed Well Irrigation Only)

FOR USE BY:
Irrigation System
Water Quality
Soils Capability
Approved: 3/13/78
Disapproved:

NAME: Daniel J. Brinda
ADDRESS: Mission, S. Dak. or Valentine Nebr.
COUNTY: Todd

LEGAL DESCRIPTION

1. WELL LOCATION: Near center of NE 1/4 S. 21 Center of line between NW 1/4 SW 1/4 of S. 22 Center of SE 1/4 NW 1/4 NE 1/4 of T. 37 R. 28
2. AREA TO BE IRRIGATED: All or part of above described land

TYPE OF IRRIGATION

1. GENUITY SPRINKLER (Indicate Type): Center Pivot, fur ditch with type irrigator
2. CROPS TO BE IRRIGATED: Corn, alfalfa, sudan etc

LAND CAPABILITY FOR IRRIGATION

3. PERCENTAGE OF SLOPE: 0-15%
4. PHYSICAL SOILS CLASSIFICATION FOR IRRIGATION: 0-2% slope class I
2-6% slope class IIa, higher slopes IIIc

WATER QUALITY (TO BE COMPLETED BY COMMISSION)

5. SAMPLE NO.: 74-228
6. SALINITY: EC = 298 (Low Medium)
7. SODIUM: SAR = 0.14 (Low)

I do hereby certify that a chemical analysis of the ground water to be
acquired for irrigation from South Dakota State University and:

the feasibility for irrigation information has been acquired from

De Witt County Conservation District

and:

that the legal description for the location of the well and land to be
irrigated is true and correct.

Daniel M. Brinda

subscribed and sworn before me this

6th day of MAY 1974.

Joseph Donald Britton

Notary Public

(Title)

Publish first publication, on or before July 4, 1974NOTICE
INTENT TO APPROPRIATE WATER

Pierre, South Dakota 57501

June 3, 1974Daniel J. and Terrill A. Brinda

Notice is hereby given that

whose post office address is Valentine, Nebraska, ~~South Dakota~~, has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use3.5 cubic feet of water per second of time from the ground water through the Brinda Irrigation Project, the point^a of diversion of which ^{are} to be located in theSE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 21; NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 22 and SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, Twp. 37N, Range 28W. Said water to be used for the purpose

of providing irrigation on the following described land:

E $\frac{1}{2}$, Section 21; S $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$, Section 22; NW $\frac{1}{4}$ and E $\frac{1}{2}$ NE $\frac{1}{4}$, Section 27, all in
T37N, R28WThis application No. 1174-2 will be considered by the Water ~~Resources~~^{Rights} Commission at their office at Pierre upon the 17th day of July, 1974, at 2:30 P. M. All interested persons may appear and be heard.~~WATER RESOURCES COMMISSION~~
WATER RIGHTS COMMISSION

By:

BURTON F. JONES, Water Rights Specialist

BFJ/bv

cc: Daniel J. Brinda, Mission Route, Valentine, Nebraska 69201

Form 8 - Proof of Publication - Notice of
Intent to Appropriate Water

No. 1174-2

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Todd) ss.

I, Margaret Figeri hereby

certify that the annexed printed copy of Notice of Intent to Appropriate

Water was taken from the Todd Co. Brinda

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

City of Mission

County of Todd and State of South Dakota;
that the said notice was published in said newspaper on the following
two dates:

Thursday, June 6, 1974

Thursday, June 13, 1974

Margaret Figeri
(Signature)

Officer
(Title)

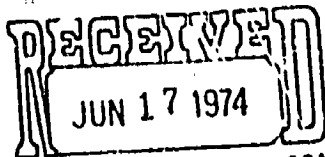
6-13-74
(Date Signed)

Notice of Intent to
Appropriate Water

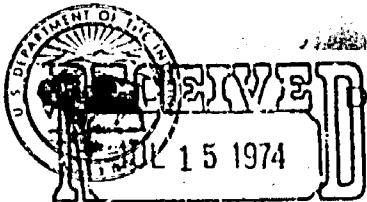
Notice is hereby given that Daniel J. and Terrill A. Brinda whose post office address is Valentine, Nebraska, has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use 3.5 cubic feet of water per second of time from ground water through the Brinda Irrigation Project, the points of diversion of which are to be located in the SE $\frac{1}{4}$, NE $\frac{1}{4}$, Section 21; NE $\frac{1}{4}$, SW $\frac{1}{4}$, Section 22 and SE $\frac{1}{4}$, NW $\frac{1}{4}$, and SE $\frac{1}{4}$, NE $\frac{1}{4}$ of Section 27, Twp. 37N, Range 28W. Said water to be used for the purpose of providing irrigation on the following described land: E $\frac{1}{2}$, Section 21; S $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$, Section 22; NW $\frac{1}{4}$ and E $\frac{1}{2}$ NE $\frac{1}{4}$, Section 27, all in T37N, R28W.

This application No. 1174-2 will be considered by the Water Rights Commission at their office at Pierre upon the 17th day of July, 1974, at 2:30 P.M. All interested persons may appear and be heard.

Water Rights Commission
Burton F. Jones
Water Rights Specialist
-TFN-



STATE WATER RIGHTS COMM.
PIERRE, SOUTH DAKOTA



STATE WATER RIGHTS COMM.
PIERRE, SOUTH DAKOTA

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Federal Building
P. O. Box 549

Aberdeen, South Dakota 57401

IN REPLY REFER TO:

Water Rights--
Application of
Daniel J. & Terril A.
Brinda

JUL 12 1974

Mr. Burton F. Jones
Water Rights Specialist
Water Rights Commission
Pierre, South Dakota 57501

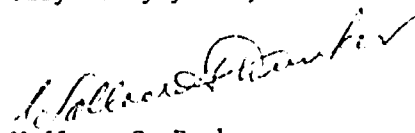
Dear Mr. Jones:

Information has been received that on July 17, 1974, at 2:30 p.m., a hearing will be held at Pierre, South Dakota, before the South Dakota Water Rights Commission upon the application of Daniel J. and Terril A. Brinda for a permit to appropriate for beneficial use 3.5 cubic feet of water per second from ground water from a location in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 21, NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 22, and SE $\frac{1}{4}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 27, All in T. 37 N., R. 28 W., Todd County, South Dakota.

This letter will serve as our written objection to such application for a permit to appropriate such 3.5 cubic feet of ground water per second from lands within the exterior boundaries of the Rosebud Indian Reservation. The issuance of such permit would be contrary to established law which declares that the State lacks jurisdiction with respect to the adjudication of waters of or the lands within the exterior boundaries of an Indian reservation. See Winters v. United States, 207 U.S. 564, 28 S.Ct. 207; United States v. Powers, 94 F.2d 783; United States v. McIntire, 101 F.2d 650, and United States v. Alexander, 131 F.2d 359.

In filing our objection to the issuance of such proposed permit and in writing this letter to you, we do not waive our right to challenge the State's jurisdiction and merely intend to call the State's attention to the fact that the State lacks jurisdiction in this matter.

Very truly yours,


Wallace G. Dunker
Field Solicitor

cc: Mr. Wyman D. Babby, Area Director, Aberdeen Area Office,
Bureau of Indian Affairs, Aberdeen, South Dakota

Superintendent, Rosebud Agency, Rosebud, South Dakota
Mr. Parnell Hagen, Area Soil Conservationist, Bureau of Indian
Affairs, Aberdeen, South Dakota

1174-2, 1183-2, 1186-2 &
1187-2

Department of Natural Resource Development

WATER RIGHTS COMMISSION

Office Building Number 2, Pierre, South Dakota 57501
Phone 605/224-3151

*Hand delivered to
Attorney General Kermit Sande
on approximately July 22, 1974*

Mr. Kermit Sande, Attorney General
State Capitol Building
Pierre, South Dakota 57501

Dear Mr. Sande:

Enclosed for your information is a copy of a letter received from Wallace G. Dunker, Field Solicitor of the U.S. Department of the Interior pertaining to Water Right Application No. 1174-2.

Water Right Application No. 1174-2 is an application to the Water Rights Commission by Daniel J. Brinda and Terrill A. Brinda to divert up to 3.5 cubic feet per second of water from four 180 foot deep wells to irrigate up to 800 acres of land in Sections 21, 22 and 27, T37N, R26W, all in Todd County, within the exterior boundaries of the Rosebud Indian Reservation. The Water Rights Commission considered this Water Right Application No. 1174-2 at a public hearing held during the afternoon of July 17, 1974.

The action of the Water Rights Commission was to approve Water Right Application No. 1174-2, containing the following qualification: "The irrigation well approved under this Permit is located near domestic wells which may obtain water from this same aquifer. The irrigation well owner, under this Permit, shall control his irrigation withdrawals so there is not a reduction of needed water supplies in existing domestic wells." The Water Rights Commission also passed a motion that this action of the Commission was contingent upon the approval of the Attorney General.

At this same hearing three other water right applications proposing diversion of ground water, in Todd County, within the exterior boundaries of the Rosebud Indian Reservation were considered by the Water Rights Commission. These applications were:

- 1183-2, Clyde E. Brewer to divert 2.7 c.f.s. to irrigate 260 acres.
- 1186-2, Robert Tinant to divert 8.0 c.f.s. to irrigate 530 acres.
- 1187-2, Lawrence Markus to divert 2.2 c.f.s. to irrigate 156 acres.

Mr. Kermit Sande, Attorney General

Page 2.

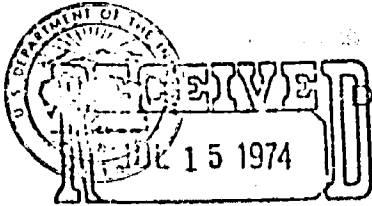
1174-2, 1183-2, 1186-2, &
1187-2

The action of the Commission on these three applications were the same as for Water Right Application No. 1174-2 inasmuch as they were approved with a domestic well interference qualification, the approval being contingent upon the concurrence of the Attorney General.

The issuance of the permits for the four above mentioned applications will be withheld pending notice of concurrence from you.

Ch. P. Smith
Ch. P. Smith
Chief Engineer
WATER RIGHTS COMMISSION

DD/bw



STATE WATER RIGHTS COMM.
PIERRE, SOUTH DAKOTA

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Federal Building
P. O. Box 549

Aberdeen, South Dakota 57401

IN REPLY REFER TO

Water Rights -
Application of
Daniel J. & Terril A.
Brinda

JUL 12 1974

Mr. Burton F. Jones
Water Rights Specialist
Water Rights Commission
Pierre, South Dakota 57501

Dear Mr. Jones:

Information has been received that on July 17, 1974, at 2:30 p.m., a hearing will be held at Pierre, South Dakota, before the South Dakota Water Rights Commission upon the application of Daniel J. and Terril A. Brinda for a permit to appropriate for beneficial use 3.5 cubic feet of water per second from ground water from a location in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 21, NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 22, and SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 27, All in T. 37 N., R. 28 W., Todd County, South Dakota.

This letter will serve as our written objection to such application for a permit to appropriate such 3.5 cubic feet of ground water per second from lands within the exterior boundaries of the Rosebud Indian Reservation. The issuance of such permit would be contrary to established law which declares that the State lacks jurisdiction with respect to the adjudication of waters of or the lands within the exterior boundaries of an Indian reservation. See Winters v. United States, 207 U.S. 564, 28 S.Ct. 207; United States v. Powers, 94 F.2d 783; United States v. McIntire, 101 F.2d 550, and United States v. Alexander, 131 F.2d 359.

In filing our objection to the issuance of such proposed permit and in writing this letter to you, we do not waive our right to challenge the State's jurisdiction and merely intend to call the State's attention to the fact that the State lacks jurisdiction in this matter.

Very truly yours,

Wallace G. Dunker
Wallace G. Dunker
Field Solicitor

cc: Mr. Wyman D. Babby, Area Director, Aberdeen Area Office,
Bureau of Indian Affairs, Aberdeen, South Dakota

Superintendent, Rosebud Agency, Rosebud, South Dakota
Mr. Parnell Hagen, Area Soil Conservationist, Bureau of Indian
Affairs, Aberdeen, South Dakota



STATE OF SOUTH DAKOTA
OFFICE OF ATTORNEY GENERAL
PIERRE 57501
(605) 224-3215

KEF MIT A. SANDE
ATTORNEY GENERAL

RECEIVED
SEP 4 1974
STATE WATER RIGHTS COMM.
PIERRE, SOUTH DAKOTA

September 3, 1974

Mr. Donald Driscoll
Chief Engineer
Water Rights Commission
Department of Natural Resource Development
Pierre, South Dakota 57501

Re: Water Right Application Nos. 1174-2,
1183-2, 1186-2, 1187-2.

Dear Mr. Driscoll:

I am in receipt of your letter requesting concurrence from the Attorney General's Office on the above mentioned water right applications.

Notwithstanding the objections noted by Mr. Wallace Dunker of the Department of the Interior, this office concurs in the approval of the applications with the domestic well interference qualification.

Sincerely,

ROBERT A. WICHSER
Assistant Attorney General

RAW:sk

Enclosure

October 11, 1974

Your Ref: Water Rights 341.1

Mr. Harley D. Zephier
Acting Area Director
Bureau of Indian Affairs
115 4th Avenue S.E.
Aberdeen, South Dakota 57401

Dear Mr. Zephier:

Your letter of October 7, 1974 asks what action was taken on Water Right Application No. 1174-2 of Daniel J. and Terril A. Brinda to divert ground water to irrigate land in Todd County.

The action of the Water Rights Commission was to approve Water Right Application No. 1174-2, containing the following qualification, "The irrigation well approved under this Permit is located near domestic wells which may obtain water from this same aquifer. The irrigation well owner, under this Permit, shall control his irrigation withdrawals so there is not a reduction of needed water supplies in existing domestic wells." The Water Rights Commission also passed a motion that this action of the Commission was contingent upon the approval of the Attorney General.

A letter was received on September 3, 1974 stating that the Office of the Attorney General concurred in approval of the application with the domestic well interference qualification. On September 5, 1974 Water Permit No. 1174-2 with the qualification as indicated was sent to Mr. Daniel J. Brinda. Mr. Brinda was also advised of the July 12, 1974 letter of the Field Solicitor of the Department of Interior. 7

As requested this office will begin to notify you when an application is received to appropriate waters within the exterior boundaries of an Indian Reservation. I am not sure that this office has information as to the exact exterior boundaries of each Indian Reservation in South Dakota.

Sincerely,

DONALD DRISCOLL, Chief Engineer
WATER RIGHTS COMMISSION

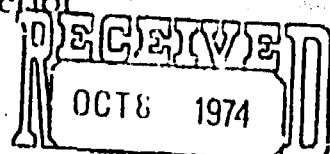
DD/bw



IN REPLY REFER TO
Water Rights
341.1

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
ABERDEEN AREA OFFICE
115 4th Avenue S.E.
ABERDEEN, SOUTH DAKOTA 57401



STATE WATER RIGHTS COMM.
PIERRE, SOUTH DAKOTA

Mr. Burton F. Jones
Water Rights Specialist
Water Rights Commission
Pierre, South Dakota 57501

OCT 7 1974

Dear Mr. Jones:

On July 12, 1974 the Field Solicitor of the Department of the Interior entered an objection to the application for a permit to appropriate water by Daniel J. and Terril A. Brinda on lands located within the exterior boundaries of the Rosebud Reservation.

May this office be informed of the action taken by the Water Rights Commission on the application.

Because of the Bureau of Indian Affairs' trust responsibility in regard to Indian lands and rights, we would appreciate being notified whenever an application is made to the State to appropriate waters within the exterior boundaries of an Indian Reservation.

Sincerely yours,

Harley D. Zepher
ACTING Area Director



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

Attorney
General

APR 25 1975

IN REPLY, REFER TO:

Rights Protection

William Janklow, Attorney General
State of South Dakota
Pierre, South Dakota 57501

APR 18 1975

Dear Mr. Janklow:

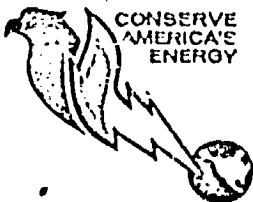
Enclosed is a copy of Water Right Permit No. 1174-2 which was approved on July 17, 1974 by the South Dakota Water Rights Commission in favor of Daniel J. Brinda. The permit authorizes the use of 3.5 cubic feet per second of water from wells to irrigate 900 acres of land within Todd County, South Dakota. This Bureau takes issue with the authority of the Commission to issue this permit since it involves water located within the exterior boundaries of the Rosebud Sioux Indian Reservation.

The issue of whether a State has jurisdiction over Indians and their property is not of recent vintage. As far back as 1832, Chief Justice Marshall, speaking for the Court, said:

Various acts of her (the Georgia) legislature have been cited in the argument, including the contract of cession made in the year 1802, all tending to prove her acquiescence in the universal conviction that the Indian nations possessed a full right to the lands they occupied, until that right should be extinguished by the United States, with their consent; that their territory was separated from that of any State within whose chartered limits they might reside, by a boundary line, established by treaties; that, within their boundary, they possessed rights with which no State could interfere, and that the whole power of regulating the intercourse with them was vested in the United States.

* * *

The Cherokee nation . . . is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force . . . but with the assent of the Cherokees themselves or in conformity with treaties and with the Acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the government of the United States.



Save Energy and You Serve America!

Worcester v. Georgia, 6 Pet. 515, 560-561 (1832). The Court has upheld this principle as recently as 1973 when Justice Marshall, speaking for a unanimous Court, said:

We hold that by imposing the tax in question on this appellant, the State has interfered with matters which the relevant treaties and statutes leave to the exclusive province of the Federal Government and the Indians themselves.

McClanahan v. Arizona State Tax Commission, 411 U.S. 164, 165 (1973). Looking back to the admission of South Dakota into the Union, it is clear that Congress also held the same view when it required in the Enabling Act, the people of South Dakota to agree to the following:

Sec. 4. ...And said conventions shall provide, by ordinance irrevocable without the consent of the United States and the people of said States:

Second. That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title ... to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States

Act of February 22, 1889 (25 Stat. 676).

Pursuant to that provision, and upon Congress changing its policy of retaining exclusive jurisdiction over the tribes, certain States, including South Dakota, were authorized by Public Law 83-280 to assume jurisdiction over Indian reservations. However, P. L. 280 required that a State going forward in this matter had to remove any legal impediments to the assumption of this jurisdiction.

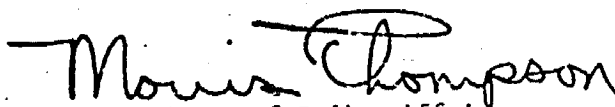
In response to P. L. 280, the South Dakota legislature enacted H.B. 791 (approved March 15, 1963) which repealed the jurisdictional prohibitions of Chapter 464 of the South Dakota Session Laws of 1961. This Act was referred to the voters of South Dakota on November 3, 1964. The citizens of South Dakota rejected P. L. 280 jurisdiction by a vote of 201,389 (against) to 58,289 (for).

Based on the foregoing, it would appear conclusive that the Water Rights

Commission was specifically denied by the citizens of South Dakota the authority to issue a water rights permit to a water user, whether Indian or non-Indian, within the exterior boundaries of the Rosebud Sioux Indian Reservation and all other areas within "Indian country."

I would appreciate your views on this matter and a statement of what authority the Commission relies on to issue permits under the conditions described above.

Sincerely yours,


Commissioner of Indian Affairs

Enclosure

POLICY OF WATER RIGHTS COMMISSION WITH RESPECT

TO WATER RIGHTS ON INDIAN RESERVATIONS

The Water Rights Commission recognizes that Indians have a superior water right on Indian-owned lands within the exterior boundaries of an Indian Reservation. This right exists whether the water is used or not, and the Indian owner has a prior right in the future to use such water for reasonable beneficial use. No water right permit need be obtained from the State for such use of water.

Water Right Applications Pertaining
to Deeded Lands within Indian Reservations

Volume II-E, Section 1, Legal and Institutional Arrangements of the South Dakota Water Plan, was prepared for the South Dakota Department of Natural Resource Development by the School of Law, University of South Dakota. This volume has a section entitled "Indian Water Rights."

The case of United States vs Hibner is mentioned on page 192 of this section on Indian Water Rights. In a discussion of the status of the water rights of those who had acquired by purchase their lands from the Indians, the court was quoted as follows:

"The status of the water right after it has passed to others by the Indians seems to be somewhat different from while such right is retained by the Indians, because the principle invoked by the courts for the protection of the Indian so long as he retains title to his lands does not prevail and apply

to the white man, and the reason for so holding is that there was reserved unto the Indians the absolute right to own and use in their own way the water for their lands, while the white man, as soon as he becomes the owner of the Indian lands, is subject to those general rules of law governing the appropriation and use of the public waters of the state, and would as grantee of the Indian allotments, be entitled to a water right for the actual acreage that was under irrigation at the time title passed from the Indians, and such increased acreage as he might with reasonable diligence place under irrigation, which would give to him, under the doctrine of relation, the same priority as owned by the Indians. Otherwise the application of any other rule would permit such grantee for an indefinite period to reclaim the balance of his land and withhold the application of the water to a beneficial use, which is against the policy recognized in the development of arid lands."

This court case is one of the reasons why the Water Rights Commission's position is that a non-Indian wanting to obtain a water right on land that he owns within the exterior boundary of an Indian Reservation should make a Water Right Application to the State of South Dakota (Water Rights Commission).

First action of the Water Resources Commission is indicative of the following policy. It must be recognized 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. Pending resolution of some of the questions concerning Indian water rights at the national level, the Water Resources Commission must take action on the water right applications directed to them. The Commission does not believe that it can discharge its obligations to the people of South Dakota by inaction or deferment pending settlement of these national controversies. It is realized 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. (In the reorganization of State Government, implemented on July 1, 1973, the Water Resources Commission was renamed the Water Rights Commission which thereby assumed jurisdiction of water rights.)

Water Right Applications Pertaining
to Indian-Owned Lands within Indian Reservations

Section 46-1-3 of South Dakota Coded Laws of 1967 states:

"It is hereby declared that all water within the state is the property of the people of the state, but the right to the use of water may be acquired by appropriation in the manner provided by law."

Sections 46-5-10 and 46-6-3 provide that any person, association, etc., intending to acquire the right to the beneficial use of water

shall make an application to the Water Rights Commission for a permit to appropriate such water.

As has been previously stated, the Water Rights Commission recognizes that a water permit does not need to be obtained from the state (Water Rights Commission) for the beneficial use of water on Indian-owned lands within the exterior boundaries of an Indian Reservation. However, considering the above-mentioned section of South Dakota laws, if a water right application is received by the Water Rights Commission proposing beneficial use of water on Indian-owned land within the exterior boundaries of an Indian Reservation, the Commission policy has been that it has an obligation to process the application and give the Indian owner the privilege of obtaining a state water right, as an additional water right to any other rights the owner may already possess.

This policy of being obligated to accept and process water right applications received pertaining to Indian-owned lands would also apply to water right applications received pertaining to lands owned by non-Indians within the exterior boundaries of an Indian Reservation.

OFFICE OF THE ATTORNEY GENERAL STATE OF SOUTH DAKOTA
KERMIT A. SANDE-ATTORNEY GENERAL
STATE CAPITOL • PIERRE, SOUTH DAKOTA 57501 • PHONE (605) 224-3215

Vern Butler

Natural Resources

Re: Indian State water rights

28 Feb 75

DATE

I find the policy statement
in state processing of water use
applications for decided land
in a reservation to be
proper and correct.

Kermit A. Sande

MAR 2 1975

SIGNED

INSTRUCTIONS TO SENDER:
1. YELLOW COPY. 2. SEND WHITE AND PINK COPIES WITH CARBON INTACT.

INSTRUCTIONS TO RECEIVER:
1. WHITE COPY. 2. DETACH STUB, KEEP PINK COPY, RETURN WHITE COPY TO SENDER.

1174-2

Vern W. Butler
Natural Resource Dev.
Commissioner of Indian Affairs'
Letter on Water Right in Todd County

Attorney General William Janklow

May 5, 1975

The April 18, 1975 letter from Morris Thompson, Commissioner of Indian Affairs, raises the question as to South Dakota's right to issue a water right under state law to Mr. Daniel J. Brinda, Todd County, South Dakota. You have asked for some facts and comments on this matter.

Mr. Brinda's application for a water permit was received on March 5, 1974, and was assigned No. 1174-2. The application requested 3.5 cfs to be withdrawn from ground water through four wells for irrigation of 800 acres. The lands to be irrigated include the NE $\frac{1}{4}$, SE $\frac{1}{4}$, Sec. 21; S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, Sec. 22; NW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 27 of R37N, R28W of the 6th P.M., Todd County, South Dakota. The notice of intent to appropriate water was duly published in the Todd County Tribune on June 6 and June 13, 1974. The Water Rights Commission hearing was held July 17, 1974, at 2:30 p.m. A letter of objection was received from Mr. Wallace G. Dunker, Field Solicitor, Department of Interior, Aberdeen, South Dakota, on July 15 and was read to the Commission at the July 17 hearing. In addition, Mr. Richard Long Dog, a member of the Rosebud Tribal Council, and Mr. Chuck Reed appeared before the Commission in opposition to granting the water right permit. The Commission approved the application with a standard domestic well interference qualification but also passed a motion that this action of the Commission be contingent upon the approval of the Attorney General. A letter requesting concurrence was delivered to Mr. Sande on July 22, 1974. On September 3, 1974, a letter signed by Mr. Robert A. Wichser, Assistant Attorney General, indicated the Attorney General's Office concurred in the approval of permit No. 1174-2 and also three other permits, 1183-2, 1186-2, and 1187-2, that were approved with the same qualifications. On September 5, 1974, this office notified Mr. Brinda that his water right application was approved but also noted that the Office of Solicitor, Department of Interior, contended the state lacked jurisdiction in issuing the water right permit. On October 7, 1974, Mr. Harley D. Zephier, Acting Area Director, Bureau of Indian Affairs, inquired as to the action on Mr. Brinda's application. He was notified of the Commission's and the Attorney General's actions.

Comment:--This is the classical case as to the Water Rights Commission's authority to issue water rights on deeded lands within what

the Indians claim are the exterior boundaries of a reservation. The Commission follows policies outlined in the statutes for the control and regulation of water within the state and specifically those statutes contained in Chapter 46-1. Upon advice from the Attorney General's Office over the years, the Commission has established a policy of requiring and granting, contingent upon other conditions being met, water rights upon any deeded land within the state, irrespective of its location. The Commission will accept and file a water right application from any Indian for use upon Indian-held lands, but does not require such water rights. (See attached report briefly outlining the Commission's policy.)

If this policy should be changed, I would appreciate your discussing the matter with me and with the Water Rights Commission.

Vern W. Butler, Secretary
Department of Natural Resource
Development

VWB:yjl

Attachment

RECEIPT

WATER RIGHTS COMMISSION

State of South Dakota

No 4 8367

July 7, 1981

PIERRE,

Howard & Judith Schmidt, Mission Route, Valentine, NE 69201

RECEIVED OF

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.		
Fee for inspecting Beneficial Use, and Issuing Water License No.		
Fee for issuing Location Certificate-Dry Draw. No. transfer of WR# 1174-2		2 50
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		2 50

WATER RIGHTS COMMISSION

By

Chief Engineer, Executive Officer

NO. 1174-2



NOTICE OF TRANSFER OF WATER PERMIT

TO: Water Rights
Foss Building
Pierre, SD 57501

Date: 7-1-81

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

800 acres - NE $\frac{1}{4}$, SE $\frac{1}{4}$, Sec. 21; S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, Sec. 22; NW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 27;

all in T37N, R28W

formerly owned by Daniel J & Terrill A Brinda

has been transferred to Howard & Judith Schmidt, Mission Route, Valentine, NE 69201

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

Water Right Permit No. 1174-2 as provided for in SDCL 46-5-32 and 46-5-33.

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

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

STATE OF SOUTH DAKOTA)
County of Taepa) ss.

I, Howard & Judith Schmidt being first duly sworn on my oath despose and say: That my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and I know of my own personal knowledge that the information herein stated is true.

Howard Schmidt
(Signed)
Judith Schmidt

Subscribed and sworn to before me this 1 Day of July, 1981

James Workman
(Notary Public)
7/1/81



Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

Division of Water Rights
605 773-3352

No. 1174-2

November 7, 1984

Howard & Judith Schmidt
Mission Route
Valentine, Nebraska 69201

Dear Mr. & Mrs. Schmidt:

The inspection of your water use system and inspection of the extent of the application of water to beneficial use, as developed under your Water Right No. 1174-2 has been completed. Your final water right document, the Water License, can now be issued.

Statutes require that we charge a \$50.00 fee for the inspection and issuing of the Water License. Upon receipt of the \$50.00 fee from you, your Water License will be sent to you.

South Dakota Water Law 46-5-30.1 requires that a permit holder may not divert water until this \$50.00 license fee has been paid. Please contact us if you have any questions.

Sincerely,

Maxine Stirling
Staff Assistant

ms/

NOTE: On form of payment, please include the number of the water permit.
This insures proper handling of the fee.

DWNR-814 8/83

State of South Dakota

Water License No. 1174-2

(1) Daniel J and Terrill A Brinda.
of Mission Route, Valentine NE
made Application No. 1174-2, March 6, 1974 for a water permit to appropriate
3.50 cubic feet per second of water from groundwater (four wells)
Todd County, South Dakota for Irrigation purposes.
Permit No. 1174-3, with a priority date of June 3, 1974
was approved July 17, 1974 and issued to applicant(s) for diversion of water with construction of the described
water supply system to be completed on or before July 17, 1979 and for the application to beneficial use of said
water on or before July 17, 1983

On July 7, 1981, Water Permit No. 1174-2 was transferred to Howard
and Judith Schmidt, Valentine, Nebraska

and

(2) It is certified that the application has complied with the provisions of South Dakota State Law relating to completion of
the construction of the water supply system and is entitled to divert 3.50 cubic feet per second of water
for beneficial use. The location of the diversion point(s) is are Well #1 - 1670 feet south, 1300 feet
west of the NE corner of Section 21; Well #2 - 2660 feet south, 1300 feet
east of the NW corner of Section 22; all in T37N, R28W

and

(3) The applicant has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to the following extent, to irrigate the following land all in T37N, R28W

Section 21 NW 1/4 NE 1/4 25.0 acres (AB)

NE 1/4 NE 1/4 25.1 " (AA)

SW 1/4 NE 1/4 38.5 " (AC)

SE 1/4 NE 1/4 38.5 " (AD)

NW 1/4 SE 1/4 6.0 " (DB)

NE 1/4 SE 1/4 6.0 " (DA)

Section 22 SW 1/4 NW 1/4 31.7 " (BC)

SE 1/4 NW 1/4 31.8 " (BD)

NW 1/4 SW 1/4 34.1 " (CB)

NE 1/4 SW 1/4 33.1 " (CA)

TOTAL 269.8 acres

(4) Pursuant to §46-5-30.1 Howard and Judith Schmidt

of HC 12, Box 23, Valentine NE 69201

the holder(s) and/or owner(s) of Water Permit No. 1174-2 is issued a license to appropriate water, the right to use

3.50 cubic feet per second of water from groundwater (two wells) with a priority date

of June 3, 1974 from the location specified in (2) of this license. The water to be

conducted to and upon lands specified in (3) of this license for the purpose of Irrigation

This license is subject to any limitations or qualifications listed in Water Permit No. 1174-2 and subject to South Dakota State Law.

John H. Hatten
Chief Engineer, Water Rights Division
Department of Water and Natural Resources

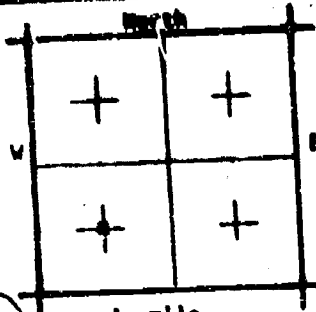
November 20, 1984

WELL DRILLERS REPORT SOUTH DAKOTA WATER RIGHTS COMMISSION

4-73

Well Owner:
Name Orval J. Brinda
Address Mission, South Dakota

Water Level Information:
Static water level 21 below land surface
If flowing: closed in pressure PSI
rate of flow GPM
Controlled by:
☐ Valve ☐ Reducer: ☐ Other
If other: specify _____

Well Location: North
Mark location with an "X"

County Todd
1 SW 1 Sec. 22 Twp. 37 Rg. 28

Well Test Data:

☒ Pumped
☐ Bailed Describe: _____
☐ Other
Pumping Level Below Land Surface
ft. After 1 Hrs. pumped 1200 GPM
101 " " 1 " " 1000 "
96 " " 2 " " 800 "

Proposed Use:
☐ Domestic ☐ Municipal ☐ Test Holes
☒ Irrigation ☐ Industrial ☐ Stock

Method of Drilling:
☐ Forward Rotary ☐ Bored ☐ Jetted
☒ Reverse Rotary ☐ Cable ☐ Other

Well Construction:

Diameter of Hole 32
Depth 214
Casing ☒ Steel ☐ Concrete
☐ Plastic ☐ Other
If other, specify _____

Was casing end left open No
Was a well screen installed Yes
Describe Well Screen
Diameter 16 Material Steel
Slot size 3" x .150
Was well gravel packed Yes
Was well grouted No
Was water sample taken _____

Remarks:

Well Log:

Formation	Depth	
	From	To
clay	0	20
clay & limestone	20	40
clay	40	68
coarse sand	68	75
clay	75	92
coarse sand	92	95
clay	95	100
coarse sand	100	103
clay	103	107
coarse sand	107	120
clay	120	130
med sand	130	150
clay & red rock	150	214

(Use Sec. If Necessary)

Date Completed: March 2, 1972

Driller:

Garment Irrigation Co. 273
Driller's or Firm's Name Union St.

Robert. Mahaska
Address _____

Donald J. Stinner 14422
Signed By Donald J. Stinner Date _____

LICENSE FOR PERMIT NUMBER 1174-2

1. Legal location of wells: North corner of NE 1/4 section 21

T 37 N R 28 W

dams & structures: _____

2. Well Information: Well Drilling Firm Sargent

No. of wells 1 Depth 214'

Casing a) diameter 16" Screen a) type 16" steel

b) length _____ b) length 3" x .150

c) type steel Static water level 30-35'

Pump a) make Western Landroller Motor a) make General Electric

b) model KB 752 72 b) model no. 5K6267KH1A

c) size 4 DKB H c) horsepower rating 100

d) capacity 800-900 GPM d) motor efficiency rating _____

e) turbine pump _____

no. of stages 8m

3. Distribution lines: Head # 8m

a) size of lines 8"

b) type steel

c) length 10'

4. Dam Information:

a) height to crest _____

b) height to spillway _____

c) crest width _____

d) crest length _____

e) spillway length _____

f) spillway width _____

g) approx. storage _____

h) Distribution lines or canals:

1) size _____

2) type _____

3) length _____

5. System Type: a) sideroll:

1) length _____ feet

2) diameter of pipe _____

3) make, model & number of sprinklers _____

4) spacing of sprinklers _____

5) nozzle size _____

i) Outlet tubes:

1) diameter _____

2) type _____

3) valued (Y/N) _____

4) valve type _____

5) location on structure _____

b) towline:

1) length _____ feet

2) make, model & number of sprinklers _____

3) spacing of sprinklers _____

4) nozzle size _____

5. System Type: c) center pivot

- 1) make Valley
- 2) number of towers 7
- 3) distance between towers
170'
- 4) overall length 1320'
- 5) End gun (Y/N) Y
- 6) high or low pressure H
- 7) make & size of nozzles
Nelson
- 8) PSI reading while system is
running 90
- 9) GPM 800-900

g) Gun

- 1) make _____
- 2) serial number _____
- 3) nozzle size _____
- 4) capacity (GPM) _____
- 5) PSI _____
- 6) hose size _____
- 7) hose length _____

d) Gate Pipe

- 1) length _____
- 2) diameter _____
- 3) spacing of gates _____

e) Siphons

- 1) number _____
- 2) size _____

f) Portable boom

- 1) make _____
- 2) serial number _____
- 3) nozzle size _____
- 4) capacity (GPM) _____
- 5) PSI _____

h) Hydromatic

- 1) make _____
- 2) model _____
- 3) serial number _____
- 4) length _____
- 5) nozzle size _____
- 6) spacing _____
- 7) PSI _____
- 8) capacity (GPM) _____

YES

NO

Check Items

1. Soil and water permit lands agree with lands being irrigated
and lands listed on permit.
2. Special Qualifications to permit being abided by.
3. All Structures, wells and lands on map.

REMARKS:

LICENSE FOR PERMIT NUMBER 1174-2

1. Legal location of wells: centerline between NW 1/4 SW 1/4
Section 22 T37N R28W

dams & structures:

2. Well Information: Well Drilling Firm Broken Bow - NEE Sargent call them (send copy)

No. of wells 1 Depth 214 ft

Casing a) diameter 16" Screen a) type 16" steel
 b) length b) length 3" x 150'
 c) type steel Static Water Level 30-32'

Pump a) make Sargent Motor a) make 115 Electric
 b) model 65879 b) model no. R-6326-04-586-R, 2126 R6
 c) size "115A" c) horsepower rating 75
 d) capacity 800-900 GPM d) motor efficiency rating
 e) turbine pump
 no. of stages 3
 Impeller Dia 9250

3. Distribution lines:
 a) size of lines 8"
 b) type Steel
 c) length 20'

4. Dam information:
 a) height to crest
 b) height to spillway
 c) crest width
 d) crest length
 e) spillway length
 f) spillway width
 g) approx. storage
 h) Distribution lines or canals:

i) Outlet tubes:
 1) diameter
 2) type
 3) valued (Y/N)
 4) valve type
 5) location on structure

5. System Type: a) slideroll:
 1) length feet
 2) diameter of pipe
 3) make, model & number of sprinklers
 4) spacing of sprinklers
 5) nozzle size

b) towline:
 1) length feet
 2) make, model & number of sprinklers
 3) spacing of sprinklers
 4) nozzle size

5. System Type: c) center pivot

- 1) make Valley
- 2) number of towers 7
- 3) distance between towers
170'
- 4) overall length 1320'
- 5) End gun (Y/N) Y
- 6) high or low pressure L
- 7) make & size of nozzles
Valley - Nelson
- 8) PSI reading while system is
running 40-45
- 9) GPM 800-900

g) Gun

- 1) make _____
- 2) serial number _____
- 3) nozzle size _____
- 4) capacity (GPM) _____
- 5) PSI _____
- 6) hose size _____
- 7) hose length _____

d) Gate Pipe

- 1) length _____
- 2) diameter _____
- 3) spacing of gates _____

e) Siphons

- 1) number _____
- 2) size _____

f) Portable boom

- 1) make _____
- 2) serial number _____
- 3) nozzle size _____
- 4) capacity (GPM) _____
- 5) PSI _____

h) Hydromatic

- 1) make _____
- 2) model _____
- 3) serial number _____
- 4) length _____
- 5) nozzle size _____
- 6) spacing _____
- 7) PSI _____
- 8) capacity (GPM) _____

YES

NO

Check Items

1. Soil and water permit lands agree with lands being irrigated and lands listed on permit.

2. Special Qualifications to permit being abided by.

3. All Structures, wells and lands on map.

REMARKS:

Permit No. 1174-2Keyapaha Water District**Report Of Examination Of Works And/Or Application Of Water To Beneficial Use**

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

I have this day made a thorough examination of the water use system constructed by Howard i
Judith Schmidt of Valentine, NE holder of
 Permit No. 1174-2, bearing the priority of June 3 1974 authorizing
 the diversion of 3.5 cu. ft. per second of the waters of groundwater - Ogallala aquifer
 for irrigation purposes, in Todd County.

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

- A. Works used to divert the water: Each pivot has one well approximately 219' deep. The wells are steel cased with 16" diameter pipe. The static water level is approximately 32'.
 Pivot #1 has a Western Landroller pump and a 100 H.P. GE motor.
 Pivot #2 has a Sargent, 800 GPM pump and a 75 HP GE motor.
- B. Works used to transport water to place of use:
 Pivot #1 - 8" steel pipe 10 feet long
 Pivot #2 - 8" steel pipe 15 feet long
- C. Works used to apply water to beneficial use:
 Pivot #1 - Valley center pivot having 7 towers, 170' between towers, having an end gun, Nelson nozzles, 45 psi and 850 gpm
 Pivot #2 - Same as pivot #1 except high pressure 65-90 psi

The system is in the following condition Good

The point of diversion is located 1670 ft south, 1300 ft west of NE corner of section 22
2 pivot #2, 2660 ft south 1330 ft east of NW corner of section 22
all of T37N, R28W.

The works are capable of diverting and conveying to the place of use 3.8cu. 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: Pivot #1: NWNE - 25.0
NE¹NE¹ - 25.1, SW¹NE¹ - 38.5, SE¹NE¹ - 38.5, NW¹SE¹ - 6.0, NE¹SE¹ - 6.0 all in
sec 21, T37N, R28W; Pivot #2: SW¹NW¹ - 31.7, SE¹NW¹ - 31.8,
NW¹SW¹ - 34.1, NE¹SW¹ - 33.1 all in section 22 T37N R28W.

comprising a total of 269.8 acres of land and the license should be issued for 3.5 cfsApplicable permit qualifications have been complied with ☒ Yes ☐ NoExceptions to compliance are: None Date Oct. 31, 1984

[Signature]
 (signature)

RECEIPT

Division of Water Rights

No 4 9825

South Dakota Department of Water and Natural Resources

Pierre, November 16, 1984

RECEIVED OF Howard or Judi Schmidt, HC 12 Box 23, Valentine, NE 69201

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use _____		
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. 1174-2	50	00
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for _____		
(Any Other Work Provided by Law)	Total	50 00

By John Hatch
Chief Engineer JOHN HATCH (ms)

NO. 1174-2



Department of Water & Natural Resources

Joe Foss Building
623 East Capitol
Pierre, South Dakota 57501

WATER RIGHTS DIVISION
Phone (605) 773-3352

November 20, 1984

Howard and Judith Schmidt
HC 12, Box 23
Valentine NE 69201

Dear Mr. & Mrs. Schmidt:

Enclosed herewith is, Water License No. 1174-2. This is the final water right document completing your process of obtaining a water right.

As long as you use the water beneficially, as stated in the Water License, the State Water Laws provide that you have a continuing right to use the water.

Very truly yours,

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

JOHN HATCH, Chief Engineer
Water Rights Division

JH: ks

Enclosures

WNR-817 3/83
Transmittal of Water License

L



Department of Water & Natural Resources

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

March 23, 1987

HOWARD & JUDITH SCHMIDT
HC 12 BOX 23
VALENTINE, NE 69201

NOTICE

Re: Violation of Requirement To Submit 1986 Irrigation
Questionnaire

Our records indicate that the 1986 Irrigation Questionnaire has not been submitted for Permit No(s). 1174-2. 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 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 2:00 pm, May 6, 1987 in Room 216, Joe Foss Building, 523 E Capitol, 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(s), the Water Management Board can:

1. Amend Permit No(s). 1174-2 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.

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

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

South Dakota Department of
Water & Natural Resources

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

April 15, 1987

1174-2

Howard & Judith Schmidt
HC 14 Box 123
Valentine, NE 69201

Dear Mr. & Mrs. Schmidt:

This will acknowledge receipt of and thank you for the return of your 1986 Irrigation Questionnaire. A notice was sent to you March 23, 1987 regarding the Irrigation Questionnaire submittal violation of Water Permit No. 1174-2 and the date hearings were to be held before the Water Management Board to determine any action to be taken concerning the violation.

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

If you have any questions, please contact us.

Very truly yours,



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

 **Department of
Water & Natural Resources**

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

February 8, 1989

HOWARD & JUDITH SCHMIDT
HC 14 BOX 123
VALENTINE, NE 69201

NOTICE

RE: Violation of Requirement to Submit 1988 Irrigation Questionnaire

Our records indicate that the 1988 Irrigation Questionnaire has not been submitted for Permit No(s). 1174-2. The request for the Questionnaire was dated October 2, 1988. The Water Management Board had directed that owners of water permits who have not submitted the 1988 Irrigation Questionnaire be given notice of hearing to be held by the Board to determine if any action is to be taken concerning the violation.

The hearings will be held at 9:45 am, March 1, 1989 at the Howard Johnson's, Roosevelt Room, I-90 at LaCrosse, Rapid City SD.

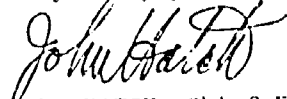
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1. Amend Permit No(s). 1174-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action;
3. Take no action.

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 1st hearing date, your name will be deleted from the agenda for the hearings.

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 24, 1989

1174-2

Howard & Judith Schmidt
HC 14 Box 123
Valentine, NE 69201

Dear Mr. & Mrs. Schmidt:

I am writing to acknowledge receipt of your 1988 irrigation questionnaire for Water Permit No. 1174-2. You may disregard the February 8, 1989, Notice of failure to submit the 1988 irrigation questionnaire. With receipt of the questionnaire your name has been deleted from the March Water Management Board meeting agenda.

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

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division



1174-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 22, 1996

1174-2

Howard Schmidt
HC 14 Box 123
Valentine NE 69201

Dear Mr. Schmidt:

Enclosed is a partially completed "Notice of Transfer of Ownership" form. You indicated on your 1995 irrigation questionnaire that the water right should be listed in your name only, rather than under Howard & Judith.

Please review the form for accuracy and make any necessary corrections. Upon completion, please sign the form in the presence of a notary public and return it to our office with a required filing fee of \$2.50.

Water Right No. 1174-2 will be transferred to your name as soon as the completed form and filing fee are received in our office. Thank you for contacting us regarding this matter. 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

enclosures

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

Date: 2-23-96



Telephone No. (605) 378-2626

Patricia K Busch
(Notary Public)
my comm exp: 1-19-98

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

RECEIPT

Division of Water Rights

South Dakota Department of Environment and Natural Resources

414819

Pierre, _____ February 27, 1996

RECEIVED OF Howard Schmidt, HC 14, Box 123, Valentine, NE 69201

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use _____		
Fee for Application for Permit No. _____ to Appropriate Water, for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>Water Right No. 1174-2</u>		
Fee for Filing Extension Request _____		2 50
Fee for _____		

(Any Other Work Provided by Law)		
Total		2 50

By

Chief Engineer

John Hatch



1174-2

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

March 4, 1996

No. 1174-2

Howard Schmidt
HC 14, Box 123
Valentine, NE 69201

Dear Mr. Schmidt:

Enclosed is a receipt in the amount of \$2.50 which you paid for the transfer of Water Right No. 1174-2.
Our records now show you as the owner of Water Right No. 1174-2.

Sincerely,

A handwritten signature in cursive script that reads 'Cheryl F. Frost'.

Cheryl F. Frost
Secretary
Water Rights Program
(605) 773-3352

enclosure

Pivot #2

Howard Schmidt

NOT TO SCALE



101-R

Map # 998-2
W/R # 1174-2

NOT TO SCALE

9.0

37-28

101-R

Pivot
Never
Developed

DAN
BRINDA

16.8

15.8

15.9

14.7

13.5

27

56.3

15.1

28.8

26.6

ALVIN
ANDERSON

5.3

16.6

15.8

37-28

10.0

Map # 998-2
W/R # 1174-2