

WATER PERMIT NO. 2619-2

Name of Applicant: **Tom O Milligan**

Address: **HCR 14 Box 221B, Mission SD 57555**

Phone: **605 856-4061**

Amount of Water Claimed: **2.0 cfs**

Total Acres: **160**

Source of Water Supply: **groundwater (one well)**

Water to be used for: **irrigation**

County: **Todd**

Type of Waste Disposal System:

Location: **6 miles southwest of Mission**

PRIORITY Date Received: **8-14-07**

Application/License Fee: **\$300**

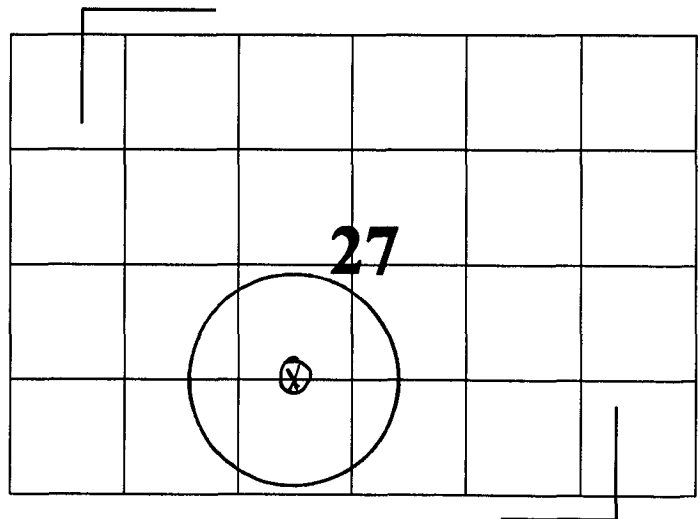
Corrected Application Received: **8-21-07**

Period of Annual Use: **April 1 – October 31**

Remarks:

Diversion Point: **E ½ SW ¼ Sec 27-T38N-R29W**

Land to be Irrigated: **E ½ SE ¼, SW ¼ Sec 27-T38N-R29W**



Depth of Well: **320 feet**

Well Driller:

Remarks:

Type of Map: **aerial**

Prepared by: **Kay Massingale, Todd Co FSA**

Reviewed and the Number Assigned on: **8-27-07**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

FORM 2: Application for irrigation in South Dakota
(type or print)

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	No. <u>2619-2</u> (office use only)	Hydrologic Unit <u>10150006</u>
	Basin <u>Nichara Tributary</u>	
	Newspaper <u>Todd Co. Tribune</u>	<u>PO Box 229</u>
	<u>605-856-4469</u>	<u>Mission 57555</u>

RECEIVED

AUG 14 2007

WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water For Irrigation

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

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

1. Name of Applicant Tom D. Milligan Phone 402-654-3822
(check one) ☒ Owner ☐ Tenant/lessee 605-856-4061
- Mailing Address HCR 14 Box 229 Mission PO Box 32 State SD 57555
(Street, RR, or Box and City) Hooper NE 68031 (Zip Code)
2. Amount of water claimed 2.0 *CFS or 2900 **GPM ***AF Total Acreage 160
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)
3. Source of water supply Well
4. Location of point of diversion (example - 3 wells in SW 1/4 NE 1/4 section 12-T104N-R53W) County Todd
1 well SW 1/4 Sec 27-38N-29W Todd Co
(Center E 1/2 SW 1/4)
5. County or counties where water will be used Todd
6. Annual period during which water is to be used April 1 - Oct 31
7. List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
(Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
SW 1/4 Sec 27-38N-29W	160	NW 1/4 SW 1/4	20
NE Todd Co		SW 1/4 SW 1/4	20
SE 1/4	20	NE 1/4 SW 1/4	40
SE 1/4 SE 1/4	20	SE 1/4 SW 1/4	40

8. Give a description of the project. (Attach sheet if more space is needed)

STATE OF SOUTH DAKOTA) SS
County of Todd

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

I, Tom Milligan, the applicant, certify that I have read this application, have examined the attached map and that the matters stated are true and that I intend, and am able to complete the necessary construction.

Applicant's signature Tom Milligan

Subscribed and sworn to before me this 30 day of July 20 07



Notary Public signature

SOUTH DAKOTA
WATER PERMIT NO. 2619-2 FOR IRRIGATION

Date of first receipt of application August 14, 2007.

Date of return to applicant for corrections, amendments or changes August 14, 2007.

Date of receipt of corrected application August 21, 2007.

The Water Management Board approved Water Permit No. 2619-2 on March 11, 2008 for Tom O Milligan, PO Box 32, Hooper NE 68031 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 2619-2 appropriates 2.0 cubic feet of water per second from one well to be completed into the Arikaree Aquifer (approximately 320 feet deep) located in the E ½ SW ¼ Section 27 to irrigate 160 acres located in the SW ¼, E ½ SE ¼ Section 27; all in T38N-R29W.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: April 1 – October 31.
3. The date from which applicant may claim right is August 14, 2007.
4. One-fifth of the construction is to be completed on or before September 11, 2010.
5. All construction is to be completed on or before March 11, 2013.
6. Water is to be put to beneficial use on or before March 11, 2017.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

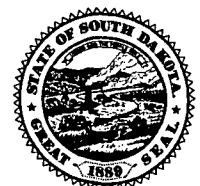
1. The well approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 2619-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

By: Garland Erbele

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

MAY 16 2008
date



Karen - There is no test hole log available for this property.
Joan

(type or print in ink)

1. Well Information - Proposed Construction

- a) Drill Hole Diameter 28" Depth 320 Ft
- b) Casing Type SDR26 PVC Plastic Diameter 16" OA Thickness .625
- c) Screen Type Slotted Diameter 16" Thickness .625
- d) Gravel Pack Washed Road Length of Gravel Pack 318 Ft
- e) Depth to Top of Water Bearing Material 120 Ft
- f) Depth to Water (ground surface to water level) 120 Ft
- g) Distance to nearest existing domestic well:
On applicants property 1/4 Mile (livestock well) On property owned by others 1 Mile

2. Wastewater Disposal System Information

- a) Type of System (i.e. septic tank, drain field) _____
- b) System Capacity (gallons) _____ Year Constructed _____
- c) Connected to the City of _____ Sanitary System

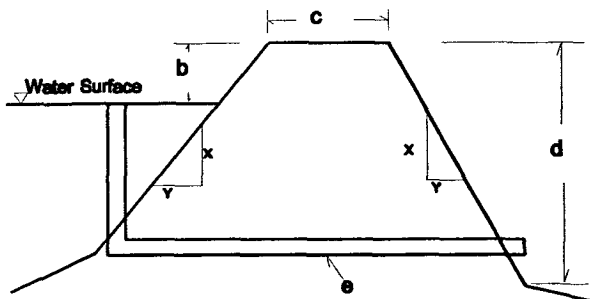
3. Dugout Information

- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

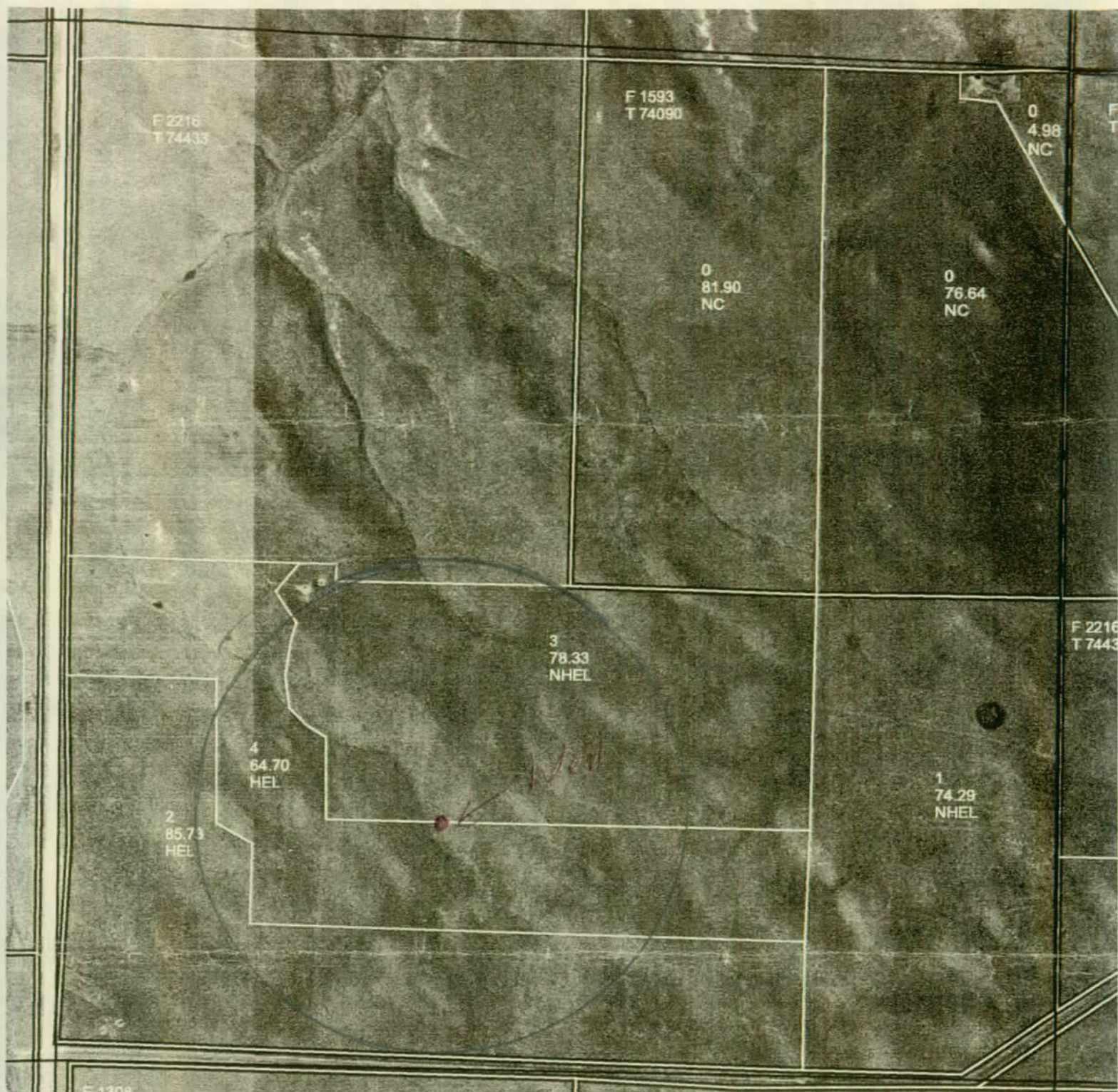
4. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:



- b) Freeboard _____
- c) Crest Width _____
Crest Length _____
- d) Height _____
- e) Primary Outlet Capacity _____
If pipe, diameter _____
- f) Secondary Spillway Capacity _____
Spillway Width _____
- g) X & Y Slope _____
Upstream _____
Downstream _____
- h) Surface Area of Impoundment _____
- i) Storage _____ Acre Feet
- j) Drainage Area Above Dam _____ Acres



<Empty Picture>

Todd County, South Dakota

Sec-Twp-Rng: 27-38N-29W

Map Printed: Jan 20, 2005

Map Not to Scale
No Official Wetland Determination

RECEIVED



USDA-MELLETT/TODD COUNTY FSA OFFICE
P.O. Box A, Corner Main & N 1st
White River, SD 57579

Kay Massingale, PT
7-30-07

AUG 21 2007

WATER RIGHTS
PROGRAM

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 8/14, 2007

RECEIVED OF Tom O Milligan PO Box 32 Hooper NE 68031

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

Fee for Application for Permit No. <u>2619-2</u> to Appropriate Water, to construct and to put water to beneficial use	250	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>2619-2</u>	50	00
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	300 00

No.

03123

By

Garland Erhell

Chief Engineer



RECEIVED

AUG 21 2007

WATER RIGHTS
PROGRAM

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 14, 2007

Tom O Milligan
HCR 14 Box 221B
Mission SD 57555

Dear Mr. Milligan:

Thank you for submitting the *Application for a Permit to Appropriate Water* for irrigation. In order to complete the application the following is required.

- Enclosed is the aerial photo map submitted with the application. Please outline the 160 acres to be irrigated.
- Enclosed is the Form 2A, Supplemental Information. Complete Item No. 1 regarding the Well Information – Proposed Construction.
- If available, submit a well log or test hole log signed by a licensed South Dakota well driller.
— *None Available at this time.* —

If you have any questions, please contact me.

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
605 773-3352
karen.schlaak@state.sd.us

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 26, 2007

Syed Huq
Water Resources
Rosebud Sioux Tribe
PO Box 910
Rosebud SD 57570

Mr. Huq:

Enclosed is a copy of the report, recommendation and public notice for Water Permit Application No. 2619-2 filed by Tom O. Milligan. The public notice is scheduled to be published October 3 and 10, 2007 in the Todd County Tribune.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2619-2. Tom O Milligan**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2619-2, Tom O Milligan, HCR 14 Box 221B, Mission SD 57555.

The Chief Engineer is recommending APPROVAL of Application No. 2619-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualification:

1. The well approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The well authorized by Permit No. 2619-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Garland Erbele, Chief Engineer
September 26, 2007

Report on Application for Water Right No. 2619-2

Tom O. Milligan

4 September 2007

Application No. 2619-2 seeks to appropriate 2.0 cfs of water from the Arikaree Aquifer to irrigate 160 acres of land located at E $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ Sec27-T38N-R29W. The diversion is to be from one well completed to the Arikaree Aquifer approximately 320 feet deep, located at the center of E $\frac{1}{2}$ SW $\frac{1}{4}$ Sec27-T38N-R29W which is approximately 6 miles southwest of Mission, SD. The annual period of use will be 1 April to 31 October.

Aquifer – Arikaree (ARKR)

The Arikaree Aquifer is a shallow aquifer comprised mostly of saturated sandstones and siltstones (Carter, 1998). It underlies approximately 1,360 square miles of Todd and Mellette Counties (Figure 1) and contains about 50 million acre-feet of water in storage (Carter, 1998). The general direction of ground water flow in the area of Sec 27-T38N-R29W is to the northwest as seen in Figure 1. The Arikaree Aquifer in the area of the proposed diversion is underlain by the White River Aquifer and overlain by the Ogallala Aquifer (Carter, 1998).

Review of Existing Permits

Water Right No. 1257-2 appropriates 1.9 cfs of water from one well (370' deep) completed to the Arikaree Aquifer approximately 4350 feet southeast of the proposed site. There are no other water rights within two miles of the proposed diversion location. This Water Right appears to have been purchased by the Rosebud Sioux Tribe. The Water Right has never been transferred or cancelled.

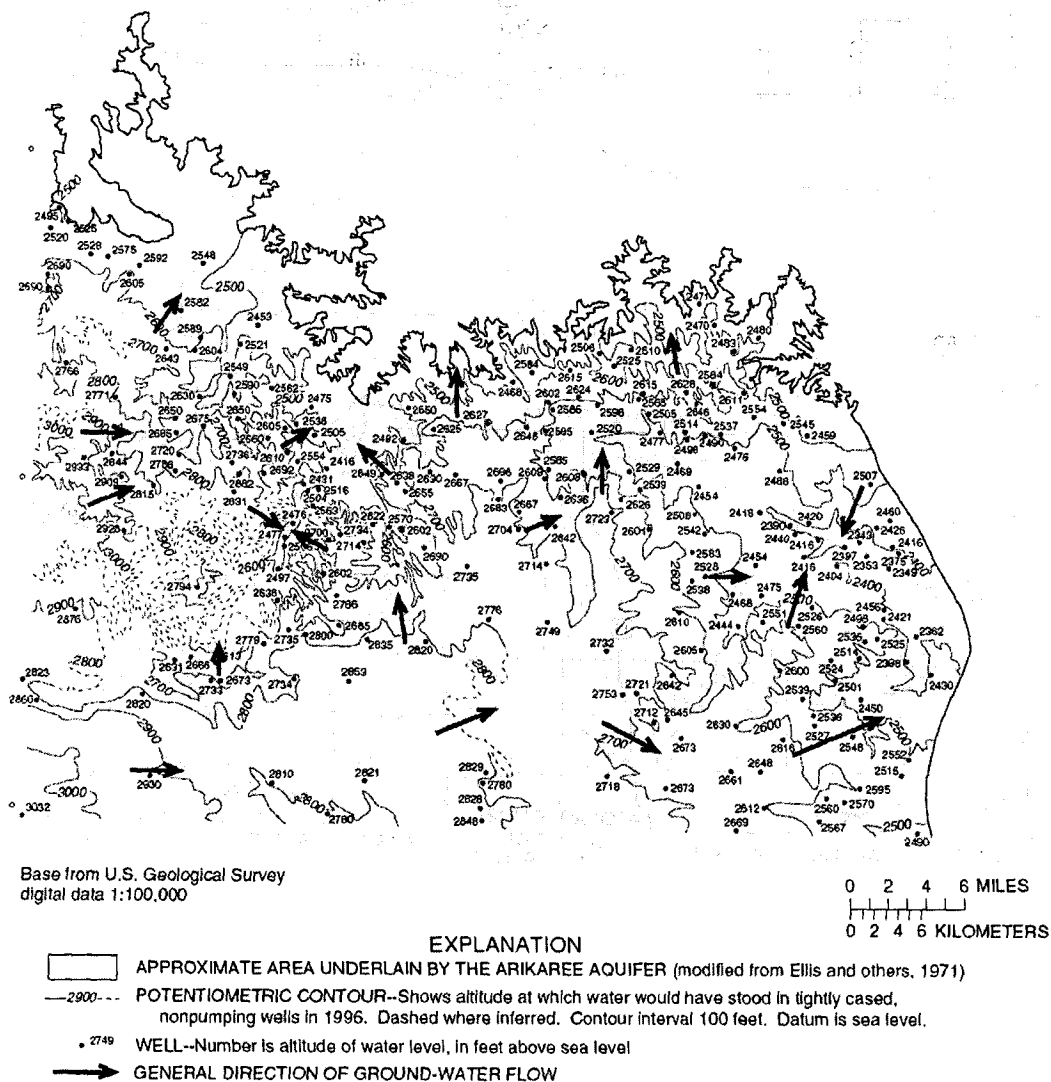


Figure 21. Potentiometric surface of the Arikaree aquifer.

Figure 1: Arikaree Aquifer map

Water Availability

The nearest monitoring well (TD-80C) completed to the Arikaree Aquifer, operated by the water rights program, is located approximately 5.4 miles southwest of the proposed diversion. The graph of water levels in this observation well shows a distinct downward trend (Figure 2). The

next closest observation well is TD-79C, which is about 19 miles northwest of the proposed site (Figure 5).

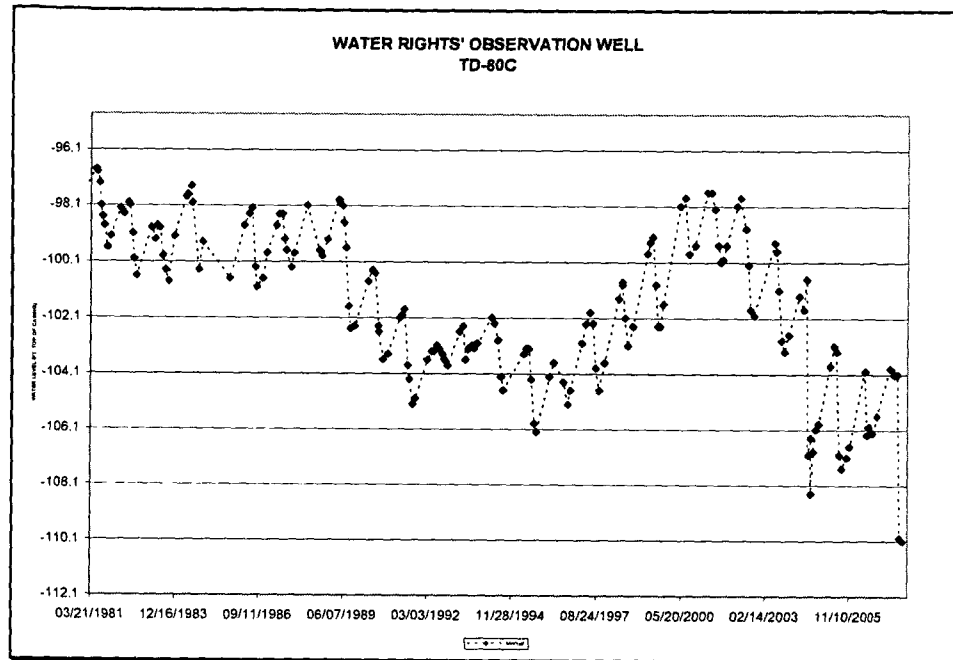


Figure 2: Arikaree observation well

Observation well TD-79C shows a typical response to climatic conditions. The water levels rise during times of increased rainfall and gradually decline with time until there is once again a recharge event. There are five observation wells in Todd County that are completed to the Arikaree Aquifer. The downward trend seen in Figure 2 is not supported for the entire aquifer. Figures 3, 4, 5 and 6 show the fluctuations of water levels in the remaining Arikaree observation wells in Todd County.

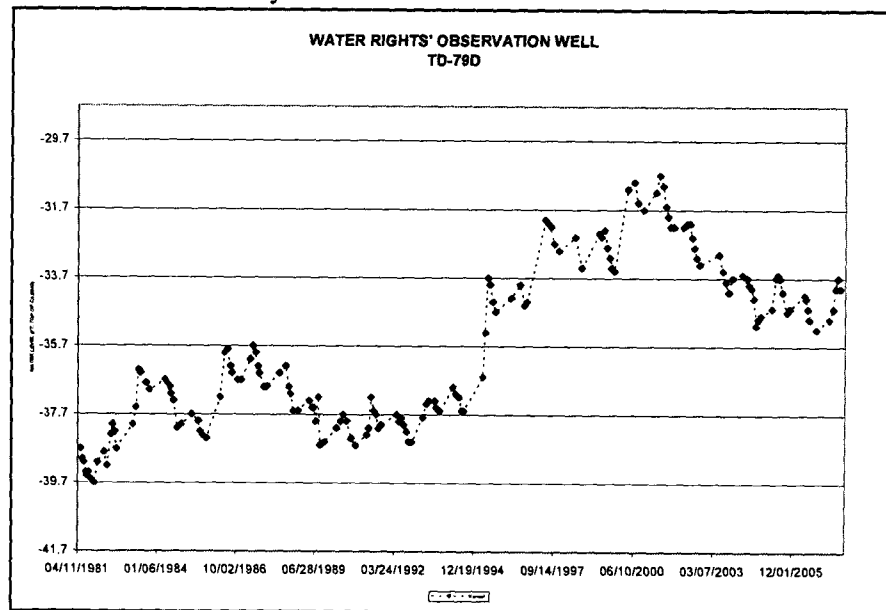


Figure 3: Arikaree observation well

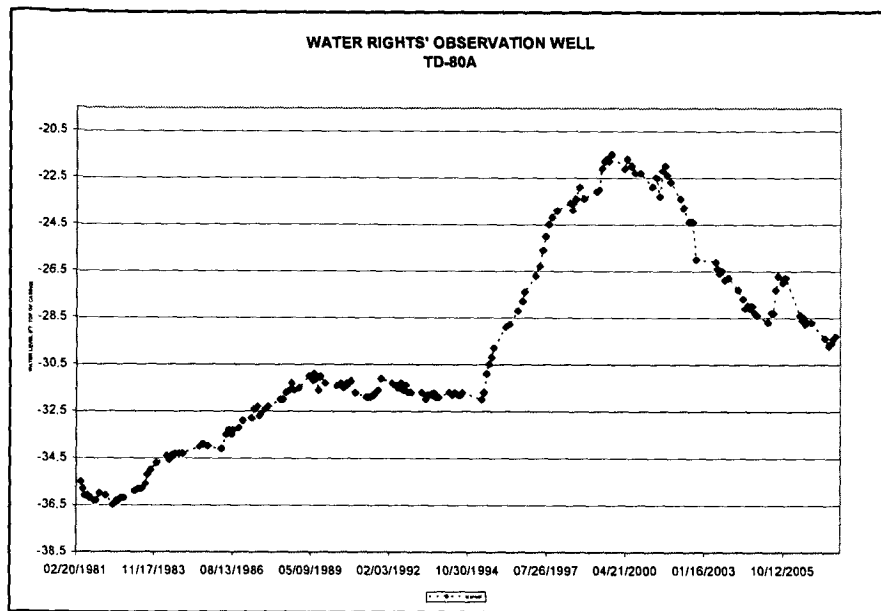


Figure 4: Arikaree observation well

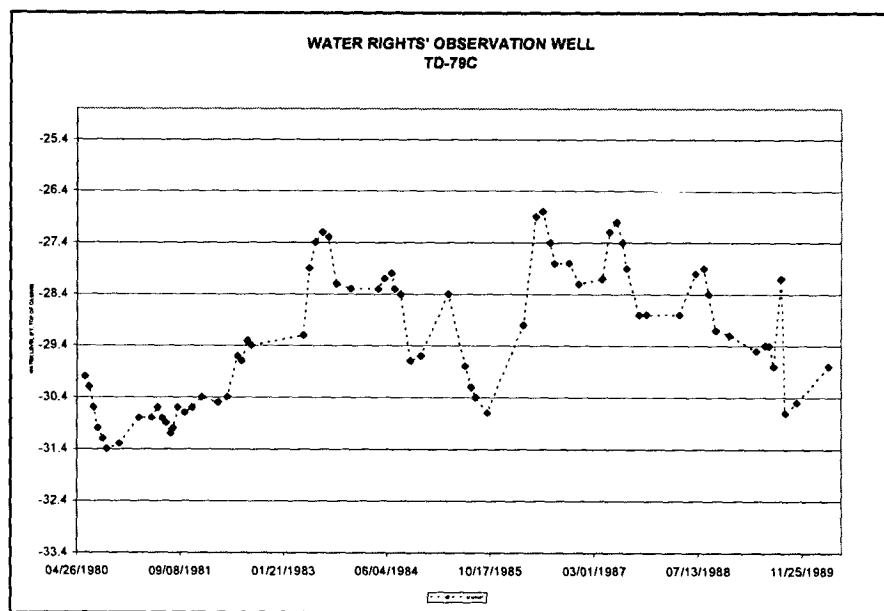


Figure 5: Arikaree observation well

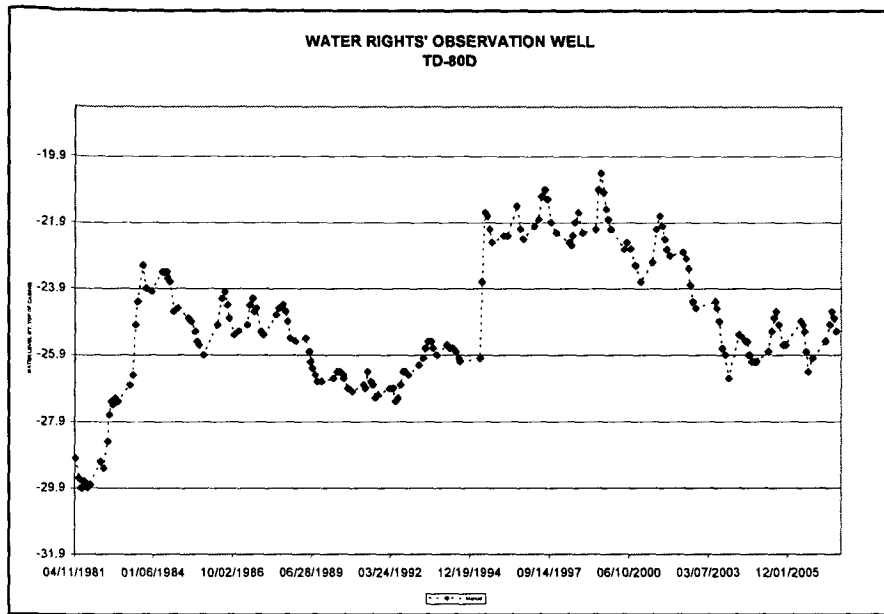


Figure 6: Arikaree observation well

It is believed that the declining curve seen in observation well TD-80C is a localized phenomenon and likely a result of the many irrigation wells completed into primarily the Ogallala Aquifer in close proximity to this observation well. The hydrograph for TD- 80C is very much like hydrographs for observation wells completed into the Ogallala Aquifer in the immediate area of this observation well.

Conclusions

1. There is unappropriated water available in the Arikaree Aquifer.
2. The proposed diversion can be developed without unlawfully impairing existing water rights.
3. The well authorized by Permit No. 2619-2 shall be constructed by a licensed well driller and shall comply with applicable laws and regulations.

Prepared by:

Mark Costello

Natural Resources Engineer
Water Rights

Reviewed by:

Jim Goodman, PE.
Natural Resources Engineer
Water Rights, Program Director

Bibliography

Carter, J.M., *Water Resources of Mellette and Todd Counties, SD*. WRIR 98-4146, USGS, Rapid City, SD., 1998

Kolm, K.E., Case, H.L., *A two Dimensional Finite Model of the High Plains Aquifer in Southern South Dakota*, WRIR 83-4175, 1983.

AFFIDAVIT OF PUBLICATION

State of South Dakota
County of Todd

RECEIVED

NOV - 1 2007

WATER RIGHTS
PROGRAM

Manoy K. Scherer, being duly sworn,
says: That The Todd County Tribune is, and during
all the times hereinafter mentioned was, a
weekly legal newspaper as defined in SDCL 17-2-
2.1 through 17-2-2.4 inclusive, as amended,
published at Mission, Todd County, South
Dakota by Huether Brothers Publishing, Inc.;
that affiant is and during all of said times was,
an employee of the publisher of such newspaper
and has personal knowledge of the facts stated in
this affidavit; that the notice, order of advertise-
ment, a printed copy of which is attached, was
published in said newspaper for 2 suc-
cessive issues, bearing the following dates:

October 10, 2007
October 17, 2007

that the full amount of the fee charged for pub-
lishing the same, to-wit, the sum of
\$ 48.10, insures solely to the benefit of
the publisher of said newspaper; that no agree-
ment or understanding for the division of the fee
has been made with any person, and that no par-
of the fee has been agreed to be paid by any
other person.

Manoy K. Scherer
Bookkeeper

**NOTICE OF APPLICATION NO. 2619-2
To Appropriate Water**

Notice is given that Tom O. Milligan, HCR 14, Box 221B, Mission SD 57555 has filed an application for a water permit to appropriate 2.0 cubic feet of water per second from one well to be completed into the Arikaree Aquifer (approximately 320 feet deep) located in E1/2SW1/4 Section 27 to irrigate 160 acres located in the SW1/4, E1/2SE1/4 Section 27; all in T38N-R29W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2619-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

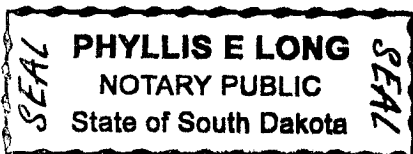
Any person interested in opposing or supporting this application or recommendations must file a written petition with BOTH the applicant and the Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E. Capitol, Pierre, SD 57501 (605) 773-3352" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by October 22, 2007.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application.

Steven M. Pirner, Secretary,
Department of Natural Resources
Pub.: October 10 and 17, 2007

Subscribed and sworn to before me this 17th
day of October A.D., 2007.

Phyllis E. Long
Notary Public



My Commission Expires
August 30, 2012



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

September 26, 2007

Todd County Tribune
PO Box 229
Mission SD 57555

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 2619-2 to Appropriate Water to be published twice. Please publish the first notice on October 3, 2007 with the second publication 7 days later. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

The applicant must verify to you that the notice is to be published, before you make the first publication. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Tom O. Milligan, HCR 14, Box 221B, Mission SD 57555 (Ph # 605-856-4061).

Please send the Water Rights Program the first publication immediately. The publication is checked for accuracy so any corrections can be made in the second publication. You may use the form below or fax a copy of the first publication. Any fax should be sent to the attention of Karen Schlaak at (605) 773-4068. Publication errors can invalidate the public notice.

After the second publication, **please send us an affidavit or use the enclosed Proof of Publication form.** The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

No. 2619-2

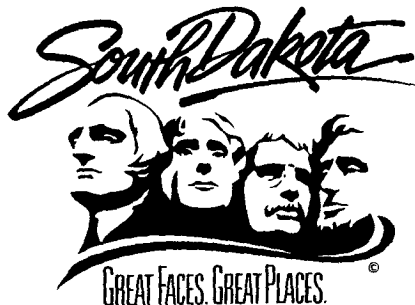
Date _____

We are in receipt of your letter of September 27, 2007 enclosing Notice to Appropriate Water by Application No. 2619-2 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

TO: Eric Gronlund
Water Rights Program
Joe Foss Building
Pierre SD 57501-3181

Name

Newspaper



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

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

September 26, 2007

Tom O Milligan
HCR 14 Box 221 B
Mission SD 57555

Dear Mr. Milligan:

Water Permit Application No. 2619-2 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Publisher of the Todd County Tribune printed at Mission SD (Ph # 605-856-4469). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application is enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice and to arrange for payment. Early contact with the paper can eliminate delays. Upon receiving authorization, the publisher has been instructed to publish your notice once each week for two consecutive weeks. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the applications.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

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

Instruction to Newspaper - Publish first Notice on October 10, 2007 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 2619-2 to Appropriate Water

Notice is given that Tom O Milligan, HCR 14, Box 221B, Mission SD 57555 has filed an application for a water permit to appropriate 2.0 cubic feet of water per second from one well to be completed into the Arikaree Aquifer (approximately 320 feet deep) located in E 1/2 SW 1/4 Section 27 to irrigate 160 acres located in the SW 1/4, E 1/2 SE 1/4 Section 27; all in T38N-R29W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2619-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendations must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by October 29, 2007.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Water Rights Program - File Documentation

NAME: Tom O Milligan

ADDRESS: Mission SD

DATE: 10-2-07 **COUNTY:** TD **TELEPHONE:** 605 856-4061 or 402-654-3822

RE: Publication Notice

COMMENTS:

Tom Milligan called concerning his publication notice. He was gone and therefore did not contact the paper in time to authorize publication of his notice on October 3rd. I told him I would contact the paper and have them publish the notice on the 10th and 17th.

I called the Todd Co Tribune. They requested I email them the revised publication notice which they would publish on the 10th and 17th. The date for petitions to be filed is now October 29, 2007.



Karen Schlaak
Environmental Scientist



ROSEBUD SIOUX TRIBE
POB 430
Rosebud, SD 57570
Phone: 605.747.2381
Fax: 605.747.2905
Website: rosebudsiouxtribe-nsn.gov

Rodney M. Bordeaux, President
Louis Wayne Boyd, Vice President
Mary Greaves, Treasurer
Gerri Night Pipe, Secretary
Lenard Wright, Sergeant-at-Arms

RECEIVED

OCT 17 2007

**WATER RIGHTS
PROGRAM**

October 16, 2007

Eric Gronlund
Water Rights Program
Department of Environmental and Natural Resources
Joe Foss Bldg.
523 East Capitol
Pierre, SD 57501-3182

Dear Eric Gronlund,

WATER PERMIT APPLICATION NO. 2619-2

I write this letter regarding Water Permit Application No. 2619-2 and have developed attached map. The proposed location for the proposed appropriation is in close proximity to the Rosebud Sioux Tribe center pivot irrigation wells and also near the production wells for the Rosebud Sioux Water Rural System (RSRWS) that supplies domestic water to over fifty percent of the general population of the Rosebud Sioux Reservation. The proposed permit would permit the appropriation of 900 gallons per minute or 1,296,000 gallons per day.

The proposed appropriation is a significant amount of water use. The Rosebud Sioux Tribe recommends that your office conducts a hydrogeologic evaluation and demonstrate that there will be no interference with the discharges of the Tribe's center pivot irrigation wells and domestic production wells over an extended period of time.

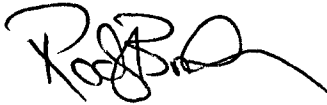
Under South Dakota Codified Laws Section 46-2A-9 a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

It is our position that further evaluation of appropriation proposed by Water Permit Application to determine 1.) whether there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, 2.) that the proposed diversion will not unlawfully impair the Tribe's center pivot irrigation wells and the use of domestic production wells supplying water to over fifty percent of the general population of the residents of the Rosebud Sioux Tribe Reservation, 3.) whether the proposed use is a beneficial use and in the public interests.

Thank you for your cooperation. Please contact Mr. Syed Huq, Director, Rosebud Sioux Tribe Water Resources, at (605)747-2381, if you have any questions or comments.

October 16, 2007

Sincerely,

A handwritten signature in black ink, appearing to read 'Rodney M. Bordeaux'.

Rodney M. Bordeaux

President

Rosebud Sioux Tribe

cc: Rosebud Sioux Tribal Council

Syed Huq, Director, RST Water Resources

Proposed Irrigation Well

RSRWS Production wells

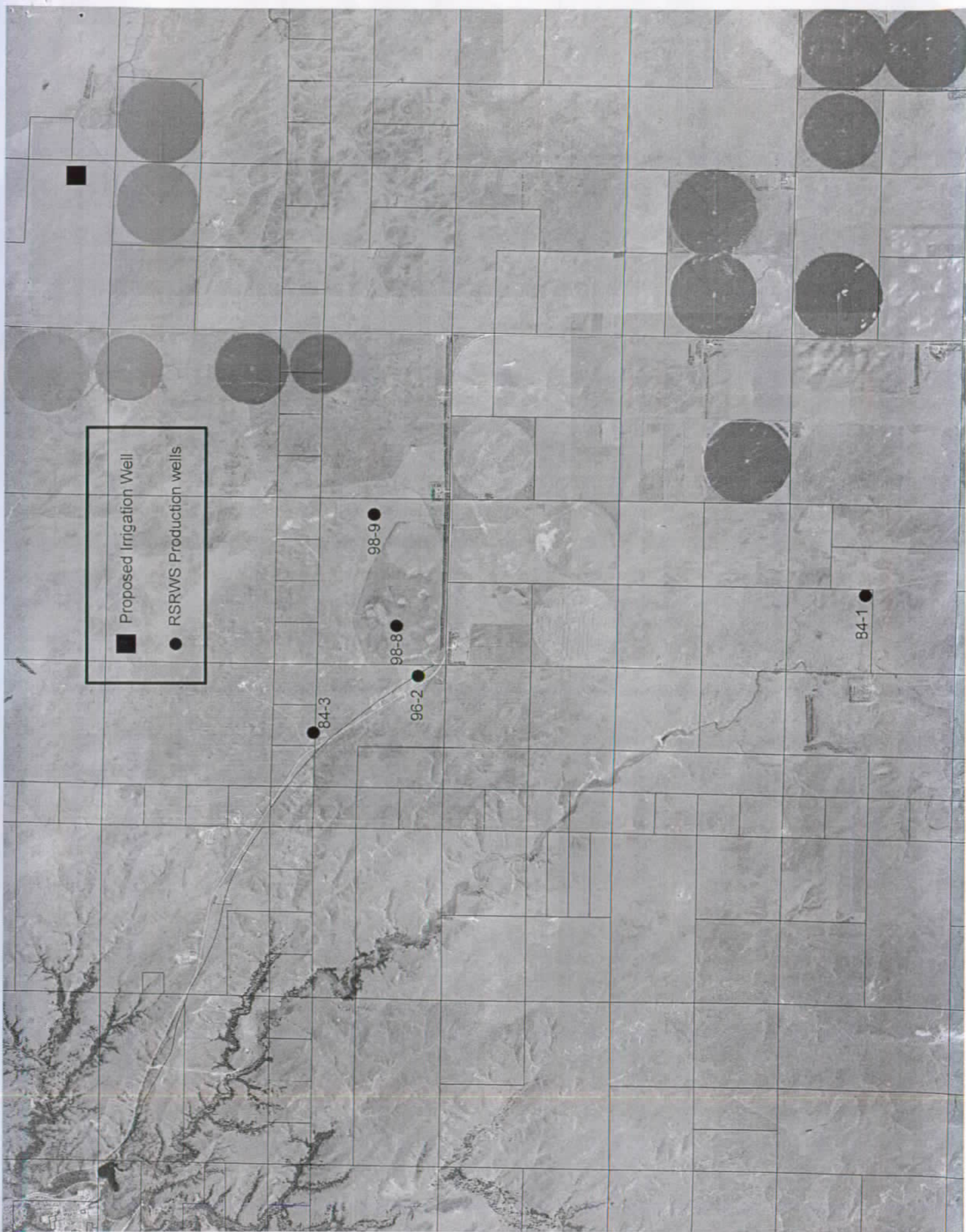
98-9

98-8

96-2

84-3

84-1



MAP 14

R29W

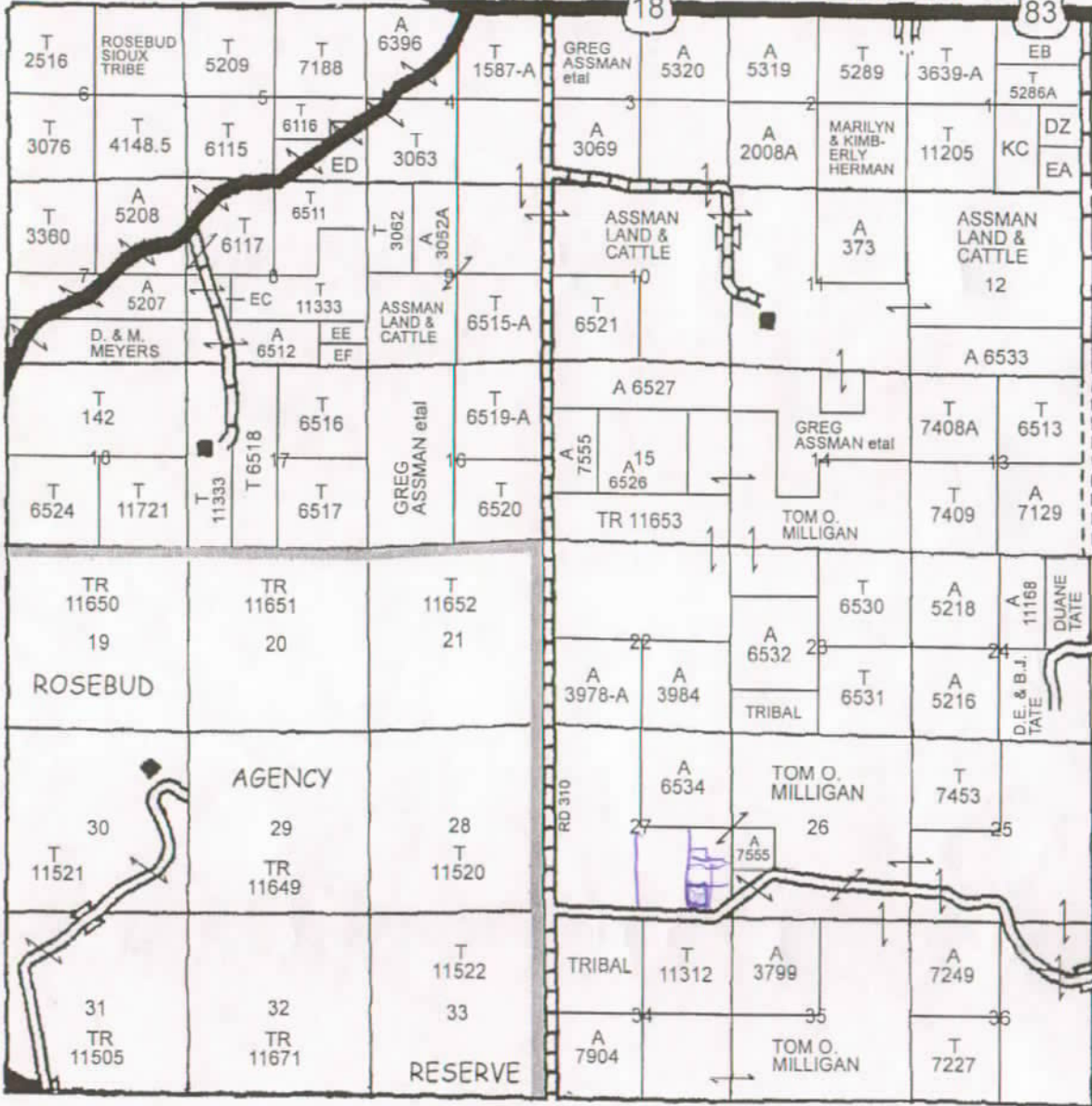
JOINS MAP 5



JOINS MAP 13

T38N

JOINS MAP 15



JOINS MAP 23

RECEIVED

OCT 22 2007

WATER RIGHTS
PROGRAMSICANGU NATION

We, as the Sicangu Nation that are covered and protected by Treaties and Winters Doctrine of The Great Sioux Nation are opposing; the Notice of Application.

- Notice of Application No. 2619-z
 - Tom O. Milligan, HCR 14, Box 221B
Mission, South Dakota 57555
To Appropriate Water
- Has filed an application for a water permit to appropriate 2.0 cubic feet of water per second from one well to be completed into the Arikaree Aquifer (Approximately 320 deep) located in E ½ SW ¼ Section 27 to irrigate 160 acres located in the SW ¼, E ½ SE ¼ Section 27; all in T 38 N-R29W
- Pursuant to SDCL 46-2A-2, the chief Engineer recommends APPROVAL of application NO. 2619-2.
- Opposing Statement:
The exercise of State of South Dakota of state jurisdiction over activities occurring entirely on Indian lands is an infringement on inherent Tribal authority and is contrary to principles of self-government and Tribal Sovereignty.

The notion again of a balanced approach is reprehensible to the Sicangu Nation that is covered and protected by treaties.

The Notice of Application and no discussion demonstrates bias, lack of seriousness and respect for Sicangu Treaty Rights 1851, 1868, and all Treaties with Winters Doctrine which governs water rights.

Excluding tribal participation defies the fundamental notion of fairness.

The Discussions to this matter as per a field hearing and participation should have been considered on the Rosebud Indian Reservation.

- Mr. Tom O. Milligan
- S.D. Chief Engineer
- Mr. Eric Gronlund of Water Rights Program
- Mr. Steven M. Pirner, Secretary, Department of Natural Resources
- Sicangu Treaty Members
- Black Hills Sioux Nation Treaty Council

- In closing, history is never forgotten by all means, and the task to stand strong and believe in our beliefs, unite our traditional values, and speak as one. What this Non-Indian group should do if they want to take part in this process is to be inclusive. It is very disappointing to see that the Tribal Representatives are not included in discussions first. To where again State of South Dakota at will conducts business with no regards to jurisdiction and Tribal Sovereignty.

SICANGU NATION
TREATY AND SOVEREIGNTY PETITION

Sicangu Nation Treaty and Sovereignty Rights

When: November 2nd & 3rd, 2007

Where: Digmann Hall, St. Francis, South Dakota

Time: 9AM to 6PM

AGENDA

9 AM Opening Prayer
9:30 AM Welcome address by host
10AM Opening statements by invited guest and Treaty members

Issues of Discussion

1. Water Rights of Tribal Nations
2. Water issue on the Rosebud Indian reservation (recent case) Tom O. Milligan
3. Legal matters – Tribal to Federal Courts
4. Future of water rights
5. Treaty issues on Cobell case
6. Treaty and the IRA Tribal Governments
7. Treaty and Oyate
8. Treaty and Tokala Societies

Guests:

- * RST Water Resource Director Syed Huq
- * RST Tribal Government, Tribal President, Tribal Vice President, RST Council
Black Hills Sioux Nation Treaty Council
Tokala Societies
Treaty member of OCETI Sakowin
RST Treaty Office
- * Mr. Eric Gronlund, SD Water Rights Program
- * Mr. Steven M. Pirner, Secretary Department of Natural Resources
- * TLE Director – Mr. Calvin Waln

SICANQU Nation TREATY AND Sovereignty Petition

- 1 Darrell Kills In Sight - MARCUS
- 2 Kyle Kills In Sight #
- 3 ~~Shene Williams~~ Metcay
- 4 ~~Shene Williams~~ Metcay
- 5 ~~Shene Williams~~ Metcay
- 6 ~~Shene Williams~~ Metcay
- 7 Rodney Borden
- 8 ~~Shene Williams~~ Metcay
- 9 Linda L. White Mouse Marshall
- 10 ~~Shene Williams~~ Metcay
- 11 ~~Shene Williams~~ Metcay
- 12 Berena White Buffalo Chief
- 13 Christi Horse Cooking
- 14 Thelma Black Crow
- 15 Mary Olson
- 16 ~~Shene Williams~~ Metcay
- 17 ~~Shene Williams~~ Metcay
- 18 Molina Richards
- 19 ~~Shene Williams~~ Metcay
- 20 Ken P. Bump
- 21 Tony Nightyrie
- 22 ~~Shene Williams~~ Metcay
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- 35 ~~Shene Williams~~ Metcay

Sicangu Nation Treaty And Sovereignty Petition

- 1 Mike One Star Sr
- 2 Charles Little Eagle Jr
- 3 Golden Eagle
- 4 Pearl Big Crow
- 5 Chantelle Daponte
- 6 Jim Spotted Elk, Sr.
- 7 Phil Stubby
- 8 W. J.
- 9 Red Haters
- 10 Gary F. Fite
- 11 Wepell D. Brown Sr.
- 12 Carter E. Wain THE Executive Director
- 13 Wab Crazy Bull
- 14 Dawna Quick Bear
- 15 Wiyaka Eaglemann
- 16 Joseph Charging Hawk
- 17 William Manner
- 18 Thomas Mounsean
- 19 Richard K. Crow Dog
- 20 Stephen M. Horse Looking Br
- 21 Hattie Ann Brown
- 22 John Red Bull
- 23 Melrose with
- 24 Elmer Clairmont Sr.
- 25 Frank Chay Horse
- 26 Rebecca Charging Horse
- 27 Douglas White Feather
- 28 Rena Charging Horse
- 29
- 30

SICANQU NATION Treaty Petition

1. Tina Spotted calf - Martiney - Rosebud, SD.
2. Richard Stand Bear - Corn Creek Comm.
3. Pearl Standing Bear - Corn Creek Comm.
4. Clayton Standing Bear - Corn Creek Comm.
5. Victoria Roubideaux - Antelope Comm.
6. ~~Samuel~~ Black Pipe - Black pipe Comm
7. Brandon Black Man - Soldier Creek Comm.
8. Edward Bad Hand - HE Dog Comm.
9. Mauley Sayue - Antelope Comm.
10. Lisa Bad Hand - Rosebud Comm.
11. Daniel White Hat -
12. Jennifer Saunders
13. Amanda Fast Horse
14. Loya Smashed Ice
15. Lynnel Hara
16. Dana W -
17. Eleanor F. Harvie
18. Marcey R. Edwards
19. Yvonne J. Lills du Water
20. James Spocson Keweenaw Bay Indian
21. Community - Ojibwa's Trustee for SGL:
22. Kevin Englem
23. Howard Gantner SGA
24. Ron Bone shirt
25. Julius Walking Crow Rosebud
26. Jennifer Greaves

Sicangu Nation
Treaty and Sovereignty
Petition

- 27 Eugenia Blindman
- 28 Ken Wilke
- 29 LEONARD W. LEADER CHARGE SR.
- 30 Gloria Black Bear
- 31 Francis Morrison
- 32 Sandra Morrison
- 33 Oker Knox Two Bulls



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 26, 2007

Darrell Kills in Sight – Marcus
Sicangu Nation
PO Box 506
St Francis SD 57572

Dear Mr. Marcus:

The South Dakota Department of Environment and Natural Resources (DENR) appreciates the invitation to participate in the Sicangu Nation Treaty and Sovereignty Rights meeting set for November 2nd and 3rd at Digmann Hall in St. Francis. However, I respectfully inform you that DENR will not be able to attend the meeting.

The Sicangu Nation did petition to intervene in the matter of the water permit application filed by Tom Milligan to irrigate using groundwater in Todd County. You will be receiving an agenda scheduling a December 6th contested hearing on the application before the South Dakota Water Management Board. At that time, the Sicangu Nation can present testimony regarding this application.

DENR remains willing to participate and have an open dialogue with the Rosebud Sioux Tribe involving environmental issues including water availability. DENR's absence from the November 2nd meeting should not be viewed as an unwillingness to continue to work on issues of mutual interest between the Tribe and State of South Dakota.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Eric Gronlund', is written over a horizontal line.

Eric Gronlund
Water Rights Program, DENR
605 773-3352



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 30, 2007

NOTICE

TO: Tom O. Milligan
HCR 14, Box 221B
Mission SD 57555

Darrell Marcus
Sicangu Nation
PO Box 506
St. Francis SD 57572

Rodney M. Bordeaux, President
Rosebud Sioux Tribe
PO Box 430
Rosebud SD 57570

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 2619-2, Tom O. Milligan

Two petitions to intervene have been filed in response to the public notice of Water Permit Application No. 2619-2 filed by Tom O. Milligan. This notice schedules a hearing before the Water Management Board to consider Application No. 2619-2. Enclosed is a copy of the staff report, recommendation and the two petitions to intervene.

As specified in the publication notice, Application No. 2619-2 proposes to appropriate 2.0 cubic feet of water per second from one well to be completed into the Arikaree Aquifer (approximately 320 feet deep) located in E 1/2 SW 1/4 Section 27 to irrigate 160 acres located in the SW 1/4, E 1/2 SE 1/4 Section 27; all in T38N-R29W.

The Water Management Board will conduct a hearing to consider Application No. 2619-2 at 9:00 AM on December 6, 2007 in the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing. The hearing time is an estimate and may be delayed due to prior agenda items. Notice will be provided to all parties of record of any change in the hearing time or date.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2619-2 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with

qualifications, 3) defer, or 4) deny this application based on the evidence presented at the public hearing.

The December 6, 2007, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any party who timely filed a petition opposing the application. The request for an automatic delay must be filed by November 26, 2007.

This hearing may be an adversarial proceeding. Any party of record and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Notice is further given to individual with disabilities that this hearing is being held in a physically accessible facility. Please notify Eric Gronlund at (605) 773-3352 by November 26, 2007, if you have any questions about the hearing process or have special needs for which the department will make arrangements.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-23; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4 and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

enclosures

c: Diane Best, Assistant Attorney General
Syed Huq, Director, RST Water Resources

NOTE: Since this matter does not involve a monetary controversy in excess of \$2,500.00 or termination of a property right in accordance with SDCL 1-26-18.3, the Chief Engineer has determined this contested case need not be referred to the Office of Hearing Examiners. If any party disagrees with this determination, the Chief Engineer shall be notified by November 26, 2007.

CERTIFICATION

I hereby certify that on October 30, 2007, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated October 30, 2007, regarding scheduling of hearing for Water Right Permit Application No. 2619-2, Tom O. Milligan, as addressed below and on the attached parties of record.

Tom O. Milligan
HCR 14, Box 221B
Mission SD 57555

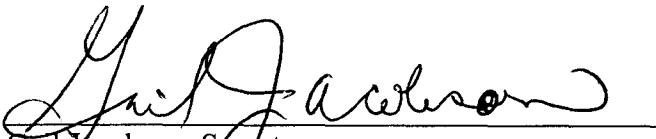
Darrell Marcus
Sicangu Nation
PO Box 506
St. Francis SD 57572

Rodney M. Bordeaux, President
Rosebud Sioux Tribe
PO Box 430
Rosebud SD 57570

Syed Huq, Director
Rosebud Sioux Tribe Water Resources
PO Box 430
Rosebud SD 57570

A copy of the above described Notice was sent Inter-office to:

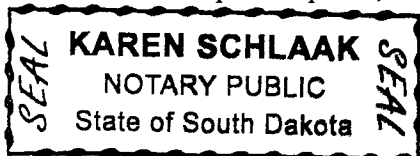
Diane Best, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501


Gail Jacobson, Secretary
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 30th day of October, 2007.


Karen Schlaak
Notary Public
My Commission expires April 1, 2013





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 13, 2007

NOTICE

TO: Tom O. Milligan
HCR 14, Box 221B
Mission SD 57555

Darrell Marcus
Sicangu Nation
PO Box 506
St. Francis SD 57572

Rodney M. Bordeaux, President
Rosebud Sioux Tribe
PO Box 430
Rosebud SD 57570

Syed Huq, Director
Rosebud Sioux Tribe Water Resources
PO Box 430
Rosebud SD 57570

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Preparation of Findings of Fact, Conclusions of Law and Final Decision

The Water Management Board directed Diane Best, Assistant Attorney General, to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of Water Permit Application No. 2619-2 filed by Tom O. Milligan. The Board will consider adoption of Findings, Conclusions and Final Decision at 1:00 PM, on March 11, 2008, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD.

The Board requested that a copy of the proposed Findings, Conclusions and Final Decision be mailed to each Board member and parties by January 31, 2008. Written objections or comments in support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision are to be mailed to each Board member, the Board attorney (mailing list enclosed) by February 20, 2008.

At the Board's discretion, oral arguments by parties who timely filed written comments in opposition or support of the proposed Findings, Conclusions and Final Decision, or alternative Findings, Conclusions and Final Decision may be made on March 11, 2008. The public hearing was completed on December 6, 2007. No additional testimony will be received.

If you have questions about the findings process, please contact Eric Gronlund at (605) 773-3352.

Enclosure

c: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General

WATER MANAGEMENT BOARD MEMBERS

Francis E. Brink
1214 South Wells Street
Aberdeen, SD 57401

Leo Holzbauer
29416 395th Ave
Wagner, SD 57380

Rodney Freeman, Jr,
P.O. Box 176
Huron, SD 57350

Bernita Loucks
219 42nd Street
Rapid City, SD 57702

Everett Hoyt
4422 Carriage Hills Dr
Rapid City SD 57702

Tim Bjork
112 W Oak St
Pierre SD 57501

Jim Hutmacher
802 E 7th Street
Oacoma SD 57365

BOARD ATTORNEY

Jeff Hallem, Assistant Attorney General
Natural Resources Section
Office of Attorney General
George S Mickelson Criminal Justice Center
1302 E Hwy 14, Suite 1
Pierre, SD 57501

WATER RIGHTS PROGRAM

Department of Environment and
Natural Resources
Garland Erbele, Chief Engineer
Water Rights Program
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181

STAFF ATTORNEY

Diane Best, Assistant Attorney General
Office of Attorney General
Natural Resources Section
George S Mickelson Criminal Justice Center
1302 E Hwy 14, Suite 1
Pierre SD 57501

CERTIFICATION

I hereby certify that on December 13, 2007, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated December 13, 2007, regarding preparation of findings of fact, conclusions of law and final decision Water Right Permit Application No. 2619-2, Tom O. Milligan, addressed as stated below :

Tom O. Milligan
HCR 14, Box 221B
Mission SD 57555

Darrell Marcus
Sicangu Nation
PO Box 506
St. Francis SD 57572

Rodney M. Bordeaux, President
Rosebud Sioux Tribe
PO Box 430
Rosebud SD 57570

Syed Huq, Director
Rosebud Sioux Tribe Water
Resources
PO Box 430
Rosebud SD 57570

A copy of the above described Notice was sent Inter-office to:

Jeff Hallem, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501
Diane Best, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501



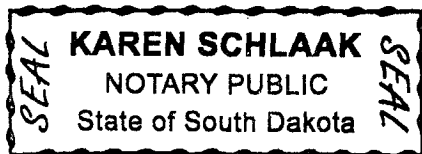
Gail Jacobson
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 13th day of December, 2007.



Karen Schlaak
Notary Public
My Commission expires April 1, 2013





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

March 17, 2008

NOTICE

TO: Tom O. Milligan
HCR 14, Box 221B
Mission SD 57555

Darrell Marcus
Sicangu Nation
PO Box 506
St. Francis SD 57572

Rodney M. Bordeaux, President
Rosebud Sioux Tribe
PO Box 430
Rosebud SD 57570

Syed Huq, Director
Rosebud Sioux Tribe Water Resources
PO Box 430
Rosebud SD 57570

FROM: Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Adoption of Findings of Fact, Conclusions of Law and Final Decision

This is to notify you that the Water Management Board adopted its Final Decision, including Findings of Fact and Conclusions of Law on March 11, 2008, approving Water Permit Application Nos. 2619-2 filed by the Tom Milligan. A copy of the signed Findings of Fact, Conclusions of Law and Final Decisions are enclosed.

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days of this notice and be in accordance with procedures established in SDCL 1-26-31.

Enclosures

c: Jeff Hallem, Assistant Attorney General
Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on March 17, 2008, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice March 17, 2008, regarding adoption of findings of fact, conclusions of law and final decision for Water Right Permit No. 2619-2, Tom O. Milligan, addressed as stated below :

Tom O. Milligan
HCR 14, Box 221B
Mission SD 57555

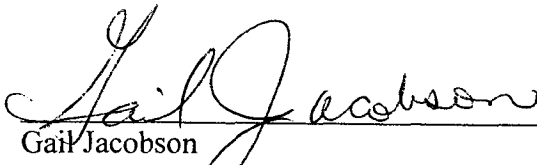
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PO Box 430
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Syed Huq, Director
Rosebud Sioux Tribe Water
Resources
PO Box 430
Rosebud SD 57570

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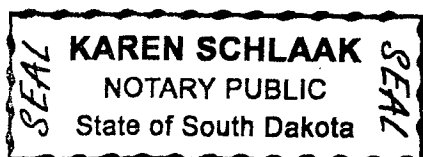
Jeff Hallem, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501
Diane Best, Assistant Attorney General, 1302 E. Hwy 14, Suite 1, Pierre SD 57501-8501


Gail Jacobson
Water Right Program

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 17th day of March 2008.


Karen Schlaak
Notary Public
My Commission expires April 1, 2013



STATE OF SOUTH DAKOTA

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)	FINDINGS OF FACT,
APPLICATION NO. 2619-2,)	CONCLUSIONS OF LAW
TOM MILLIGAN)	AND FINAL DECISION
)	

FINDINGS OF FACT

1. Hearing was held on the above-entitled matter on December 6, 2007.

2. This is an application to appropriate 2.0 cubic feet per second of water. The water will be used by the Applicant for irrigation of 160 acres of land located in E1/2 SE1/4, SW1/4 Section 27, T-38N, R29W, in Todd County.

3. The grant of this application would allow the Applicant to appropriate water from one Arikaree Aquifer well that is 320 feet deep. It is located at the center of E1/2, SW1/4 Section 27, T-38N, R29W, which is approximately 6 miles southwest of Mission, South Dakota. The point of diversion is found on the Rosebud Sioux Reservation.

4. Applicant Tom Milligan owns the property in question. He is not a tribal member and the land involved is not held in trust for a tribe or tribal member.

5. The source of water under the application is the Arikaree Aquifer which is a shallow aquifer that underlies approximately 1,360 square miles of Todd and Mellette Counties.

It is reliably estimated that the aquifer contains at least 50 million acre feet of recoverable water in storage. The general direction of groundwater flow in this area is to the northwest.

6. Based on monitoring wells operated by the water rights program and as described below, unappropriated water is available from the Arikaree Aquifer for this application.

7. One monitoring well (TD-80C) is approximately 5.4 miles from the site of the application and shows a downward trend. Water Rights Program expert witness Mark Costello attributes this decline to a localized phenomenon. This conclusion is based on information from other observation wells in this aquifer and the existence of irrigation wells near to monitoring well TD-80C. The downward trend likely results from the other irrigation wells in the immediate vicinity of monitoring well TD-80C, most of which were completed into the Ogallala Aquifer.

8. In addition to TD-80C, the Water Rights Program operates four other monitoring wells in this aquifer in Todd County. Each shows that the aquifer is responsive to climatic conditions. The water levels rise during times of increased rainfall and gradually decline with time until there is once again a recharge event. Based on the monitoring wells, which are spaced in various places in the aquifer, water is available from the aquifer for this water use.

9. Water Rights Program witness Costello also testified that the proposed irrigation is unlikely to impair existing water rights. In making this analysis, witness Costello considered an irrigation system authorized under Water Right No. 1257-2. Water Permit 1257-2 authorized appropriation of 1.9 cfs of water from three wells in the Arikaree Aquifer. The wells are approximately 3600 feet east, 4500 feet southeast, and 6500 feet southeast of the proposed site. These wells are unlikely to experience adverse impairment from the applicants' use for irrigation. There are no other state issued water rights within two miles of the applicant's proposed site.

10. In addition, Water Right No. 1257-2 holds a priority date prior to this application. Because Water Right No. 1257-2 holds a priority date previous to the application involved here it would have protection under state law against adverse interference.

11. The Rosebud Sioux Tribe intervened in this proceeding and presented testimony through Syed Huq. The Rosebud Sioux Tribe operates the irrigation system described above. The tribe may claim an even earlier priority date based on treaties or federal water law doctrines. These Findings of Fact and Conclusions of law do not purport to determine the existence of, quantify or adjudicate any tribal claim to a treaty or federal law right, whether denominated a "Winters Right" or otherwise.

Regardless of those issues, the water right granted under Water Right No. 1257-2 affords state protection under the state prior appropriation doctrine.

12. The Rosebud Sioux Tribe also operates three other wells within one mile of the proposed site. They are Rosebud Sioux Water Rural System wells that supply domestic water for tribal members. The tribe may claim priority based on treaties or federal water law doctrines and its legal rights would stem from such sources, as applicable. These Findings of Fact and Conclusions of law do not purport to determine the existence of, quantify or adjudicate any tribal claim to a treaty or federal law right, whether denominated a "Winters Right" or otherwise.

13. Mr. Huq testified that the Rosebud Sioux Tribe is not opposed to granting this particular application, but asserts that the applicant will not be able to produce water at the requested diversion rate from the Arikaree, given the location of the well.

14. Although the Board finds, based on the Findings of Fact and Conclusions of Law herein, that the water permit should be granted, the Board does not guarantee production of water at the level claimed.

15. During testimony Mr. Huq stated, on behalf of the Rosebud Tribe, that a hydro-geologic study should be conducted that includes consideration of monitoring wells operated by the

Rosebud Sioux Tribe in the Arikaree and Ogallala Aquifers. He urged the state to consider information from the Rosebud monitoring wells in handling water rights applications. At the hearing he did not present the data from the monitoring wells or identify the specific locations, or water level history for those wells.

16. Costello testified that he used the state database of monitoring wells and did not have access to the Rosebud network of information when reviewing the information on this particular application. The DENR stated that it would, to the extent practical, consider the Rosebud Sioux Tribe information in reviewing water rights applications and in administering water rights, when access is available to such information in the future.

17. Questions also arose concerning the DENR's ability to resolve claims of impairment caused by persons using water pursuant to state granted water rights. The DENR explained that to the extent that the entity making the interference claim is also subject to the state's jurisdiction, the DENR is able to resolve those conflicts. With respect to situations where the state does not have jurisdiction over the complaining party or where access to investigate is limited due to jurisdictional claims, the state utilizes information reasonably available to it. Access would need to be made available to well sites and

well records if interference is claimed by the Rosebud Sioux Tribe.

18. Mr. Huq testified that there has been a lack of formal communications between the Rosebud Tribe and the State of South Dakota on water administration. Mr. Huq recognized that the tribe had been sent a letter on September 26, 2007, specifically with respect to the Milligan application, even before the matter was published in the newspaper. He asked, however, that notification be provided on water applications earlier in the process to allow for joint study. In this particular case, there was sufficient time available for the Tribe to supply additional information to the DENR for analysis and for Tribal preparation for presenting of such information at hearing on December 6.

19. Another intervener, the Sicangu Nation, filed a protest that was received by the Water Rights Program on October 22, 2007. The protest claims that this Boards' authority over the present application is an infringement on inherent Tribal authority and is contrary to principles of self-government and Tribal sovereignty. The protest included a document with several signatures entitled Sicangu Nation Treaty and Sovereignty Petition. The facsimile petition was considered as a petition to intervene and the Sicangu Nation was afforded an opportunity to present testimony and argument.

20. Darrell Kills-in-Sight Marcus appeared at hearing on behalf of the Sicangu Nation. He presented a Declaration of Sovereignty of The Supreme Organization of the Unrestricted Indians of the Great Sioux Nation. The Declaration of Sovereignty contains 47 signatures and states that it is filed on behalf of the Lakota Sioux Nation. The Declaration asserts that the Lakota Sioux Nation is in charge of its own government, affairs, destiny and future. Mr. Marcus presented testimony explaining the context and history of the sovereignty claim.

21. Mr. Marcus testified that he is concerned about the implications of this water right on tribal sovereignty and on tribal water rights in general. He stated that he represents grassroots traditional people that do not recognize the tribal organization which currently exists under the 1934 Indian Reorganization Act. The Board does not purport to determine the existence of, quantify or adjudicate Mr. Marcus's claims on behalf of the Supreme Organization of the Unrestricted Indians of the Great Sioux Nation.

22. Mr. Marcus did not challenge the DENR expert opinion that there is sufficient water available from the Arikaree Aquifer for this particular application. Mr. Marcus did not claim or identify any specific water rights held by or specific water rights claimed by the Sicangu Nation or The Supreme

Organization of the Unrestricted Indians of the Great Sioux Nation.

23. Based on the evidence presented at hearing, the grant of this application for the use of water to irrigate 160 acres would not interfere with the Rosebud Sioux Tribe's right to make its own laws and be governed by them. The grant of the right would not interfere with any legally protected right to the Supreme Organization of the Unrestricted Indians of the Great Sioux Nation.

24. Based on the foregoing Findings of Fact, this Board finds that this Permit will not adversely impair existing water rights for appropriative use and will not interfere with the Rosebud Sioux Tribe's claims of water rights under federal doctrines or treaties, as applicable.

25. In addition to appropriative water rights, there may be domestic wells completed into the Arikaree Aquifer in this area.

26. Prior rights for appropriative water use and any right for domestic use would take priority over the appropriative water right granted in this proceeding, provided that such prior rights or domestic rights are from adequate wells, i.e., wells that are constructed sufficiently deep into the aquifer to warrant such protection. Simply put, the pump placement in a prior appropriative well or domestic well may not be protected

if the pump could be lowered and still produce a sufficient water supply. This Board has concluded in the past that because water resources are to be put to beneficial use to the fullest extent of which they are capable, it will not protect prior water users who seek to pump water from upper levels within a well when the source aquifer could sustain pumping at lower pump placements and thereby allow for increased beneficial use of water.

27. The Board finds that the proposed diversion will not adversely impair existing domestic or appropriative water rights as described in the foregoing Findings of Fact.

28. The evidence available to this Board is sufficient to determine that adequate water is available from the Arikaree Aquifer for this permit and that appropriative and domestic wells completed in the Arikaree Aquifer in this area will not be unlawfully impaired.

29. The Board has also considered whether the proposed use is beneficial. The Board finds that the appropriation of water for irrigation, as described in the previous Findings of Fact, is reasonable and useful and beneficial to the appropriator. In addition to benefit to the appropriator, this Board must also consider whether the contemplated use is consistent with the interests of the public of this state in the best utilization of

water supplies. This Board has consistently approved applications for water use for irrigation for crops in the past.

30. Although the Rosebud Sioux Tribe is concerned about overall administration of the aquifer and water availability in general, Mr. Hug did not oppose this particular use of water for irrigation.

31. Granting the water use would not interfere with the Rosebud Sioux Tribe's right to make its own laws and be governed by them or to claim water rights under federal doctrines or treaties, as applicable.

32. The Supreme Organization of the Unrestricted Indians of the Great Sioux Nation is concerned about state infringement on tribal sovereignty. Mr. Marcus did not assert that the specific proposed irrigation use would impair any water rights held by The Supreme Organization of the Unrestricted Indians of the Great Sioux Nation.

33. This Board determines that the water use in this case is consistent with the interests of the public of this state in the best utilization of water supplies. Using water for irrigation as proposed is a beneficial use.

34. This Board is also required to consider public interest. Using water for irrigation is in the public interest in agricultural areas such as Todd County. Neither Mr. Hug nor

Mr. Marcus assert otherwise. The Rosebud Tribe itself has a center pivot irrigation system.

35. When considering the public interest, the Board considers a wide variety of public interest concerns including economic value in irrigated crops, and possible impacts to neighboring property owners and others using nearby lands. Such impacts must, of course, be considered in terms of the public interest (or lack thereof) relating to the specific use at hand. The Water Management Board finds that the water use for irrigation is in the public interest.

36. The foregoing Findings and Conclusions pertaining to beneficial use concerns also apply to consideration of public interest.

37. The Board finds that: (a) there is reasonable probability that there is unappropriated water available for the Applicant's proposed use; (b) the proposed diversion can be developed without unlawful impairment of existing rights; (c) the proposed use is a beneficial use; and (d) the proposed use is in the public interest.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The proposed point of diversion is in Todd County on the Rosebud Sioux Reservation, but both the property to be irrigated and the well in question are owned by Mr. Milligan who is neither a

tribe nor a tribal member. The land is in fee status and is not trust property. No party claims otherwise as to any of these points.

2. Based on the evidence presented at hearing, the Board concludes that the grant of this application for water use for irrigation of 160 acres would not interfere with the Rosebud Sioux Tribe's right to make its own laws and be governed by them. Moreover, the grant of this right would not interfere with any legally protected right of The Supreme Organization of the Unrestricted Indians of the Great Sioux Nation. The Board makes no determination regarding the rights of the two interveners to control or influence the administration of any tribal claim to a water right.

3. There is a reasonable probability there is unappropriated water available for the Applicant's proposed use from the Arikaree Aquifer.

4. The proposed use for irrigation is a beneficial use in that it is: (a) reasonable and useful and beneficial to the appropriator and, (b) at the same time is consistent with the interests of the public of this state in the best utilization of water supplies. SDCL 46-1-6(3).

5. The proposed diversion can be developed without unlawful impairment of existing rights. The Board concludes

that any effect on either appropriative or domestic wells will not cause adverse impairment to properly constructed wells.

6. The Rosebud Tribe may claim prior existing rights for water uses including irrigation and domestic water use. In these Findings of Fact or Conclusions of Law, the Board does not purport to quantify or adjudicate other uses stemming from federal doctrines or treaty rights. Based on the foregoing Findings of Fact, this Board finds that this Permit will not adversely impair existing water rights for appropriative use and will not interfere with the tribal right to govern itself or to claim water rights under federal doctrines or treaties, as applicable.

7. The Rosebud Sioux Tribe operates three wells for irrigation approximately 3600 feet, 4500 feet, and 6500 feet from the Milligan well. The water use from these wells was originally authorized in state Water Right No. 1257-2. The Rosebud Sioux Tribe acquired these wells after the permit was issued and the permit remains in effect. The appropriative right in Water Right No. 1257-2 would have priority over the Milligan right under state law because it is "first in time, first in right" under SDCL 46-5-7. Such priority assumes that the prior authorized well is properly constructed as stated in Board rules.

8. In light of the foregoing Findings, the proposed use for irrigation is in the public interest.

9. This Board has carefully considered the positions of the various parties in this matter. SDCL 46-1-4 requires that South Dakota's water resources be put to beneficial use to the fullest extent of which they are capable. Further, the "beneficial use" criteria for consideration of the water permit in this case requires consideration of the best utilization of the water supply. Ultimately, the legal criteria for approval of water permits in this matter are designed to provide for maximum utilization of water for the arid climate in western South Dakota. This Board finds that these legal requirements are best met by approval of the water permit at issue in this case.

FINAL DECISION

Application No. 2619-2 is hereby granted and a Permit shall be issued forthwith containing the following qualifications:

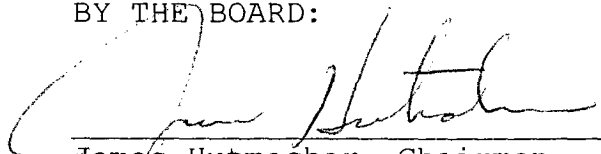
1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The well authorized by Permit No. 2619-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board well construction rules, ch. 74:02:04, with the well casing pressure grouted (bottom to top) pursuant to § 74:02:04:28.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this 11 day of March, 2008.

BY THE BOARD:


James Hutmacher, Chairman

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

January 31, 2008

TO: Water Board and Interested Parties
FROM: Diane Best, Assistant Attorney General

RE: In the Matter of Water Permit Applicatin No. 2619-2,
Tom Milligan

Handwritten initials "DB" in blue ink.

As required by the Board, I am enclosing proposed Findings of Fact and Conclusions of Law in the above-referenced matter.

It is my understanding that the parties will have until February 20, 2008, to submit responses and alternatives to these proposals and send them to all parties. Hearings on the proposed Findings will be March 11, 2008.

DB:js
Enclosure

STATE OF SOUTH DAKOTA

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)	FINDINGS OF FACT,
APPLICATION NO. 2619-2,)	CONCLUSIONS OF LAW
TOM MILLIGAN)	AND FINAL DECISION
)	

FINDINGS OF FACT

1. Hearing was held on the above-entitled matter on December 6, 2007.

2. This is an application to appropriate 2.0 cubic feet per second of water. The water will be used by the Applicant for irrigation of 160 acres of land located in E1/2 SE1/4, SW1/4 Section 27, T-38N, R29W, in Todd County.

3. The grant of this application would allow the Applicant to appropriate water from one Arikaree Aquifer well that is 320 feet deep. It is located at the center of E1/2, SW1/4 Section 27, T-38N, R29W, which is approximately 6 miles southwest of Mission, South Dakota. The point of diversion is found on the Rosebud Sioux Reservation.

4. Applicant Tom Milligan owns the property in question. He is not a tribal member and the land involved is not held in trust for a tribe or tribal member.

5. The source of water under the application is the Arikaree Aquifer which is a shallow aquifer that underlies approximately 1,360 square miles of Todd and Mellette Counties.

It is reliably estimated that the aquifer contains at least 50 million acre feet of recoverable water in storage. The general direction of groundwater flow in this area is to the northwest.

6. Based on monitoring wells operated by the water rights program and as described below, unappropriated water is available from the Arikaree Aquifer for this application.

7. One monitoring well (TD-80C) is approximately 5.4 miles from the site of the application and shows a downward trend. Water Rights Program expert witness Mark Costello attributes this decline to a localized phenomenon. This conclusion is based on information from other observation wells in this aquifer and the existence of irrigation wells near to monitoring well TD-80C. The downward trend likely results from the other irrigation wells in the immediate vicinity of monitoring well TD-80C, most of which were completed into the Ogallala Aquifer.

8. In addition to TD-80C, the Water Rights Program operates four other monitoring wells in this aquifer in Todd County. Each shows that the aquifer is responsive to climatic conditions. The water levels rise during times of increased rainfall and gradually decline with time until there is once again a recharge event. Based on the monitoring wells, which are spaced in various places in the aquifer, water is available from the aquifer for this water use.

9. Water Rights Program witness Costello also testified that the proposed irrigation is unlikely to impair existing water rights. In making this analysis, witness Costello considered an irrigation system authorized under Water Right No. 1257-2. Water Permit 1257-2 authorized appropriation of 1.9 cfs of water from three wells in the Arikaree Aquifer. The wells are approximately 3600 feet east, 4500 feet southeast, and 6500 feet southeast of the proposed site. These wells are unlikely to experience adverse impairment from the applicants' use for irrigation. There are no other state issued water rights within two miles of the applicant's proposed site.

10. In addition, the priority date for Water Right No. 1257-2 is 1975. Because Water Right No. 1257-2 holds a priority date previous to the application involved here it would have protection under state law against adverse interference.

11. The Rosebud Sioux Tribe intervened in this proceeding and presented testimony through Syed Huq. The Rosebud Sioux Tribe operates the irrigation system described above. The tribe may claim an even earlier priority date based on treaties or federal water law doctrines. These Findings of Fact and Conclusions of law do not purport to determine the existence of, quantify or adjudicate any tribal claim to a treaty or federal law right, whether denominated a "Winters Right" or otherwise. Regardless of those issues, the water right granted under Water

Right No. 1257-2 affords state protection under the state prior appropriation doctrine.

12. The Rosebud Sioux Tribe also operates three other wells within one mile of the proposed site. They are Rosebud Sioux Water Rural System wells that supply domestic water for tribal members. The tribe may claim priority based on treaties or federal water law doctrines and its legal rights would stem from such sources, as applicable. These Findings of Fact and Conclusions of law do not purport to determine the existence of, quantify or adjudicate any tribal claim to a treaty or federal law right, whether denominated a "Winters Right" or otherwise.

13. Mr. Hug testified that the Rosebud Sioux Tribe is not opposed to granting this particular application, but asserts that the applicant will not be able to produce water at the requested diversion rate from the Arikaree, given the location of the well.

14. Although the Board finds, based on the Findings of Fact and Conclusions of Law herein, that the water permit should be granted, the Board does not guarantee production of water at the level claimed.

15. During testimony Mr. Hug stated, on behalf of the Rosebud Tribe, that a hydro-geologic study should be conducted that includes consideration of monitoring wells operated by the Rosebud Sioux Tribe in the Arikaree and Ogallala Aquifers. He

urged the state to consider information from the Rosebud monitoring wells in handling water rights applications. At the hearing he did not present the data from the monitoring wells or identify the specific locations, or water level history for those wells.

16. Costello testified that he used the state database of monitoring wells and did not have access to the Rosebud network of information when reviewing the information on this particular application. The DENR stated that it would, to the extent practical, consider the Rosebud Sioux Tribe information in reviewing water rights applications and in administering water rights, when access is available to such information in the future.

17. Questions also arose concerning the DENR's ability to resolve claims of impairment caused by persons using water pursuant to state granted water rights. The DENR explained that to the extent that the entity making the interference claim is also subject to the state's jurisdiction, the DENR is able to resolve those conflicts. With respect to situations where the state does not have jurisdiction over the complaining party or where access to investigate is limited due to jurisdictional claims, the state utilizes information reasonably available to it. Access would need to be made available to well sites and

well records if interference is claimed by the Rosebud Sioux Tribe.

18. Mr. Huq testified that there has been a lack of formal communications between the Rosebud Tribe and the State of South Dakota on water administration. Mr. Huq recognized that the tribe had been sent a letter on September 26, 2007, specifically with respect to the Milligan application, even before the matter was published in the newspaper. He asked, however, that notification be provided on water applications earlier in the process to allow for joint study. In this particular case, there was sufficient time available for the Tribe to supply additional information to the DENR for analysis and for Tribal preparation for presenting of such information at hearing on December 6.

19. Another intervener, the Sicangu Nation, filed a protest that was received by the Water Rights Program on October 22, 2007. The protest claims that this Boards' authority over the present application is an infringement on inherent Tribal authority and is contrary to principles of self-government and Tribal sovereignty. The protest included a document with several signatures entitled Sicangu Nation Treaty and Sovereignty Petition. The facsimile petition was considered as a petition to intervene and the Sicangu Nation was afforded an opportunity to present testimony and argument.

20. Darrell Kills-in-Sight Marcus appeared at hearing on behalf of the Sicangu Nation. He presented a Declaration of Sovereignty of The Supreme Organization of the Unrestricted Indians of the Great Sioux Nation. The Declaration of Sovereignty contains 47 signatures and states that it is filed on behalf of the Lakota Sioux Nation. The Declaration asserts that the Lakota Sioux Nation is in charge of its own government, affairs, destiny and future. Mr. Marcus presented testimony explaining the context and history of the sovereignty claim.

21. Mr. Marcus testified that he is concerned about the implications of this water right on tribal sovereignty and on tribal water rights in general. He stated that he represents grassroots traditional people that do not recognize the tribal organization which currently exists under the 1934 Indian Reorganization Act. The Board does not purport to determine the existence of, quantify or adjudicate Mr. Marcus's claims on behalf of the Supreme Organization of the Unrestricted Indians of the Great Sioux Nation.

22. Mr. Marcus did not challenge the DENR expert opinion that there is sufficient water available from the Arikaree Aquifer for this particular application. Mr. Marcus did not claim or identify any specific water rights held by or specific water rights claimed by the Sicangu Nation or The Supreme

Organization of the Unrestricted Indians of the Great Sioux Nation.

23. Based on the evidence presented at hearing, the grant of this application for the use of water to irrigate 160 acres would not interfere with the Rosebud Sioux Tribe's right to make its own laws and be governed by them. The grant of the right would not interfere with any legally protected right to the Supreme Organization of the Unrestricted Indians of the Great Sioux Nation.

24. Based on the foregoing Findings of Fact, this Board finds that this Permit will not adversely impair existing water rights for appropriative use and will not interfere with the Rosebud Sioux Tribe's claims of water rights under federal doctrines or treaties, as applicable.

25. In addition to appropriative water rights, there may be domestic wells completed into the Arikaree Aquifer in this area.

26. Prior rights for appropriative water use and any right for domestic use would take priority over the appropriative water right granted in this proceeding, provided that such prior rights or domestic rights are from adequate wells, i.e., wells that are constructed sufficiently deep into the aquifer to warrant such protection. Simply put, the pump placement in a prior appropriative well or domestic well may not be protected

if the pump could be lowered and still produce a sufficient water supply. This Board has concluded in the past that because water resources are to be put to beneficial use to the fullest extent of which they are capable, it will not protect prior water users who seek to pump water from upper levels within a well when the source aquifer could sustain pumping at lower pump placements and thereby allow for increased beneficial use of water.

27. The Board finds that the proposed diversion will not adversely impair existing domestic or appropriative water rights as described in the foregoing Findings of Fact.

28. The evidence available to this Board is sufficient to determine that adequate water is available from the Arikaree Aquifer for this permit and that appropriative and domestic wells completed in the Arikaree Aquifer in this area will not be unlawfully impaired.

29. The Board has also considered whether the proposed use is beneficial. The Board finds that the appropriation of water for irrigation, as described in the previous Findings of Fact, is reasonable and useful and beneficial to the appropriator. In addition to benefit to the appropriator, this Board must also consider whether the contemplated use is consistent with the interests of the public of this state in the best utilization of

water supplies. This Board has consistently approved applications for water use for irrigation for crops in the past.

30. Although the Rosebud Sioux Tribe is concerned about overall administration of the aquifer and water availability in general, Mr. Huq did not oppose this particular use of water for irrigation.

31. Granting the water use would not interfere with the Rosebud Sioux Tribe's right to make its own laws and be governed by them or to claim water rights under federal doctrines or treaties, as applicable.

32. The Supreme Organization of the Unrestricted Indians of the Great Sioux Nation is concerned about state infringement on tribal sovereignty. Mr. Marcus did not assert that the specific proposed irrigation use would impair any water rights held by The Supreme Organization of the Unrestricted Indians of the Great Sioux Nation.

33. This Board determines that the water use in this case is consistent with the interests of the public of this state in the best utilization of water supplies. Using water for irrigation as proposed is a beneficial use.

34. This Board is also required to consider public interest. Using water for irrigation is in the public interest in agricultural areas such as Todd County. Neither Mr. Huq nor

Mr. Marcus assert otherwise. The Rosebud Tribe itself has a center pivot irrigation system.

35. When considering the public interest, the Board considers a wide variety of public interest concerns including economic value in irrigated crops, and possible impacts to neighboring property owners and others using nearby lands. Such impacts must, of course, be considered in terms of the public interest (or lack thereof) relating to the specific use at hand. The Water Management Board finds that the water use for irrigation is in the public interest.

36. The foregoing Findings and Conclusions pertaining to beneficial use concerns also apply to consideration of public interest.

37. The Board finds that: (a) there is reasonable probability that there is unappropriated water available for the Applicant's proposed use; (b) the proposed diversion can be developed without unlawful impairment of existing rights; (c) the proposed use is a beneficial use; and (d) the proposed use is in the public interest.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The proposed point of diversion is in Todd County on the Rosebud Sioux Reservation, but both the property to be irrigated and the well in question are owned by Mr. Milligan who is neither a

tribe nor a tribal member. The land is in fee status and is not trust property. No party claims otherwise as to any of these points.

2. Based on the evidence presented at hearing, the Board concludes that the grant of this application for water use for irrigation of 160 acres would not interfere with the Rosebud Sioux Tribe's right to make its own laws and be governed by them. Moreover, the grant of this right would not interfere with any legally protected right of The Supreme Organization of the Unrestricted Indians of the Great Sioux Nation. The Board makes no determination regarding the rights of the two interveners to control or influence the administration of any tribal claim to a water right.

3. There is a reasonable probability there is unappropriated water available for the Applicant's proposed use from the Arikaree Aquifer.

4. The proposed use for irrigation is a beneficial use in that it is: (a) reasonable and useful and beneficial to the appropriator and, (b) at the same time is consistent with the interests of the public of this state in the best utilization of water supplies. SDCL 46-1-6(3).

5. The proposed diversion can be developed without unlawful impairment of existing rights. The Board concludes

that any effect on either appropriative or domestic wells will not cause adverse impairment to properly constructed wells.

6. The Rosebud Tribe may claim prior existing rights for water uses including irrigation and domestic water use. In these Findings of Fact or Conclusions of Law, the Board does not purport to quantify or adjudicate other uses stemming from federal doctrines or treaty rights. Based on the foregoing Findings of Fact, this Board finds that this Permit will not adversely impair existing water rights for appropriative use and will not interfere with the tribal right to govern itself or to claim water rights under federal doctrines or treaties, as applicable.

7. The Rosebud Sioux Tribe operates a three wells for irrigation approximately 3600 feet, 4500 feet, and 6500 feet from the Milligan well. The water use from these wells was originally authorized in state Water Right No. 1257-2 (1975 priority date). The Rosebud Sioux Tribe acquired these wells after the permits were issued and the permits remain in effect. The appropriative right in Water Right No. 1257-2 would have priority over the Milligan right under state law because it is "first in time, first in right" under SDCL 46-5-7. Such priority assumes that the prior authorized well is properly constructed as stated in Board rules.

8. In light of the foregoing Findings, the proposed use for irrigation is in the public interest.

9. This Board has carefully considered the positions of the various parties in this matter. SDCL 46-1-4 requires that South Dakota's water resources be put to beneficial use to the fullest extent of which they are capable. Further, the "beneficial use" criteria for consideration of the water permit in this case requires consideration of the best utilization of the water supply. Ultimately, the legal criteria for approval of water permits in this matter are designed to provide for maximum utilization of water for the arid climate in western South Dakota. This Board finds that these legal requirements are best met by approval of the water permit at issue in this case.

FINAL DECISION

Application No. 2619-2 is hereby granted and a Permit shall be issued forthwith containing the following qualifications:

1. The well approved under this Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The well authorized by Permit No. 2619-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board well construction rules, ch. 74:02:04, with the well casing pressure grouted (bottom to top) pursuant to § 74:02:04:28.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this _____ day of March, 2008.

BY THE BOARD:

James Hutmacher, Chairman

STATE OF SOUTH DAKOTA

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER PERMIT)
APPLICATION NO. 2619-2)
TOM MILLIGAN) CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct
copies of Proposed Findings of Fact, Conclusions of Law and
Final Decision In the Matter of Water Permit Application
No. 2619-2, Tom Milligan, were served upon each of the following
by enclosing the same in envelopes with first class postage,
prepaid and affixed thereto, and depositing said envelopes in
the United States mail, at Pierre, South Dakota, on this 31st
day of January, 2008.

Tom O. Milligan
HCR 14, BOX 221B
Mission, SD 57555

Darrell Marcus
Sicangu Nation
P.O. Box 506
St. Francis, SD 57572

Rodney M. Bordeaux, President
Rosebud Sioux Tribe
P.O. Box 430
Rosebud, SD 57570

Syed Huq, Director
Rosebud Sioux Tribe Water
Resources
P.O. Box 430
Rosebud, SD 57570

Francis E. Brink
1214 South Wells Street
Aberdeen, SD 57401

Everett Hoyt
4422 Carriage Hills Drive
Rapid City, SD 57702

Leo Holzbauer
29416 395th Avenue
Wagner, SD 57380

Bernita Loucks
219 42nd Street
Rapid City, SD 57702

Rodney Freeman, Jr.
P.O. Box 176
Huron, SD 57350-0176

Tim Bjork
112 W Oak Street
Pierre, SD 57501

By interoffice to:

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources
Foss Building
532 East Capitol
Pierre, SD 57501

By hand delivery to:

Jeffrey P. Hallem
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501

A handwritten signature in cursive script, reading "Diane Best", is written over a horizontal line.

Diane Best
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215

4/14/2008
Date: 04/21/2008

To : Garland Erbele, Chief Engineer of Water Rights Program
Department of Environment and Natural Resources
Foss Building 532 East Capital
Pierre, S.D. 57501

Jeffery P. Hallem & Diane Best, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, S.D. 57501-8501
(605) 773-3215

From: Darrell Marcus (Kills In Sight)
Sicangu Nation
P.O. Box 506
St. Francis, S.D. 57572

Subj: In the matter of water permit -Application No. 2619-2, Tom Milligan response

To Water Management Board, State of South Dakota, To certificate of Service that implies where it is true and correct of proposed findings of fact, conclusion of law and final decision. As a petitioner of signatures of Sicangu Oyate on the Rosebud Indian Reservation. We, are still in opposition to this decision.

Following:

- The decision deem by law or ordinance of Water Management Board is not subject to anyone(s) else of laws of government.
- To where the decision by motion by the Water Management Board did not view policies and procedures of Rosebud Sioux tribe and Sicangu Lakota Treaties.
- The decision forecasted a final judgment with languages of a court decision.
- In this event or reply, response, or appeal is ultimately denied, and elected not to appeal without our (due process).
- To the decision (final) and not subject to correction or amendment venue is breach of trust among (2) governments.
- Tribal Governments required by law to notify any previous recipient of the record in question of the corrective action taken for a U.S. citizen or alien lawfully admitted for permanent residence on the Indian Reservation and not recorded in Tribal Court System.
- Burke Act - May 08, 1906 affected this decision. Lacey Act - 1908 the Lakota Nation's went on record opposing the opening of reservation to settlement, protested.
- Many Lakota people lost their land to forced patent fees pushed upon them with no oversight; racial hatred; prejudice, and illegal taken of land where normal federal, state governments.
- June 1, 1924 U.S. Congress passed an Act granting citizenship to all Indians in the United States. This act read be it enacted..., that all non-citizen Indians born within the territorial limits of the United States; provided that the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.
- There is no establishment of a complaint process of violations in reference to Indian

Reservation.

- Water Management Board have in-place a (NO) exceptions here policy.
- Application no. 2619-2 did not have a hearing or follow the R.S.T. Uniform Community Organization Law, policy and procedures.
- Request for an extension on this 45 days notice for tribal rebuttal.



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

RECEIVED
MAY - 6 2008
WATER RIGHTS
PROGRAM

May 5, 2008

Darrell Marcus (Kills In Sight)
Sicangu Nation
P.O. Box 506
St. Francis, SD 57572

Re: Milligan Water Permit

Dear Mr. Marcus (Kills In Sight):

On April 18, 2008, I received your correspondence dated April 14, 2008, regarding the above referenced water permit application. I also received your telephone message seeking 45 additional days to respond to the final decision in this matter.

As stated at hearing, I am counsel for the Chief Engineer and the DENR Water Rights Program. The Chief Engineer is a party to the case and makes nonbinding recommendations to the Board.

Hearing was held on this matter on December 6, 2007. All parties presented evidence. At the end of the hearing, the Board ordered me, as counsel for the Chief Engineer, to prepare Proposed Findings of Fact and Conclusions of Law and provide them to all other parties so they could comment, object, or make alternative proposed finds. The Board held that the proposed Findings were to be made on or before January 31, 2008. The Board also stated that the deadline for any objections or alternative findings was February 20, 2008. All parties had an opportunity to make alternative findings or comments at that time. Also, a notice was sent to all parties on December 13, 2007. The notice repeated those deadlines. A copy is attached.

Consistent with the Board order, I sent out proposed Findings of Fact and Conclusions of Law to the Board and all parties on January 31, 2008. At that time, I sent a memo repeating the February 20 date as a date to respond with any objections.

No objections or alternatives were filed. The Board considered the issue on March 11 at its Board meeting, and adopted its final Findings of Fact and Conclusions of Law.

Darrell Marcus (Kills In Sight)
Page 2
May 5, 2008

The DENR is proceeding to issue the permit. Given the foregoing procedure, I will not be stipulating to delay or reopen this proceeding. I do not believe that any impropriety or due process violation occurred.

This letter is not meant as disrespect for the position you took at hearing. The deadlines in this case are the same as those followed for all water cases.

I notice that your letter was also sent to the Board lawyer, Jeff Hallem. I have not spoken to Mr. Hallem or the Board regarding this matter and do not purport to speak on their behalf. I am, however, sending this letter to Mr. Hallem, Mr. Huq, and to Mr. Milligan so they know the Chief Engineer's position. Obviously, they can elect to respond in whatever fashion they choose.

Sincerely,



Diane Best
Assistant Attorney General

Enclosures

DB:jkp

cc: /Garland Erbele
cc/enc: Tom O. Milligan
Rodney M. Bordeaux
Syed Huq

4/14/2008
Date: 04/21/2008

To : Garland Erbele, Chief Engineer of Water Rights Program
Department of Environment and Natural Resources
Foss Building 532 East Capital
Pierre, S.D. 57501

Jeffery P. Hallem & Diane Best, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, S.D. 57501-8501
(605) 773-3215

From: Darrell Marcus (Kills In Sight)
Sicangu Nation
P.O. Box 506
St. Francis, S.D. 57572

Subj: In the matter of water permit -Application No. 2619-2, Tom Milligan response

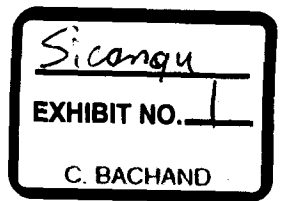
To Water Management Board, State of South Dakota, To certificate of Service that implies where it is true and correct of proposed findings of fact, conclusion of law and final decision. As a petitioner of signatures of Sicangu Oyate on the Rosebud Indian Reservation. We, are still in opposition to this decision.

Following:

- The decision deem by law or ordinance of Water Management Board is not subject to anyone(s) else of laws of government.
- To where the decision by motion by the Water Management Board did not view policies and procedures of Rosebud Sioux tribe and Sicangu Lakota Treaties.
- The decision forecasted a final judgment with languages of a court decision.
- In this event or reply, response, or appeal is ultimately denied, and elected not to appeal without our (due process).
- To the decision (final) and not subject to correction or amendment venue is breach of trust among (2) governments.
- Tribal Governments required by law to notify any previous recipient of the record in question of the corrective action taken for a U.S. citizen or alien lawfully admitted for permanent residence on the Indian Reservation and not recorded in Tribal Court System.
- Burke Act - May 08, 1906 affected this decision. Lacey Act - 1908 the Lakota Nation's went on record opposing the opening of reservation to settlement, protested.
- Many Lakota people lost their land to forced patent fees pushed upon them with no oversight; racial hatred; prejudice, and illegal taken of land where normal federal, state governments.
- June 1, 1924 U.S. Congress passed an Act granting citizenship to all Indians in the United States. This act read be it enacted..., that all non-citizen Indians born within the territorial limits of the United States; provided that the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.
- There is no establishment of a complaint process of violations in reference to Indian

Reservation.

- Water Management Board have in-place a (NO) exceptions here policy.
- Application no. 2619-2 did not have a hearing or follow the R.S.T. Uniform Community Organization Law, policy and procedures.
- Request for an extension on this 45 days notice for tribal rebuttal.



THE SUPREME ORGANIZATION OF THE
UNRESTRICTED INDIANS OF THE GREAT SIOUX NATION
NACA' ITAHCAN OMNICIYE

DECLARATION OF SOVEREIGNTY

The Supreme Organization of the Unrestricted Indians of the Great Sioux Nation made up of the Chiefs Society-Traditional Council of the Oceti Sakowin "Seven Council Fires" has since time immemorial stood as the Sovereign Eternal Governing Body of the Lakota Sioux Nation, knowing that our Full Blood Lakota Sioux Peoples represent this sovereignty inherently given to the Lakota Sioux Nation by the Creator and that we, not representatives of a foreign government, but a nation of the Paha Sapa "Black Hills", speak for our peoples.

The Supreme Organization of the Unrestricted Indians of the Great Sioux Nation has always been a sovereign nation prior to the 1851 Fort Laramie Treaty and the 1868 Fort Laramie Treaty, between our nation, our Oceti Sakowin "Seven Council Fires", and the United States. Customs, traditions and the Natural Laws of the Lakota Sioux Nation are the controlling provisions of Lakota Sioux basic law.

The Lakota Sioux Nation has for eternity retained and lived by the truth of the Great Spirit, and the truth of the Natural Law. Our Grand Fathers have lived by the Cannupa "Sacred Pipe" this being our covenant with the Great Spirit, we the Lakota Sioux Nation had upheld our portion and continue this way of life today. Our promise of peace to all living beings through the sacred pipe was given before the eyes of Tankasila "Grand Father GOD", with the Great Spirit as witness. Therefore under these ways of peace, truth, and sacredness we do hereby declare our inherent right to sovereignty.

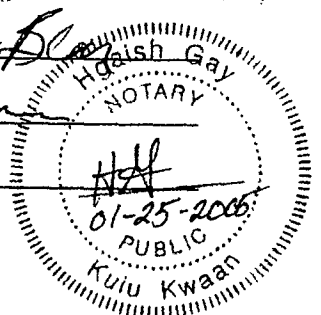
Today the 25TH Day of January 2005 the Lakota Sioux People's Chiefs Society-Traditional Council do hereby assert that we are now in charge of our own government, affairs, destiny and future as we have been since time immemorial and as we were when our ancestors signed the 1851 Treaty of Fort Laramie and 1868 Treaty of Fort Laramie with the United States Government.

C-E-R-T-I-F-I-C-A-T-I-O-N

THEREFORE BE IT ORDAINED, We the Lakota Sioux Peoples who are Direct Descendants of the Lakota Sioux Indians involved in the signing of the April 29, 1868 Fort Laramie Treaty do hereby in affirmation and by affixing our signatures give notice to any individuals, entities, organizations or governments.

1. Francis Mc Crow
2. Joe White Bull
3. July White Thunder
4. Wm Black Bear Sr
5. Reginald Gish Killeb
6. Dave Bald Eagle

7. Neil Boon Bear
8. Off Charles Little Cloud
9. Kevin Lee Brown Thunder
10. John Conquering Bear
11. JP. 2nd Gen
12. Joe Crow



DECLARATION OF SOVEREIGNTY

PAGE 2

- | | |
|-------------------------------|-----|
| 13. Dewey Little Thunder Sr | 49. |
| 14. Wam Pam Kua Sine | 49. |
| 15. Bruce In The Woods | 50. |
| 16. James Chipping Crow | 51. |
| 17. Homer Whifum Soldier | 52. |
| 18. General Woods | 53. |
| 19. Burger Little Rabbit | 54. |
| 20. Willa Muddaggers | 55. |
| 21. ~~Just Full of~~ | 56. |
| 22. Edward Star | 57. |
| 23. Carlos L. Red Legs | 58. |
| 24. ~~Edward L. Star~~ | |
| 25. Ta Sunke Sapa. (Mimicong) | |
| 26. B. Boing Bird Thunder | 61. |
| 27. ~~John Star~~ | 62. |
| 28. ~~Howard Red Elk~~ | 63. |
| 29. ~~Robert Red Elk~~ | 64. |
| 30. Barry Thunder Hawk | 65. |
| 31. Alvin Red Elk SR. | 66. |
| 32. Reding Black | 67. |
| 33. Chief Red Bird | 68. |
| 34. Tony Crow | 69. |
| 35. Adeline Star Softie Se. | 70. |
| 36. The Conquering Bear | 71. |
| 37. Meryl Sitting up Sir | 72. |
| 38. Charles Chipp | 73. |
| 39. Trevor Chipp | 74. |
| 40. Vincent Chipp | 75. |
| 41. Godfrey R Chipp | 76. |
| 42. Charles Chipp II | 77. |
| 43. James Crow | 78. |
| 44. ~~Alvin Red Elk~~ | 79. |
| 45. R. Everett Goodface | 80. |
| 46. Jackie Little | 81. |
| 47. Danil Kill Sight | 82. |
| 48. | 83. |



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

May 9, 2008

Roy Stone, Jr., Director
Sicangu Treaty Office
Rosebud Sioux Tribe
PO Box 430
Rosebud SD 57570

Dear Mr. Stone:

I am writing in response to the Sicangu Treaty Council's request that Michael One Star, Sr. be designated to represent the Council on the South Dakota Water Management Board. Specifically you ask the process to designate a member of the Council as a Board member.

The Water Management Board consists of seven citizens appointed by the Governor to regulate and control the development, conservation and allocation to the use of water. However at this time, all these positions are filled and there are no vacancies on the Board. South Dakota Codified Laws 1-40-15 and 1-40-16 are specific as to the qualifications, representation and political affiliation of Board members. No more than four members can be from the same political party and there must be a representative with experience in each one of the following areas of expertise.

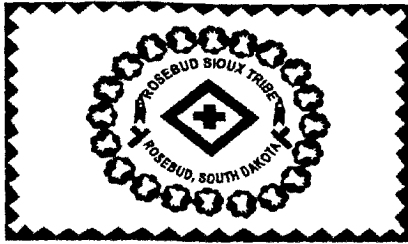
- SD well driller's license / SD resident
- Municipal government and operation
- Domestic uses of water
- One member appointed at large
- Irrigation
- Industrial uses of water
- Fish and wildlife interests

You also requested information on water projects within and surrounding South Dakota. I have added your name to our mailing list to receive a copy of the Water Management Board meeting agendas. In addition, any Council member may subscribe to receive personal email notice of all pending water right permit applications in South Dakota. The internet link to subscribe is: http://www.state.sd.us/denr/des/waterrights/public_notice.htm. Please be aware that to participate in the hearing process for a pending water right application you need to file a petition to intervene in the hearing. An explanation of how to file a petition is given in each of the public notices which are available at the above website.

While the state can not grant Mr. One Star a position on the Board at this time, the Council can participate in water issues that present a concern to the Rosebud Sioux Tribe by filing a petition as described above. Thank you again for your letter.

Sincerely,

Garland Erbe, Chief Engineer
Water Rights Program, DENR
605 773-3352



Sicangu Treaty Office

Rosebud Sioux Tribe

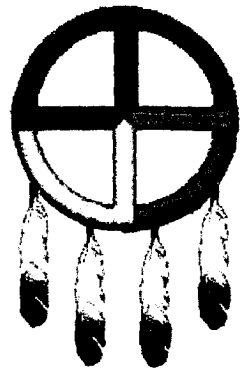
1 Running Wolf Circle

P.O. Box 430

Rosebud, SD 57570

Office (605) 747-4775

Fax (605) 747-5580



RECEIVED

APR 23 2008

WATER RIGHTS
PROGRAM

Tuesday, April 22, 2008

Department of Environment and Natural Resources

Garland Erbele, Chief Engineer, Water Rights Program

Joe Foss Building, PMB 2020

523 East Capitol

Pierre, SD 57501-3181

RE: WATER MANAGEMENT BOARD

Mr. Erbele, Chief Engineer and Water Management Board:

I am writing in reference to a request for the Sicangu Treaty Council (Rosebud Sioux Tribe), they have one council member (Michael One Star, Sr.) who has been designated to represent the STC on the South Dakota Water Management Board. And what is the process to allow one to become a member.

Also, the Sicangu Treaty Office is requesting any information or documents of all water projects within and surrounding the State of South Dakota to be forwarded to the office for informational and record keeping purposes.

Should you have any questions please contact the Sicangu Treaty Office at (605) 747-4775.

Thank You

Roy Stone, Jr., Director

Sicangu Treaty Office

rs

xc: STO Office file

Admin



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

MAY 16 2008

Tom O Milligan
PO Box 32
Hooper NE 68031

Dear Mr. Milligan:

Enclosed is Water Permit No. 2619-2 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

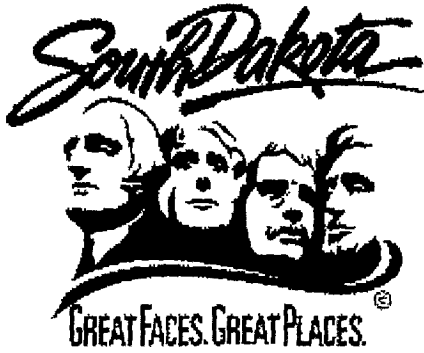
Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

An informational sheet ? *Common Water Right Questions?* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 22, 2008

2619-2

Tom O Milligan
PO Box 32
Hooper NE 68031-0032

Dear Mr. Milligan:

I am writing to acknowledge receipt of the "Notice of Completion of Works" form that you sent in to let us know that you are completed with your irrigation system.

The system is now ready for inspection. Inspections are done on a county-by-county basis as staff time permits. You have done everything you need to do and the intervening time between the completion of your project and the staff inspection has no bearing on your water permit.

Someone from our office will contact you prior to the inspection to set up a time that is convenient for you. 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

RECEIVED

JUL 21 2008

WATER RIGHTS
PROGRAMNOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USEDate July 18, 2008TO: Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181FROM: Tom O. Milligan
(name)
P.O. Box 32
(address)
Hooper, NE 68031
(city, state, zip)402-654-3822
(phone)

I have completed the construction of the water use system and I have put the water to beneficial use to the maximum extent it is going to be used.

Water Permit No. 2619-2 states that the water use system is to be constructed by March 11, 2013, and water is to be put to beneficial use by March 11, 2017.
(date) (date)

The water use system was completed on July 16, 2008.
(date)

Applying the water to beneficial use was completed on July 17, 2008.
(date)

You may schedule an investigation

Tom O. Milligan
(signature)

You may investigate the new irrigation well at your convenience. If you want someone from our ranch to be with you please call 605-856-4158.

Thank you,
Tom O. Milligan

SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 27 Twp 38 Rg 26

County

Todd

North

Please mark well location with an "X"

W

E

Well Completion Date

6/3/2008

1 Mile

Distance to nearest potential pollution source (Septic tank, abandoned well, feed lot, etc.)

? ft. from (identify source)

PROPOSED USE:

☐ Domestic/Stock ☐ Municipal ☐ Business ☐ Test Holes
☒ Irrigation ☐ Industrial ☐ Institutional ☐ Monitoring well

METHOD OF DRILLING:

REVERSE ROTARY

CASING DATA:

☐ Steel ☒ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
20.0 LB/FT	16.00 IN	111.0 FT	0.0 FT	30.00 IN

LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
CEMENT	15	15.5 Lb/gal	20.0 Ft	0.0 Ft

Describe grouting procedure
PUMPED TREMIE PIPE

SCREEN:

☒ Perforated pipe ☐ Manufactured
Diameter 15.00 Inches Length 20.0 FeetMaterial PVCSlot Size .080 Set From 111.0 Feet to 351.0 Feet

Other information

WAS A PACKER OR SEAL USED?

☐ Yes ☒ No

If so, what material?

Describe packer(s) and location

DISINFECTION: Was well disinfected upon completion?

☒ Yes, How? HTH
☐ No, Why Not?

Lab sample sent to for water quality analysis

Well Owner: TOM MILLIGAN

Business Name:

Address: P.O. BOX 32City, State, Zip: HOOPER NE 68031

WELL LOG:

DEPTH

FORMATION	FROM	TO
top soi, sand,sandstone,limestone la	0	28
sand,sandstone,limestone,clay	28	56
sand,sand,limestone,clay	56	68
sandstone,pepper,limestone,clay	68	92
sand,pepper,sandstone,clay,limesto	92	146
sand,sandstone,clay,limestone	146	184
sand,pepper,sandstone,clay,limesto	184	236
sand,pepper,sandstone,clay	236	346
red rock	346	360

STATIC WATER LEVEL 108.0 FEET

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ Inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

Reduced flow rate _____ GPM

Can well be completely shut in?

WELL TEST DATA:

☒ Pumped Describe:

☐ Bailed

☐ Other

Pumping Level Below Land Surface

325.0 Ft. After 2.0 Hrs. pumped 850.0 GPM308.0 Ft. After 2.0 Hrs. pumped 800.0 GPMIf pump installed, pump rate: 750.0 GPM

REMARKS

RECEIVED
MAR - 3 2009
WATER RIGHTS
PROGRAM

This well was drilled under license # 189

And this report is true and accurate.

Drilling firm: GROSCH IRRIGATION CO., INC.

Signature of License Representative

Signature of Well Owner or Equitable Property Holder:

Date:

2/23/09

Permit No. 2619-2
Niobrara Tributary - Water District

Other permit/license(s) associated with project: none

Contact Person & Address: Tom O. Milligan, PO Box 32, Hooper NE 68031 (Ph 402 654-3822)

Report Of Examination Of Works

On, September 21, 2010, I made a thorough examination of the water use system constructed by Tom Milligan of PO Box 32, Hooper NE 68031 holder of Permit No. 2619-2, bearing the priority of August 14, 2007 authorizing the diversion of 2.0 cu. ft. per second from the Arikaree Aquifer for irrigation purposes, in Todd County.

The system is in the following condition excellent. The point of diversion is located approximately 1,250 feet north and 2,750 feet east of the SW corner Section 27, T38N, R29W with a longitude of -100.7392 and a latitude of 43.2340. The works are capable of diverting and conveying to the place of use 1.67 cu. ft. per second of water and/ being used for irrigation. Water has been put to beneficial use to the maximum extent as follows:

all in Section 27, T38N, R29W

NE ¼ SW ¼	31	SW ¼ SE ¼	34
SE ¼ SW ¼	31	NE ¼ SE ¼	2
NW ¼ SE ¼	34	SE ¼ SE ¼	2

comprising a total of 134 acres of land and the license should be issued for 1.67 cfs.

Review of Permit Qualifications And Regulations:

- 1) Special qualifications to permit being abided by Yes
- 2) All structures, wells and lands on map Yes
- 3) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period Yes
- 4) Exceptions to compliance are: correction in acreage necessary – see attached form

Report On the Specifics of the System

Diversion Point Information:

- 1) Well Drilling Firm: Grosch Irrigation Inc. – No. 189
- 2) No. of Wells 1
- 3) Depth 360 feet
- 4) Well log is available yes

Casing:

- 1) Diameter 16 inches
- 2) Length approx. 330 feet
- 3) Type plastic

Screen:

- 1) Type PVC
- 2) Length 20 feet
- 3) Static water level 108 feet

Pump\ Motor:

- 1) Pump Make #
- 2) Pump Model
- 3) Capacity 750 GPM
- 4) Motor Make US Electric
- 5) Motor Model No. BF69
- 6) Horsepower rating 100hp

Distribution System: - Well located approximately 27 feet from pivot center

System Type:

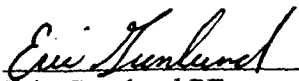
Center pivot:

- 1) Make Lindsey Zimmatic
- 2) Overall length 1397 feet (with endgun)
- 3) Number of towers 7
- 4) End gun yes
- 5) High or low pressure low
- 6) Capacity 750 GPM

Chemigation:

- 1) Does chemigate no
- 2) Main line check valve #
- 3) Inspection port/air relief #
- 4) Low pressure drain #
- 5) Discharge is 20' from source #
- 6) Interlock type #
- 7) Injection pump type #
- 8) Injection check valve #
- 9) Injection line check valve or positive displacement pump #
- 10) All chemigation equipment appears to be installed in the proper position and complies with chemigation laws and rules #

COMMENTS: Mr. Milligan did not accompany me on licensing investigation. He was contacted and granted permission to view the system. He confirmed that the system capacity is 750 gpm. Notice of Completion of Works is on file.


Eric Gronlund PE
Natural Resources Engineer
DENR, Water Rights Program

October 20, 2010
Date

Water Permit No. 2619-2, Tom O. Milligan



Well located approximately 1,250 feet north and 2,750 East of SW corner Section 27, T38N, R29W



Eric Gronlund
Eric Gronlund
Water Rights Program, DENR
Licensing Investigation - September 21, 2010



Well head and Pivot center for Water Permit No. 2619-2, Tom O. Milligan

Approval of a Change of Diversion Point

NAME: Tom Milligan

ADDRESS: PO Box 32, Hooper, NE 68031

DATE: October 19, 2010 **COUNTY:** Todd **TELEPHONE:** 402 654-3822

BACKGROUND:

Water Permit No. 2619-2 was approved March 11, 2008 appropriating 2.0 cubic feet of water per second from one well completed into the Arikaree Aquifer to be located in the E $\frac{1}{2}$ SW $\frac{1}{4}$ Section 27 to irrigate 160 acres located in the SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27, T28N, R29W. See report on licensing of acreage outside of permitted area report for change in acreage legal description

On September 21, 2010, I conducted a licensing investigation of the water permit. I found that Mr. Milligan shifted the location of the pivot's center point about 650 feet east of the originally intended location. Since the permit holder wanted the well near the center pivot this puts the well on the east side of the north-south quarter section line and in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ instead of the public noticed location of the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27. The actual completed well is about 100 feet to the east of area where it was properly public noticed.

AUTHORITY:

Pursuant to SDCL 46-5-13.1, the location of a diversion point may be changed or additional diversion points may be licensed provided the following conditions are met and the potential for interference with other existing diversions is not increased:

- **Developed water source same as permitted source and no additional water appropriated**

The water source authorized by Water Permit No. 2619-2 is the Arikaree Aquifer. There is no change in the proposed depth or water source.

No additional appropriation of water is requested. The water permit appropriates 2.00 cfs. The licensing investigation found the well producing 1.67 cfs. Therefore, no additional water will be appropriated by the change in the well location.

- **Review of Existing Diversions**

A review of the well log database found five domestic/stock wells and one irrigation well completed in the sections surrounding Sections 27. The nearest well on record is approximately 3800 feet southwest of the Milligan well

There is also neighboring irrigation on Rosebud Sioux Tribe land for which the state does not have record. Presumably they are supplied from wells completed into the Arikaree Aquifer. The nearest well to the Milligan diversion is estimated to be $\frac{1}{2}$ mile to the southwest in the NE $\frac{1}{4}$ Section 34. The moving of the diversion point approximately 650 feet from its originally intended location should not have a significant impact on drawdown based on the area observation wells.

CONCLUSION

- The change in the well location does not appropriate additional water.
- The well will still be completed into the Arikaree Aquifer .
- Interference is not expected to be a concern.
- Existing domestic wells should not be adversely impacted by authorizing this additional well.

RECOMMENDED ACTION

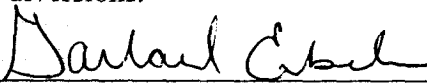
Based on the above criteria, it is recommended that the change of diversion point be authorized under Water Permit No. 2619-2.



Eric Gronlund
Water Rights Program

The Chief Engineer makes a finding pursuant SDCL 46-5-13.1 and ARSD 74:02:01:14.01 that:

This change of diversion point does not increase the potential for adverse effects to existing diversions.



Garland Erbele, Chief Engineer
Water Rights Program

Licensing of Acreage Outside of Permitted Area

NAME: Tom Milligan

ADDRESS: PO Box 32, Hooper NE 68031

DATE: October 19, 2010 **COUNTY:** Todd **TELEPHONE:** 402 654-3822

AUTHORITY

Pursuant to SDCL 46-5-30.5, acreage developed for irrigation outside of the area described on the permit may be licensed provided the following conditions are met:

NO INCREASE IN PERMITTED ACREAGE OR WATER APPROPRIATED:

The acreage developed for irrigation is 134 acres as compared to 160 acres authorized by the permit. Licensing of the permit will result in a reduction in the amount of water appropriated.

EXPLANATION:

The map submitted with the originally application showed the center pivot being primarily located in the SW $\frac{1}{4}$ Section 27, T38N, R29W. There was apparently about 30 acres to be in the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27. When the application was processed it mistakenly described the acreage to be irrigated as the SW $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ of the section. The E $\frac{1}{2}$ SE $\frac{1}{4}$ should have been the W $\frac{1}{2}$ SE $\frac{1}{4}$. In addition the actual pivot's center point was located approximately 650 feet east of the originally intended location. The area where water is applied by the pivot is the E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ and a small portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27.

UNPERMITTED ACREAGE:

- **Contiguous to Permitted Acreage**

Yes – the acreage is all contiguous to the irrigation project as initially intended

- **Owned by Same Property Owner**

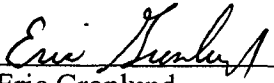
Yes – the land is owned by Mr. Milligan

- **Developed Prior to Expiration of Construction Period**

Yes – the period to complete construction is May 11, 2013. Mr. Milligan filed the notice of completion of works on July 21, 2008. The licensing investigation was conducted on September 21, 2010.

RECOMMENDED ACTION

Based on the above criteria, it is recommended that the acreage as developed be included in the water license.



Eric Gronlund
Water Rights Program

The Chief Engineer makes a finding pursuant to SDCL 46-5-30.5 that:

This acreage change does not impair existing water rights and the overall project, as developed, is consistent with the original application. Licensing of the unpermitted acreage may occur without application or publication pursuant to SDCL 46-2A-4.



Garland Erbele, Chief Engineer
Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

FEB 11 2011

2619-2

Tom O Milligan
PO Box 32
Hooper NE 68031

Dear Mr. Milligan:

Enclosed is Water License No. 2619-2. This is the final water right document completing your process of obtaining a Water Right. Also, included with your license is a map prepared by the staff engineer who conducted the investigation.

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. If you have any questions, please contact our office.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

STATE OF SOUTH DAKOTA
WATER LICENSE NO. 2619-2

(1) Tom O Milligan, PO Box 32, Hooper NE 68031 made Application No. 2619-2, August 14, 2007 for a water permit to divert 2.0 cubic feet of water per second from groundwater (one well), Todd County, South Dakota for irrigation purposes. Permit No. 2619-2, with a priority date of August 14, 2007 was approved March 11, 2008 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before March 11, 2013 and for the application to beneficial use of water on or before March 11, 2017.

The permit holder submitted a *Notice of Completion of Works and Application of Water to Beneficial Use* on July 21, 2008. The *Notice* stated the diversion system was completed on July 16, 2008 and the water placed to beneficial use on July 17, 2008.

An investigation conducted for licensing purposes found the diversion point and acreage developed for irrigation under Water Permit No. 2619-2 were not in the locations authorized by the permit. Pursuant to SDCL 46-5-13.1 and 46-5-30.5, the Chief Engineer makes a finding that existing water rights will not be impaired and the overall project, as developed, is consistent with the original application.

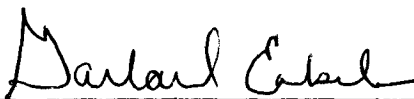
(2) The water supply system has been completed and water applied to beneficial use in accordance with South Dakota State Law. Pursuant to South Dakota Codified Law 46-5-30.1, the holder and/or owner of Water Right No. 2619-2 is issued a license, bearing a priority date of August 14, 2007 to appropriate 1.67 cubic feet of water per second from groundwater (one well) to irrigate 134 acres.

The diversion point is located: approximately 1,250 feet north and 2,750 feet east of the southwest corner of Section 27-T38N-R29W (SW ¼ SE ¼). The acres authorized for irrigation are as follows:

Section 27-T38N-R29W			
NW ¼ SW ¼	31 acres	SW ¼ SE ¼	34 acres
SE ¼ SW ¼	31 acres	NE ¼ SE ¼	2 acres
NW ¼ SE ¼	34 acres	SE ¼ SE ¼	2 acres
Total 134 acres			

(3) This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Permit No. 2619-2 including the following now applicable qualifications:

- The well approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
- The well authorized by Permit No. 2619-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
- This Permit is approved subject to the irrigation water use questionnaire being submitted each year.


Garland Erbe, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

FEB 11 2011
date

