

WATER PERMIT NO. 2771-2

Name of Applicant: **Milligan Mace Boies Flannery LLC**

Address: **PO Box 32, Hooper NE 68031** Phone: **402 459-5620**

Amount of Water Claimed: **1.24 cfs** Total Acres: **80 acres**

Source of Water Supply: **groundwater (2 wells)**

Water to be used for: **irrigation** County: **Todd**

Type of Waste Disposal System:

Location: **4 miles southwest of Mission**

PRIORITY Date Received: **7-13-17** Application/License Fee: **\$ 950**

Corrected Application Received: Period of Annual Use: **March 1 – September 30**

Remarks: **Water Right No. 444-2 authorized irrigation of portions of this land from Antelope Creek**

Diversion Point: **SW 1/4 SE 1/4 Sec 19 and NW
1/4 NE 1/4 Sec 30; all in T38N-R28W**

Land to be Irrigated: **S 1/2 SE 1/4, SE 1/4 SW 1/4
Sec 19 and NE 1/4 Sec 30; all in T38N-R28W**

Depth of Well: **120 feet deep**

Well Driller: **Grosch Irrigation Co.**

Remarks:

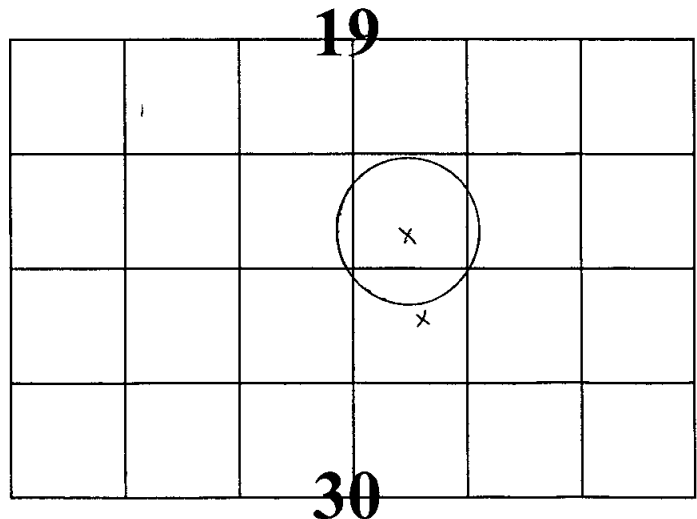
Type of Map: **aerial**

Prepared by:

Reviewed and the Number Assigned on: **7-13-17**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



ck for 1050

RECEIVED

JUL 13 2017

WATER RIGHTS
PROGRAM

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>2771-2</u> (office use only) Hydrologic Unit <u>10150006</u>
	Basin <u>Niob Trib</u>
	Newspaper <u>Todd Co. Tribune, Mission</u> <u>Capitol Journal, Pierre</u>

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 to Appear on Irrigation Permit Milligan Mace Boies Flannery LLC
Note: The "Name to Appear on Irrigation Permit" must be the name in which the property to be irrigated is held in.
- Mailing Address P.O. Box 32 Hooper NE 68031
(Address) (City) (State) (Zip Code)
- Phone _____ Mobile 402-459-5620 Email tomilligan@hotmail.com
2. Amount of water claimed 1.25 *CFS or 560 **GPM 80 ***AF Total Acreage 80
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)
3. Source of water supply 2 ground water wells
4. Location of point of diversion 2 wells in NE 1/4 sec 30-38 TN. 15 RA
(example - 3 wells in SW 1/4 NE 1/4 section 12-T104N-R53W)
SW 1/4 SE 1/4 Sec 19 & NW 1/4 NE 1/4 Sec 30; all T38N-R28W County Todd
5. County or counties where water will be used Todd
6. Annual period during which water is to be used March - Sept.
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
<u>bottom meadow</u>	<u>80 total</u>		
<u>S 1/2 SE 1/4, SE 1/4 SW 1/4 Sec 19</u>	<u>50</u>		
<u>N 1/2 NE 1/4 Sec 30</u>	<u>30</u>		
<u>all in T38N-R28W</u>			

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

2 wells will feed a center pivot irrigating approximately 80A to produce livestock feed.
Requesting diversion rate greater than statutory limit.

I, Tom Milligan manager/owner the applicant, certify under
Name of Person Title (if applicable)

penalty of perjury that I have read this application, examined the attached map, and that the matters stated are true. I further certify, if acting on behalf of an entity or individual other than myself, that I am authorized to submit this application.

SOUTH DAKOTA
WATER PERMIT NO. 2771-2 FOR IRRIGATION

Date of first receipt of application July 13, 2017.

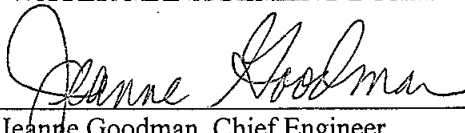
The Water Management Board approved Water Permit No. 2771-2 on December 7, 2017 for Milligan Mace Boies Flannery LLC c/o Tom Milligan, PO Box 32, Hooper NE 68031 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 2771-2 appropriates 1.25 cubic feet of water per second (cfs) from two wells to be completed into the Arikaree Aquifer (120 feet deep) located in the SW 1/4 SE 1/4 Section 19 and the NW 1/4 NE 1/4 Section 30 for irrigation of 80 acres located in the S 1/2 SE 1/4, SE 1/4 SW 1/4 Section 19 and N 1/2 NE 1/4 Section 30; all in T38N-R28W. Water Right No. 444-2 authorized irrigation of portions of this acreage from Antelope Creek.
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: March 1 – September 30.
3. The date from which applicant may claim right is July 13, 2017.
4. One-fifth of the construction is to be completed on or before June 7, 2020.
5. All construction is to be completed on or before December 7, 2022.
6. Water is to be put to beneficial use on or before December 7, 2026.
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 wells approved under this Water Permit No. 2771-2 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 wells authorized by Permit No. 2771-2 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. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 2771-2 authorizes a maximum diversion rate of 1.25 cfs for the irrigation of 80 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

By: 
Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

DEC 20 2017

date



Supplemental Information

(type or print)

1. Well Information (check one or both as applicable) ☒ Drilling new well(s) ☐ Using existing well(s)

- a) If new wells, how many 2 Have test holes been drilled ☒ Yes ☐ No Drilled by Grosch Drilling Co, Inc
(if yes, please provide copies of logs)
- b) If existing wells, how many Provide copy of log(s), if available. Drilled by

For either Existing or Proposed Wells:

- c) Well Depth (required) 120' Depth to Top of Water Bearing Material 17 Depth to Water from Surface
- d) Distance to nearest domestic well on applicant's property 1 1/2 miles Property owned by others 2 miles

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

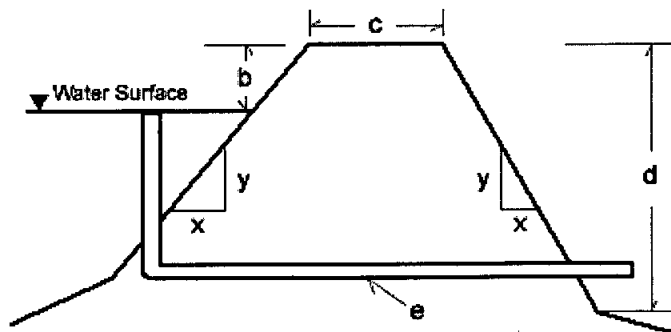
- a) Surface Dimensions Depth
- b) Depth to water (ground surface to water level)

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 (e.g. 3 to 1 is a typical slope)
Upstream
Downstream
- h) Surface Area of Impoundment
- i) Storage Acre Feet
- j) Drainage Area Above Dam Acres



19

20

*existing pivot
site of new wells*

30

site of new well

new well

29

Sec 13
T038N
R29W

Sec 18
T038N
R28W

Sec 17
T038N
R28W

Sec 24
T038N
R29W

Sec 19
T038N
R28W

Sec 20
T038N
R28W

Sec 25
T038N
R29W

Sec 30
T038N
R28W

Sec 29
T038N
R28W

Sec 36
T038N
R29W

Sec 31
T038N
R28W

Sec 32
T038N
R28W

GROSCH IRRIGATION CO., INC.

GPS

43D / 14 / 44.4

100D / 40 / 41.8

Branch **O'Neill, NE**

Date **December 7, 2010**

1 - 10

Name **TOM MILLIGAN**

HOOPER

County TODD CO - SD

NE 30 SEC 38 TN 25 RA

(LOCATE TEST WITH X)

NRD	FEET FROM	LINE
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FEET FROM LINE

[illegible]

DRILLER

Thad Babutzke

GROSCH IRRIGATION CO., INC.

GPS

43D / 14 / 41.6

100D / 40 / 36.4

Branch O'Neill, NE

Date **December 7, 2010**

2 - 10

Name **TOM MILLIGAN**

HOOPER

County TODD CO - SD

NRD

NE 30 SEC 38 TN 25 RA

(LOCATE TEST WITH X)

FEET FROM LINE

FEET FROM LINE

[illegible]

DRILLER

Thad Babutzke

Todd

NOTICE OF WELL CONSTRUCTION

(1) WELL CONSTRUCTION

Location of well: 1/4 SW Section 29 Township 38 Range 28
 Well owner L-7 Ranch (Bob Lowmeyer) Mission S.D.
 (Name) (Address)
 Date well drilling completed June 76 Purpose of well (domestic, irrigation, municipal, industrial, other)

WELL LOG

Layers, top to top in feet	Description of layer	Depth to top of water producing aquifer _____ ft.
<u>0-15</u>	<u>Sand</u>	Depth to static water level _____ ft.
<u>15-38</u>	<u>Clay</u>	Name of producing aquifer (if known) _____
<u>38-50</u>	<u>sand</u>	Total depth of drill hole <u>146</u> ft.
<u>50-60</u>	<u>Sand & Clay mixed</u>	Depth to bottom of casing <u>146</u> ft.
<u>60-80</u>	<u>sand</u>	Casing information: In the space below show kind, size, weight, lengths per diameter, etc., for production casing and surface casing, if used.
<u>80-120</u>	<u>Coarse sand & gravel</u>	
<u>120-130</u>	<u>med gravel</u>	
<u>130-145</u>	<u>good coarse gravel</u>	
<u>145-150</u>		Screen information: In the space below show length of screen below bottom of casing, diameter and kind of screen or casing perforations.

If a flowing well, flow of completed well _____ G.P.M.

Attach sheet if more space is needed

AAA Well Co.
 Name of Drilling Contractor

(2) PUMP INSTALLATION

Company name and size of pump National 10" Bore HP 7.5
 Type of pump Turbine Capacity of installed pump 600 G.P.M.
 Depth of pump placement 144 ft., Date of pump installation May 76

(3) WATER SURFACE MEASURING TUBE

On some wells an air-tight water surface measuring tube is required: See Section 46.408 of Chapter 46.4, MINIMUM WELL CONSTRUCTION STANDARDS.

Show exact vertical length of water surface measuring tube, when installed _____ ft., tube diameter _____, tube material _____.

AAA Well Co.
 Name of Pump Installation Contractor

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date July 13, 2007

RECEIVED OF Milligan, Mace, Boiss, Flannery LLC 27251 288th St Mission SD 57555

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	850	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. _____	200	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	1050 00

No. **08298**

By Jeannie Goodman
Chief Engineer

24m

December 20, 2017

PAYMENT REQUEST FORM

PAYEE: Milligan Mace Boies Flannery LLC
c/o Tom Milligan
PO Box 32
Hooper NE 68031

FROM: DENR Water Rights Program
523 E. Capitol Ave
Pierre, SD 57501-3181

DESCRIPTION OF SERVICE, PRODUCE OR TRANSFER

Refund overpayment of the application/license fee for Water Permit No. 2771-2

AMOUNT: \$100.00

FUNDING SOURCE:

GENERAL: X

FEDERAL:

OTHER:

COMMENTS:

AUTHORIZATION:



I declare and affirm under the penalties of perjury that this claim is in all things, true and correct.
I further agree to comply with the provisions of the Civil Rights Act of 1964 and regulations issued
thereunder relating to nondiscrimination in federal assisted programs.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2771-2, Milligan Mace Boies Flannery LLC**

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. 2771-2, Milligan Mace Boies Flannery LLC, c/o Tom Milligan, PO Box 32, Hooper NE 68031.

The Chief Engineer is recommending APPROVAL of Application No. 2771-2 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 qualifications:

1. The wells approved under this Water Permit No. 2771-2 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 wells authorized by Permit No. 2771-2 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. Pursuant to SDCL 46-5-6 which allows a greater diversion rate if the method of irrigation, time constraints, or type of soils so requires, Permit No. 2771-2 authorizes a maximum diversion rate of 1.25 cfs for the irrigation of 80 acres with an annual volume not to exceed 2 acre feet of water per acre per year.
4. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
September 22, 2017

REPORT TO THE CHIEF ENGINEER
Water Permit Application Nos. 2771-2 and 2772-2
Milligan Mace Boies Flannery LLC
August 28, 2017

Water Permit Application No. 2771-2 proposes to appropriate water at a maximum diversion rate of 1.25 cubic feet per second (cfs) from two wells to be completed into the Arikaree aquifer (ARKR). The proposed wells are expected to be completed to an approximate depth of 120 feet deep and will be located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T38N-R28W in Todd County. The water from this application will be used for the irrigation of 80 acres located in the S $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19 and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 30, T38N-R28W. These acres being irrigated are also licensed under Water Right No. 444-2, which diverts water from Antelope Creek at a maximum diversion rate of 2.07 cfs with an annual appropriation of 52 acre-feet per year for the irrigation of 145 acres. In addition to the same acres being applied for under this application, Water Right No. 444-2 also authorizes irrigation in SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 30, and E $\frac{1}{2}$ NW $\frac{1}{4}$ Section 32, T38N-R28W.

Water Permit Application No. 2772-2 proposes to appropriate water at a maximum diversion rate of 0.62 cubic feet per second (cfs) from a well to be completed into the Arikaree aquifer (ARKR). The proposed well is expected to be completed to an approximate depth of 110 feet deep and located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T38N-R28W in Todd County. The water from this application will be used for the irrigation of 89 acres located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, T38N-R28W and the SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 29, T38N-R28W. These acres are already irrigated under Water Right Nos. 1258-2 and 1915-2. Water Right Nos. 1258-2 and 1915-2 combined, appropriate 1.27 cfs from one well located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, T38N-R28W. The total maximum diversion rate for these 89 acres, including this application, will be 1.89 cfs.

AQUIFER: Arikaree (ARKR)

HYDROGEOLOGY

The High Plains aquifer is a regional aquifer that extends from southern South Dakota to Texas and underlies approximately 174,000 square miles (Gutentag et al, 1984). Within South Dakota, the High Plains aquifer underlies approximately three million acres (4,750 square miles) (Gutentag et al, 1984). Within Todd County, the High Plains aquifer is present throughout, but absent from the extreme northeast corner of the county (Martin et al, 2004). The High Plains aquifer system consists mainly of one or more late Tertiary or Quaternary age geologic units that are hydraulically connected (Gutentag et al, 1984). Within South Dakota, the Tertiary aged portions of the High Plains aquifer are made up of the Arikaree Formation, the Batesland Formation and the Ogallala Formation. The overlying Quaternary aged deposits consist of alluvial and eolian deposits (Filipovic, 2011). The aquifer material in each of these formations can vary greatly, so the extent of individual water bearing deposits cannot be determined (Carter, 1998). For water management purposes, the South Dakota Department of Environment and Natural Resources Water Rights Program, and the South Dakota Water Management Board have historically considered appropriations from the High Plains aquifer to be either from the Ogallala aquifer or from the Arikaree aquifer.

Mapping at the 1:125,000 scale by Ellis et al. (1971) shows that in the area of these applications, the Ogallala Formation has been removed through erosional processes. Within Todd County, the Arikaree Formation consists of silicified claystone, silty clays, siltstone, and poorly consolidated sandstone. The basal 50 to 150 feet usually is composed of silty and sandy beds that commonly are separated from the upper clayey part by 5 to 10 feet of thin-bedded limestone (Long and Putnam, 2010). In Bennett County, to the west of Todd County, the Arikaree Formation was described as predominantly pinkish-tan to red, greenish, brown massive very fine to fine sandstone with beds of volcanic ash, silty sand, siltstone, claystone, sandy clay, and limestone (Filipovic, 2011). The Arikaree aquifer is composed primarily of the saturated sandstones and siltstones within the Arikaree Formation. Given the depths of these wells, and similarities of the units encountered in the well logs, these applications are within the Arikaree aquifer.

The Arikaree aquifer in Todd County is estimated to encompass an area of 738,560 acres and contains 2,215,680 acre-feet of recoverable water (Allen et al, 1985). Within Todd County, the Arikaree aquifer is about half unconfined and half confined, with the confined portions occurring where the aquifer is overlain by impermeable materials in the Ogallala Formation, and also in the deeper part of the aquifer where impermeable material exists in the upper part of the formation (Carter, 1998). There are two lithologic logs that penetrate the High Plains aquifer within five miles of the applications, and neither lithologic log identified the elevation of the top of the Arikaree Formation, or the thickness of the Arikaree Formation in this area (Lithologic Logs Database, 2017). Carter (1998) estimated the average thickness of the Arikaree aquifer to be 290 feet, with the top of the aquifer occurring from 0 to 406 feet below the land surface. The potentiometric surface of the Arikaree aquifer ranged from 18 feet above ground surface to 170 feet below ground surface (Carter, 1998). The direction of groundwater flow in the Arikaree aquifer is generally from west to east, with the northern portions of the aquifer draining towards the north and east, and locally in the area of the application, towards Antelope Creek (Long and Putnam, 2010).

Two test holes completed for Application 2771-2 showed the static water level to be 17 to 29 feet below grade in December 2010. The two test hole logs show a thin limestone unit occurring 28-30 feet above a unit identified as "Red Rock". In relation to this thin limestone unit and the Red Rock, the static water level is 35-37 feet above the limestone and 65-67 feet above the Red Rock. One of the test holes identified two layers as sand with clay, and these layers may act as aquitards. A domestic well completed less than a mile south-southeast of these test holes shows layers of clay from a depth of 46-136 feet with the well screened from 86-136 feet. The static water level of this domestic well was 23 feet at the time of completion (June 2012). Greene et al. (1991) identified the water bearing units within the Arikaree as Unit E and Unit B, with Unit E being the uppermost unit of the Arikaree and ranging in thickness from 0-235 feet. Due to the Arikaree formation being exposed at the surface and the depth of the wells, the Arikaree aquifer in the immediate area is expected to be unconfined and any potential impermeable layers are not laterally extensive due to the variability within the aquifer. As the distance from the applications increases to the west, south, or east, the Ogallala Formation is present and confines the aquifer.

Aquifer testing performed by Greene et al (1991) in the Arikaree aquifer near Pine Ridge, SD produced the following estimates of hydraulic properties. For the unconfined portions of the

aquifer, transmissivity (T) = 1,250 ft²/d, specific yield (S_y) = 0.03, and hydraulic conductivity (K) = 13 ft/d. For the confined portions of the aquifer, transmissivity (T) = 300 ft²/d, storativity (S) = 3×10^{-4} , and hydraulic conductivity (K) = 1 ft/d.

South Dakota Codified Law 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a 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. This report will address the availability of unappropriated water and existing rights within the Arikaree aquifer.

WATER AVAILABILITY

The probability of unappropriated water available from an aquifer can be evaluated by considering SDCL 46-6-3.1, which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." If the source of the water is older than or stratigraphically lower than the Greenhorn Formation and a water distribution system has applied for a permit, the Board need not take into consideration the balance of aquifer recharge and withdrawal. Here, the water source is not older or lower than the Greenhorn Formation and a water distribution system is not involved. Therefore, the balance of withdrawal and recharge must be considered.

Hydrologic Budget

Recharge

Recharge to the Arikaree aquifer in South Dakota occurs through infiltration of precipitation on the outcrop of the Arikaree Formation (Figure 1). Although recharge is spatially variable, Long and Putnam (2010) estimated that the average recharge rate for the period of 1978-2008 for the Arikaree aquifer is 1.45 inches per year from previously published values and calibration of their model. Using 1.45 inches per year over the outcrop area of the Arikaree Formation in Todd County (203,875 acres) (Martin et al, 2004), the estimated average annual recharge to the Arikaree aquifer in Todd County would be approximately 24,635 acre-feet/year. Assuming that the formation and climate is similar in the other areas that the Arikaree outcrops, the same recharge rate can be applied to the entirety of the Arikaree Formation outcrop in South Dakota (1,514,080 acres), which results in an estimated average annual recharge to the Arikaree aquifer of 182,950 acre-feet/year.

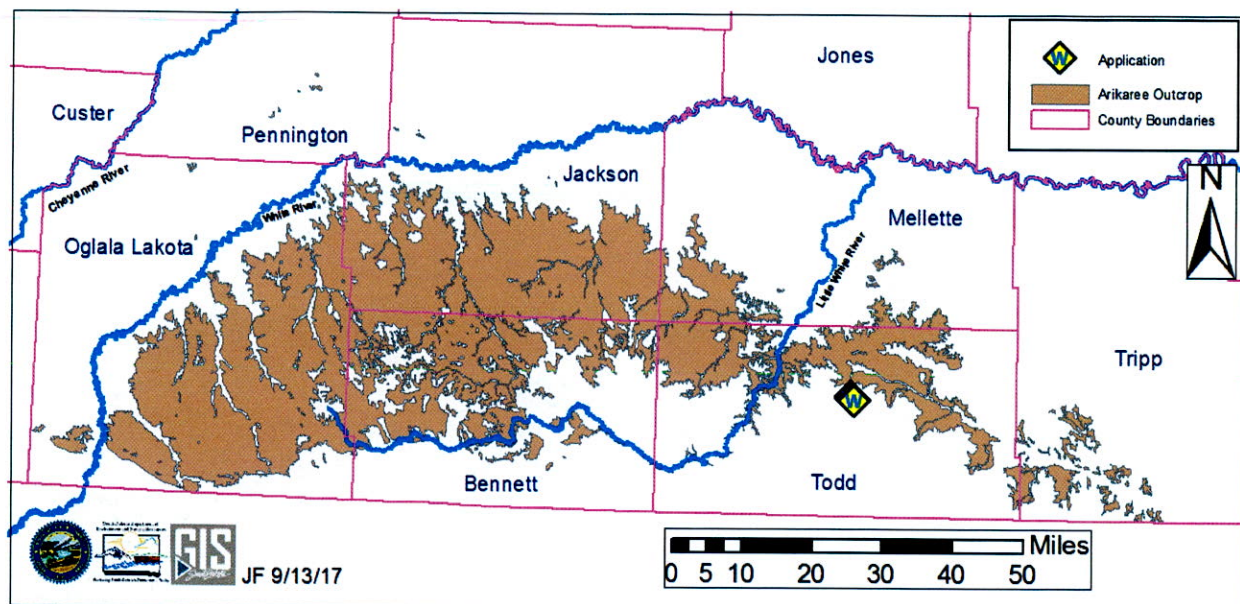


Figure 1. Map showing the outcrop of the Arikaree Formation in South Dakota (modified from Martin et al., 2004).

Discharge

Discharge from the Arikaree aquifer occurs naturally in areas where the water table is near the land surface through evapotranspiration, and by discharge from springs to alluvial aquifers and streams (Carter, 1998). Discharge also occurs through well withdrawals for irrigation, municipal, domestic, and stock use. Currently, there are 37 water rights/permits for the Arikaree aquifer for a number of different types of uses (Water Rights, 2017a). Within Todd County, there are currently four water rights/permits. However the land for Water Right 1257-2 has been purchased by the Rosebud Sioux Tribe Tribal Land Enterprise, and the Water Right has not been transferred, nor has the annual irrigation questionnaire been submitted to report the usage. In addition to the State of South Dakota Water Rights Program, the Rosebud Sioux Tribe also manages water use on tribal lands within Todd County.

Irrigation accounts for 29 of the 37 water rights/permits, and of the remaining 8 appropriations, 4 are for municipal systems, and there is one each for commercial use, domestic use, fish and wildlife propagation, and institutional use.

For non-irrigation appropriations, some are limited by an annual volume and others are limited by the permitted instantaneous diversion rate. For water rights/permits limited by the instantaneous diversion rate, the total permitted diversion rate is 2.67 cfs. Currently, there are no rights/permits in the Arikaree aquifer that are limited by annual volume (Water Rights, 2017a). For determining the average annual withdrawal, water rights/permits that are limited by an annual volume are assumed to use the entire volume, while rights/permits limited by pumping rate are estimated to pump 60% of the time. Water use for non-irrigation purposes in the Arikaree aquifer would then be an estimated 1,160 ac-ft per year.

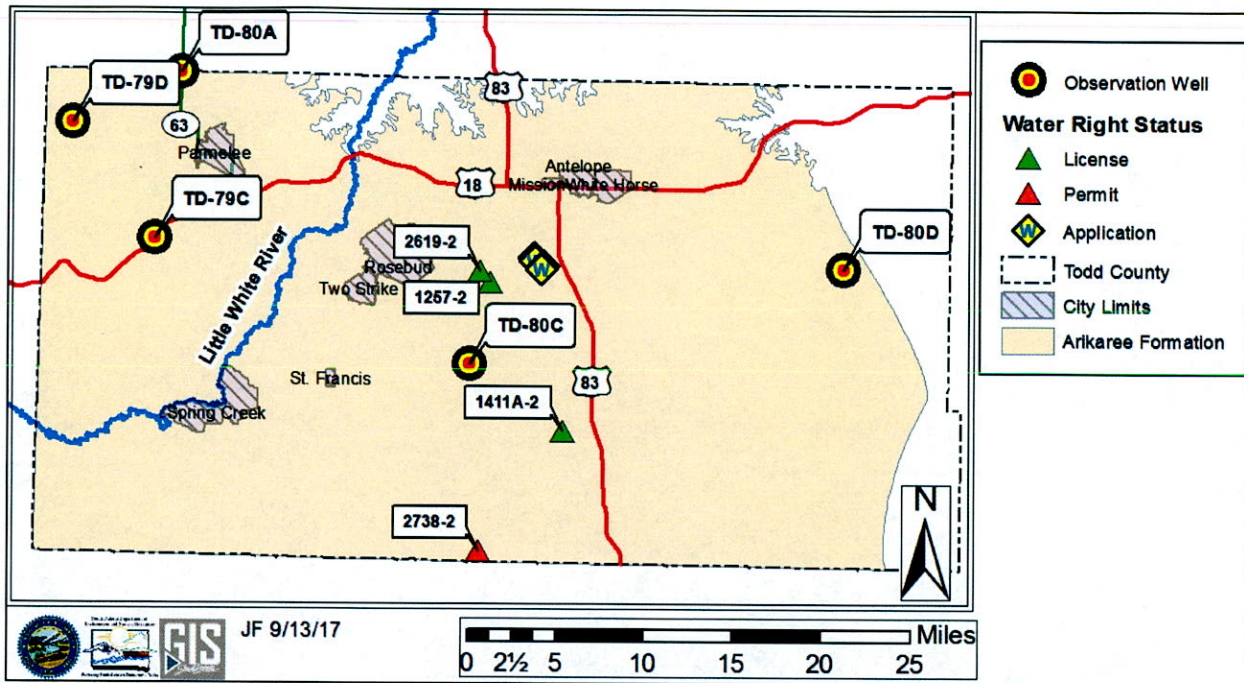


Figure 2. Map showing water rights/permits and observation wells in the Arikaree aquifer within Todd County (Water Rights, 2017a and 2017c) using aquifer boundaries modified from Carter (1998).

From the 2016 irrigation data, there were 28 water rights/permits that are diverting water from the Arikaree for irrigation (Water Rights, 1983-2017). Annual reported irrigation data from the entire period of record, 1982 to 2016, is displayed in Figure 3, which shows the reported pumpage.

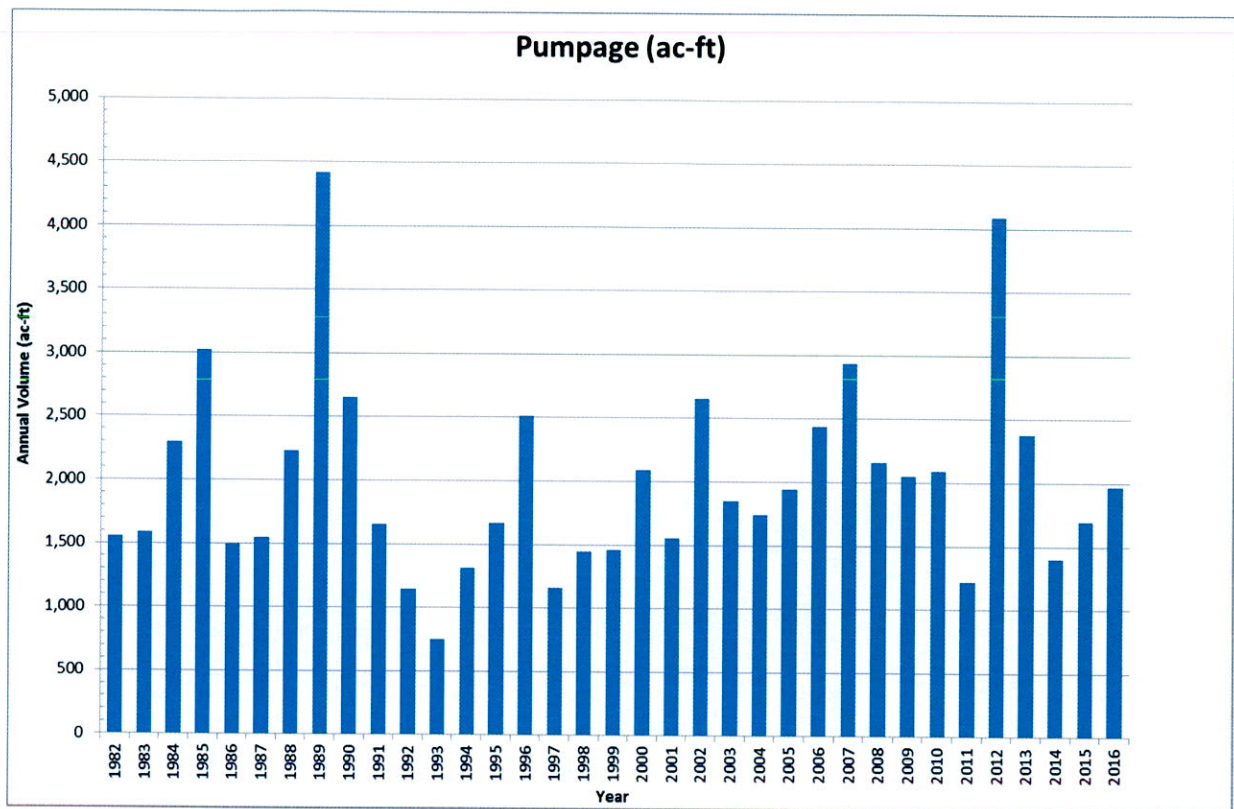


Figure 3: Reported annual irrigation data for the Arikaree aquifer (Water Rights, 1983-2017)

From 1982 to 2016, the average withdrawal for irrigation from the entire Arikaree aquifer has been 2,005 ac-ft per year, but has varied from 751 ac-ft/yr to 4,418 ac-ft/yr. Within Todd County, the average withdrawal for irrigation from the Arikaree aquifer has been 170.9 ac-ft/yr, varying from 16 ac-ft/yr to 468 ac-ft/yr. These applications, combined, seek to irrigate 169 acres, of which 89 acres are currently authorized for irrigation from groundwater and 80 acres are currently authorized for irrigation from Antelope Creek. Historically, the average annual application rate in South Dakota is less than one acre-ft/acre, so these permits will increase the estimated average annual withdrawal by less than 169 acre-feet/year. The total estimated average annual withdrawal for irrigation purposes is 2,174 ac-ft per year for the entire Arikaree aquifer, of which 340 ac-ft/yr would come from within Todd County if this application is approved.

There are a number of well completion reports on with the SD DENR-Water Rights Program for domestic wells that appear to be completed into the Arikaree aquifer, however due to the low population density and a rural water system being present, their annual withdrawal is not significant to the hydrologic budget of the aquifer (Water Rights, 2017b). It is currently unknown how much water is withdrawn from the Arikaree aquifer for tribal use, but given the large amount of recharge to the aquifer, there is likely water available to use.

Hydrologic Budget

The estimated annual recharge to the Arikaree aquifer is 182,950 acre feet per year, and the estimated annual withdrawals are 3,334 acre feet per year. The estimated recharge is much

greater than the estimated discharge from well withdrawals, showing that there is a reasonable probability that unappropriated water is available in the Arikaree aquifer to support the proposed application.

Observation Well Data

Administrative Rule of South Dakota 74:02:05:07 requires that the Water Management Board *“shall rely upon the record of observation well measurements in addition to other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge to the aquifer.”*

The Water Rights Program monitors 36 observation wells completed in the Arikaree aquifer (Water Rights, 2017c). The Rosebud Sioux Tribe has several monitoring wells within Todd County, however only one of those has been identified as being in the Arikaree aquifer (Long and Putnam, 2010). The nearest observation well monitored by the Water Rights Program is TD-80C, located approximately 6.75 miles to the southwest of the well locations. The observation well monitored by the Rosebud Sioux Tribe, RST-15, is located approximately 4.5 miles to the east of the well locations. The hydrograph for RST-15 (Figure 4) was obtained from a 2010 report by Long and Putnam and does not contain data newer than 2008. In a request for water level information to Syed Huq, Rosebud Sioux Tribe Water Resources Director, he stated that he has to get the requisite approval in order to share their information on RST-15. He did mention that between 1984 and the present, the water table has dropped by about 3.5 feet (personal communication, Sept. 7th, 2017). This drop does correlate with the hydrograph for TD-80C (Figure 5), and shows that the aquifer responds similarly at these two observation wells.

The hydrographs for these monitoring wells show that the aquifer responds well to climatic conditions and that these monitoring wells respond in a fashion similar to the rest of the monitoring wells in the Arikaree aquifer. The water levels rise during periods when recharge to the aquifer exceeds the sum of withdrawals and natural discharge from the aquifer, and the water levels decline when the sum of withdrawals and natural discharge from the aquifer is greater than the recharge to the aquifer. Over the period of record, the water level shown in the hydrograph has remained stable with climatic variability showing a difference of about 10 feet between wetter and drier periods. The overall difference between the maximum and minimum is greater due to the temporal impacts caused by irrigation pumping, however between irrigation seasons, the aquifer generally returns to a level similar to the pre-pumping condition. The means that the amount of recharge to and the natural discharge from the aquifer greatly exceeds pumping. The observation well data indicates that there is a reasonable probability that there is unappropriated water available from the Arikaree aquifer.

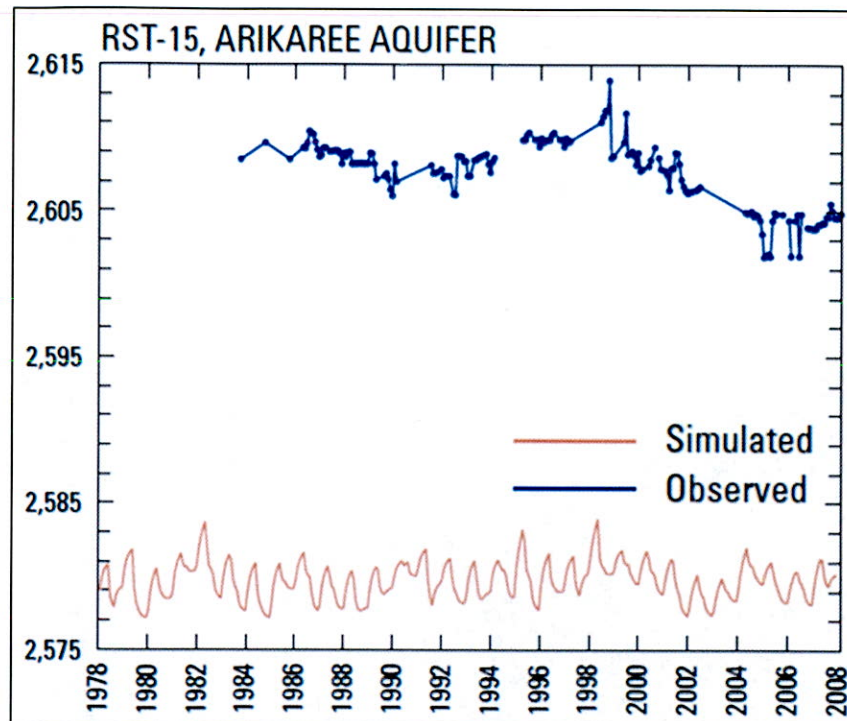


Figure 4. Hydrograph for tribal observation well RST-15 showing simulated and observed data for the calibrated transient groundwater model (Long and Putnam, 2010)

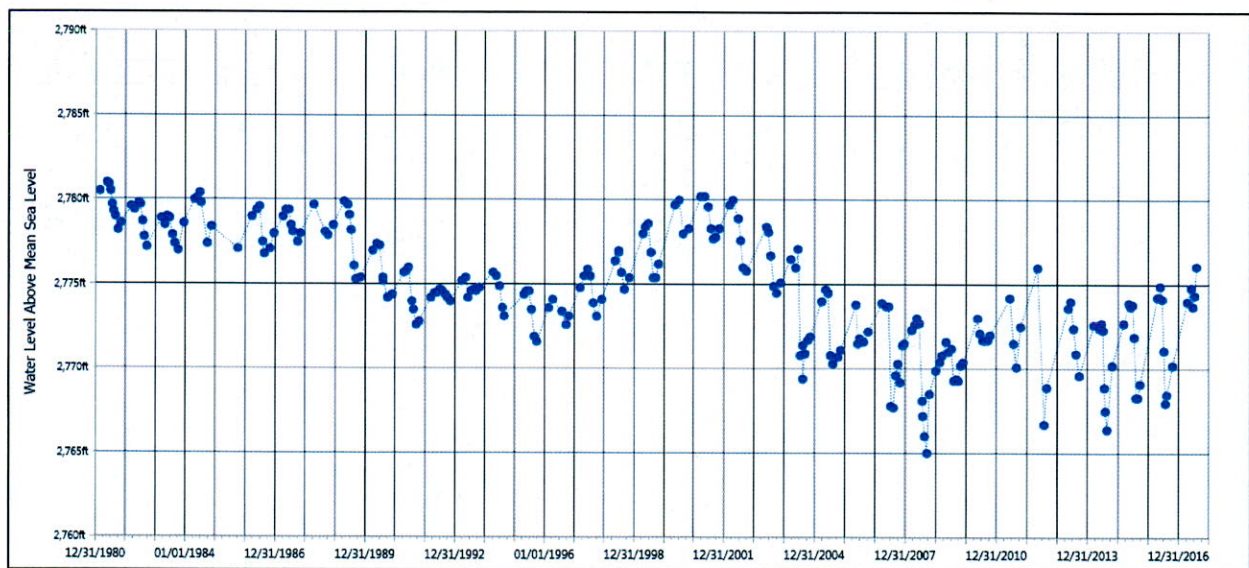


Figure 5: Hydrograph for DENR Water Rights Observation Well TD-80C (Water Rights, 2017c)

EXISTING WATER RIGHTS

The nearest existing water rights/permits are Water Right Nos. 1258-2 and 1915-2, which are for irrigation from two wells 120 feet deep and one well 150 feet deep. Application 2772-2 is for a well to supplement the existing wells for these two Water Rights. Depending on the variability of the formations, these may be hydraulically connected and able to influence each other. As these wells are all operated by the same operator, drawdown can be managed to reduce any interference. The next nearest existing water right/permit is Water Right No. 444-2 for diversion of surface water from Antelope Creek to irrigate the same land that Application 2771-2 is being applied for. These applications, if approved, are not expected to adversely impact these Water Rights that are operated by the same operator.

Historically, water use on land owned by the Rosebud Sioux Tribe and its members has not been recorded with the State of South Dakota, however it is known that there are irrigation users and water supply wells on these lands. From aerial imagery (USDA-FSA-APFO, 2016), the nearest groundwater supplied center pivot to these applications is approximately 2.5 miles to the west. The land that this pivot is located on was previously owned by Tom Milligan and is now owned by Rosebud Sioux Tribe Tribal Land Enterprise (RST TLE) (Water Rights, 2017a). This center pivot was licensed under Water Right No. 1257-2 for a maximum diversion rate of 1.9 cfs from the Arikaree aquifer for the irrigation of 134 acres, however it has yet to be transferred to the new owner or canceled, and no irrigation questionnaires have been submitted since 1997 (Water Rights, 2017a).

The nearest communities to this application are Mission and Antelope, SD, which are both connected to the Rosebud Rural Water Supply System. The Rosebud RWS utilizes both surface water from the Missouri River and locally available groundwater. The nearest public water supply wells are for the Rosebud RWS, and the cluster of five wells identified as “Rosebud Wells” is approximately 5.3 miles to the west-southwest (Huq and Whiting, 2016). There is another cluster of wells identified as “Mission Wells”, marked as “In Reserve”, and they are located approximately 4.3 miles to the south. From their location and local geology, they are likely to be in the Ogallala Aquifer. These applications, if approved, are not expected to adversely impact the adequate wells of these users.

To protect existing rights and domestic users, the Water Management Board has defined an “adequate well” in ARSD 74:02:04:20(6) as:

“a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet;”

In the past, the Water Management Board has concluded that because water resources are to be put to beneficial use to the fullest extent of which they are capable, pump placement within an

existing well may not be protected if the pump could be lowered and still produce a sufficient water supply.

CONCLUSIONS

1. Water Permit Application No. 2771-2 proposes to appropriate water at a maximum diversion rate of 1.25 cubic feet per second (cfs) from two wells (120ft deep) to be completed into the Arikaree aquifer for the irrigation of 80 acres. These acres are also licensed under Water Right No. 444-2.
2. Water Permit Application No. 2772-2 proposes to appropriate water at a maximum diversion rate of 0.62 cubic feet per second (cfs) from a well (110ft deep) to be completed into the Arikaree aquifer for the irrigation of 89 acres. These acres are also licensed under Water Rights Nos. 1258-2 and 1915-2.
3. Based upon the hydrologic budget and observation well data, there is a reasonable probability that unappropriated water is available from the Arikaree aquifer to supply the irrigation of 169 acres.
4. There is a reasonable probability that the appropriations as proposed by these applications will not adversely impact adequate wells for existing water rights and domestic use.



John Farmer
SD DENR – Water Rights Program

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- Water Rights. 2017b. Well Completion Report Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2017c, "Observation Well Database", SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, September 28, 2017 9:03 AM
To: Bennett County Booster (triblegals@gmail.com)
Subject: 2771-2, 2772-1 Milligan Mace Boies Flannery LLC
Attachments: 2771-2,2772-2public.short.docx; FORM8.FRM.doc

*called this is email
for Todd Co Tribune*

Attached is a notice to be published on October 4, 2017.

Milligan Mace Boies Flannery LLC, c/o Tom Milligan, PO Box 32, Hooper NE 69031 (402 459-5620) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak
SD DENR, Water Rights Program
(605) 773-3352



Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, September 28, 2017 9:04 AM
To: legals@capjournal.com
Subject: 2771-2, 2772-1 Milligan Mace Boies Flannery LLC
Attachments: 2771-2,2772-2public.short.docx; FORM8.FRM.doc

Attached is a notice to be published on October 4, 2017.

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Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak

SD DENR, Water Rights Program
(605) 773-3352



NOTICE OF APPLICATION NOS. 2771-2 and 2772-2 to Appropriate Water

Notice is given that Milligan Mace Boies Flannery LLC, c/o Tom Milligan, PO Box 32, Hooper NE 68031 has filed the following applications for a water permit.

Application No. 2771-2 proposes to appropriate 1.25 cubic feet of water per second (cfs) from two wells to be completed into the Arikaree Aquifer (120 feet deep) located in the SW 1/4 SE 1/4 Section 19 and the NW 1/4 NE 1/4 Section 30 for irrigation of 80 acres located in the S 1/2 SE 1/4, SE 1/4 SW 1/4 Section 19 and N 1/2 NE 1/4 Section 30; all in T38N-R28W. Water Right No. 444-2 authorized irrigation of portions of this acreage from Antelope Creek. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Application No. 2772-2 proposes to appropriate 0.62 cfs from one additional well to irrigate acres authorized by Water Right Nos. 1258-2 and 1915-2. Water Right Nos. 1258-2 and 1915-2 combined, appropriate 1.27 cfs from the same well located in the SW 1/4 NW 1/4 Section 29-T38N-R28W for irrigation of 89 acres located in the SE 1/4 NE 1/4, NE 1/4 SE 1/4 Section 30, SW 1/4 NW 1/4, W 1/2 SW 1/4 Section 29; all in T38N-R28W. This application proposes to appropriate 0.62 cfs from an additional well to be completed into the Arikaree Aquifer (110 feet deep) located in NW 1/4 SW 1/4 Section 29-T38N-R28W. This application, if approved, and Water Right Nos. 1258-2 and 1915-2 will authorize a total of 1.89 cfs for irrigation of 89 acres.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 2771-2 and 2772-2 with qualifications 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 recommendations with qualifications, the applications, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing or supporting these applications 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 recommendations. 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 16, 2017.

The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

If the applicant does not contest the recommendations of the Chief Engineer and no petition to oppose the applications is received, the Chief Engineer shall act on the applications pursuant to the recommendations with no hearing held before the Water Management Board. If a petition opposing the applications or contesting the recommendations is filed, then a hearing will be scheduled and the Water Management Board will consider these applications. Notice of the hearing will be given to the applicant and any person filing a petition.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at the total approximate cost of_____.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

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

September 25, 2017

Milligan Mace Boies Flannery LLC
c/o Tom Milligan
PO Box 32
Hooper NE 68031

Dear Mr. Milligan:

Water Permit Application Nos. 2771-2 and 2772-2 for irrigation use have been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Todd Co. Tribune printed at Mission SD (Ph # 605-856-4469) and the Capitol Journal printed at Pierre SD (Ph # 605-224-7301). You will need to contact the newspaper(s) and authorize publication of this notice. For your information, a copy of the notice, the recommendations of the Chief Engineer and report on the applications are 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(s) to authorize publication of your Notice and to arrange for payment. Early contact with the paper(s) can eliminate delays. Upon receiving authorization from you, the publisher has been instructed to publish your notice. 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 application.

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.

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Hughes) SS

I, Marylinn Baker

certify that the attached printed Notice was taken

from the Capital Journal

printed and published in Pierre

County of Hughes and

state of South Dakota. The notice was published

in the newspaper on the following date:

10-4-17

Cost of Printing \$41.16

Marylinn Baker
(Signature)

Bookkeeper
(Title)

10-16-17
(Date Signed)

SNAXLP 15952
11dy 10/4

NOTICE OF
APPLICATION NOS.
2771-2 and 2772-2 to
Appropriate Water

Notice is given that Milligan
Mece Boies Flannery LLC,
c/o Tom Milligan, PO Box
32, Hooper NE68031 has
filed the following applica-
tions for a water permit.

Application No. 2771-2
proposes to appropriate
1.25 cubic feet of water per
second (cfs) from two wells
to be completed into the
Arikaree Aquifer (120 feet
deep) located in the SW 1/4
SE 1/4 Section 19 and the
NW 1/4 NE 1/4 Section 30
for irrigation of 80 acres lo-
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SE 1/4 SW 1/4 Section 19
and N 1/2 NE 1/4 Section
30; all in T38N-R28W. Wa-
ter Right No. 444-2 author-
ized irrigation of portions of
this acreage from Antelope
Creek. The applicant is re-
questing a diversion rate
greater than the statutory
limit of 1 cfs per 70 acres.

Application No. 2772-2
proposes to appropriate
0.82 cfs from one additional
well to irrigate acres author-
ized by Water Right Nos.
1258-2 and 1915-2. Water
Right Nos. 1258-2 and
1915-2 combined, appropri-
ate 1.27 cfs from the same
well located in the SW 1/4
NW 1/4 Section
29-T38N-R28W for irriga-
tion of 89 acres located in
the SE 1/4 NE 1/4, NE 1/4
SE 1/4 Section 30, SW 1/4
NW 1/4, W 1/2 SW 1/4 Sec-
tion 29; all in
T38N-R28W. This applica-
tion proposes to appropri-
ate 0.82 cfs from an addi-
tional well to be completed
into the Arikaree Aquifer
(110 feet deep) located in
NW 1/4 SW 1/4 Section
29-T38N-R28W. The appli-
cation, if approved, and
Water Right Nos. 1258-2
and 1915-2 will authorize a
total of 1.89 cfs for irrigation
of 89 acres.

Pursuant to SDCL
46-2A-2, the Chief Engineer
recommends APPROVAL
of Application Nos. 2771-2
and 2772-2 with qualifica-
tions because 1) unappropri-
ated 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 in-
terest. The Chief Engineer's
recommendations with
qualifications, the applica-
tions, and staff report are
available at
<http://denr.sd.gov/public> or
contact Eric Gronlund for
this information, or other in-
formation, at the Water
Rights Program address
provided below.

Any person interested in
opposing or supporting
these applications or rec-
ommendations must file a
written petition with BOTH
the applicant and Chief En-
gineer. The applicant must
file a petition if contesting
the Chief Engineer's recom-
mendations. The Chief En-
gineer's address is "Water
Rights Program, Foss
Building, 523 E Capitol, Pi-
erre SD 57501 (605
773-3352)" and the appli-
cant's mailing address is
given above. A petition filed
by either an interested per-
son or the applicant must
be filed by October 16,
2017.

The petition may be infor-
mal, but must include a
statement describing the
petitioner's interest in the
applications, the petitioner's
reasons for opposing or
supporting the applications,
and the signature and mail-
ing address of the petitioner
or the petitioner's legal
counsel, if legal counsel is
obtained.

If the applicant does not
contest the recommenda-
tions of the Chief Engineer
and no petition to oppose
the applications is received,
the Chief Engineer shall act
on the applications pursu-
ant to the recommendations
with no hearing held before
the Water Management
Board. If a petition opposing
the applications or contest-
ing the recommendations is
filed, then a hearing will be
scheduled and the Water
Management Board will
consider these applica-
tions. Notice of the
hearing will be given to the
applicant and any person
filing a petition.

Steven M. Pirner,
Secretary,
Department of Environment
and Natural Resources.

Published once at the total
approximate cost of \$41.16.

RECEIVED

OCT 18 2017

WATER RIGHTS
PROGRAM

Tom Milligan

Affidavit of Publication

State of South Dakota

County of Todd

RECEIVED

OCT 20 2017

WATER RIGHTS
PROGRAM

Taylor Risse, being, first duly sworn, on oath, says: That he/she is an employee of Huether Brothers Publishing, Inc., and that the Todd County Tribune is, and during all the times hereinafter mentioned was, a weekly legal newspaper as defined in the SDCL 17-2-2.1 through the 17-2-2.4 inclusive; that said newspaper has been published within the said county of Todd and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for 1 successive week(s) to wit:

October 4, 2017

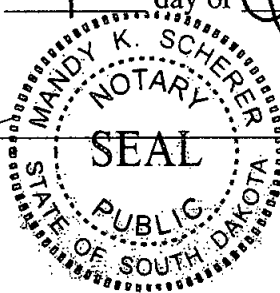
That the full amount of the fee charged for the publication of the attached public notice, \$45.54 insures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are:

Signed: Taylor Risse

Subscribed and sworn to before me this 4 day of October, 2017.

Mandy Scherer
Notary Public

My Commission Expires
December 9, 2021





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

September 25, 2017

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

Dear Mr. Huq:

Please find enclosed the staff report, recommendations and publication notice for two water permit applications filed by Milligan Mace Boies Flannery LLC in Todd County. Public notice is to be published in the Todd County Tribune and Pierre Capital Journal.

This information is being sent to you as part of the DENR's commitment to keep the Rosebud Sioux Tribe informed of water permitting issues in Todd County.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures



Rosebud Sioux Tribe

Sicangu Oyate

P.O. Box 430

Rosebud, SD 57570

Phone: (605) 747-2381 – Fax: (605) 747-2243

William Kindle
President
Scott Herman
Vice President
Wayne Boyd
Treasurer
Linda Marshall
Secretary
Edward Clairmont
Sergeant-At-Arms

10/4/17

Ms. Jeanne Goodman, Chief Engineer
Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

RECEIVED

OCT 06 2017

**WATER RIGHTS
PROGRAM**

Ref: Water Permit applications NO 2771-2 and 2772-2

Dear Ms. Goodman:

We are in receipt of your recommendations to the above permits under reference. We appreciate the fact that you have conducted a hydrologic evaluation of the impacts of the two permits and your recommendation is based on it. However Rosebud Sioux Tribe has claimed jurisdiction over water resources both surface and ground water within the exterior boundaries of the Reservation which is Todd County and tribal lands in Mellette, Tripp and Gregory Counties. Rosebud Sioux Tribe has a water Code approved by Tribal Council Resolution 2015-339 that serves as the mechanism to exercise Tribal jurisdiction over all water resources within the Reservation. I have attached a copy of the Tribal council resolution 2015-339 along with few pages of the Water Code depicting the Table of Contents, Declaration of Rights and Ownership, Purpose, Application of Code, Notice of Enactment and Effect etc. A full copy of the Water Code was provided to the Secretary, SD Department of Environment and Natural Resources with a cover letter (attached) dated July 9, 2015.

In the Report to the Chief Engineer on the two permits by Mr. John Farmer, Water Rights Program on page 4 it is mentioned "In addition to the State of South Dakota Water Rights Program, the Rosebud Sioux Tribe also manages water use on tribal lands within Todd County." We take serious exception to this statement, the State of South Dakota Water Rights Program has absolutely no jurisdiction to manage water use on tribal lands within Todd County, it is well managed by the Rosebud Sioux Tribe Water Resources Program under the supervision of RST Land and Natural Resources Committee and Tribal Council. It is also mentioned in the report that the land for Water Right 1257-2 has been purchased by Rosebud Sioux Tribe Tribal Land Enterprise and the Water Right has not been transferred. Please make arrangement to transfer the said Water Right to the Rosebud Sioux Tribe.

In view of the facts enumerated above, Rosebud Sioux Tribe opposes the two water permit applications filed by Milligan Mace Boies Flannery LLC in Todd County. As mentioned above the exterior boundary of Rosebud Sioux Reservation comprises entire Todd County and tribal lands in Mellette, Tripp and Gregory Counties.

Thank you for the opportunity to explain our position and we request you to direct the applicant Milligan Mace Boies Flannery LLC to contact Rosebud Sioux Tribe Water Resources Program as per the Rosebud Sioux Tribe Water Code and I can assure that the applicant will receive a fair treatment as enumerated in the code including a hydro-geologic evaluation.

If you have any questions or comments, please direct them to me at (605) 747-2381 or Water Resources Program at (605) 747-2559.

Sincerely,

A handwritten signature in black ink, appearing to read "William Kindle". The signature is fluid and cursive, with the first name "William" being more legible than the last name "Kindle".

William Kindle, President
Rosebud Sioux Tribe

Attachment.

Cc: Eric Gronlund, Water Rights Program

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2015-339**

WHEREAS, the Rosebud Sioux Tribe is a federally recognized Indian tribe organized pursuant to the Indian Reorganization Act of 1934 and all pertinent amendments thereof; and

WHEREAS, the Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and Bylaws; and

WHEREAS, free access and unhindered control of the water of the Rosebud Sioux Tribe is essential to the existence of the Rosebud Sioux Tribe and its people and without such access and control, the viability of the Rosebud Sioux Indian Reservation as a permanent home and abiding place will be increasingly threatened and the economic development of the Rosebud Sioux Indian Reservation thwarted; and

WHEREAS, the uncontrolled use and obstruction of the water of the Rosebud Sioux Indian Reservation causes or will cause over appropriation, waste, interference between users, unreliable water supplies, lowering of water quality, dangerously low lake and stream levels, destruction of fish and other wildlife habitats, and the loss of other economic and environmental amenities needed to ensure an acceptable quality of life within the Rosebud Sioux Indian Reservation; and

WHEREAS, the Rosebud Sioux Tribe has sovereign jurisdiction over and beneficial ownership of waters of the Rosebud Sioux Tribe and the Rosebud Sioux Indian Reservation; and

WHEREAS, the current Rosebud Sioux Tribe Water Code contains outdated provisions, is difficult to administer, and does not address issues of current importance such as extended droughts, climate change, depletion of aquifers, and risks to the quality of the waters of the Rosebud Sioux Tribe; and

WHEREAS, the water resources of the Rosebud Sioux Tribe has to be protected from potential contamination by pipelines carrying hazardous materials and injection of hazardous materials into or through the aquifers; and

WHEREAS, assessment, evaluation, monitoring, protection and development of the water resources of Rosebud Sioux Tribe is in need of a framework such as the Water Code; and

WHEREAS, comprehensive management of the water resources on the Rosebud Reservation is in need of an up to date Water Code; and

WHEREAS, the enforcement of the Rosebud Sioux Tribal Water Code will allow the RST Water Resources Program to implement a fair water use permit system for all residing within the exterior boundary of the reservation in Todd County and tribal lands in Mellette, Tripp, Lyman and Gregory counties; and

WHEREAS, the previous resolution no. 77-32 adopting a water code for Rosebud Sioux Tribe is rescinded and is replaced by a new one under this resolution; and

WHEREAS, the new Water Code has gone through the process of a public hearing, review by a tribal attorney, and Land & Natural Resources Committee; now

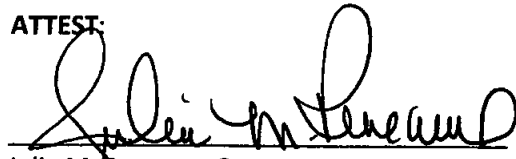
THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribal Council approved the new RST Water Code and direct the RST Water Resources Program Director for implementation.

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2015-339**

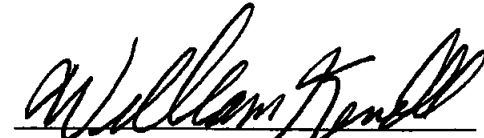
CERTIFICATION

This is to certify that the above Resolution No. 2015-339 establishing the Water Code was duly approved by the Rosebud Sioux Tribal Council in session on June 14, 2016, for a first reading with a vote of fifteen (15) in favor, zero (0) opposed and zero (0) not voting. A second reading was duly approved on January 31, 2017, by a vote of fifteen (15) in favor, zero (0) opposed and zero (0) not voting. The said Water Code was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:



Julia M. Peneaux, Secretary
Rosebud Sioux Tribe

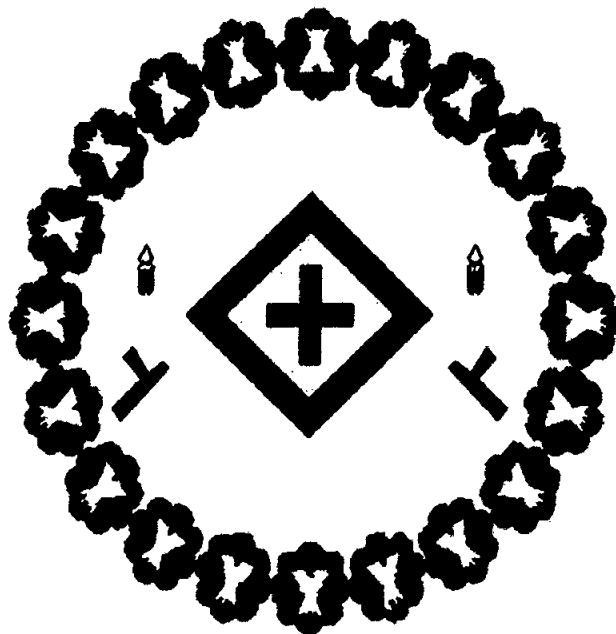


William Kindle, President
Rosebud Sioux Tribe

ROSEBUD SIOUX TRIBE

WATER CODE

Tribal Council Resolution 2015- 339



May 2015

Rosebud Sioux Tribe

June 2015

WATER CODE

President – William Kindle

Vice President – Richard “Tuffy” Lunderman

Secretary – Julie Peneaux

Treasurer – Byron “Barney” Wright

Land and Natural Resources Committee

Chairman – William Bear Shield

Members: Wayne Fredrick

Brian Dillon

Michael Boltz

Mary Wain

Richard “Smokey” Whipple

Keith Fielder

Lydia Whirlwind Solder

Keith Horse Looking Sr.

Eric Antoine – RST Attorney

Syed Huq, Director
RST Water Resources

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CHAPTER 11 - ROSEBUD SIOUX TRIBE WATER CODE

100 General Provisions

101 Declarations of Rights and Ownership

(A) Declaration

The Rosebud Sioux Tribe hereby asserts its prior, exclusive, and supreme rights in ownership of and jurisdiction over the Waters of the Rosebud Sioux Indian Reservation, defined herein, for all purposes for a homeland.

The Rosebud Sioux Tribal Council has the right to amend this Water Code by a 2/3rds majority of the Tribal Council, and any amendment will be published in a newspaper of general circulation and all Water Use Permits held shall be reviewed by RST Land and Natural Resources Committee for approval in writing.

(B) Nature of Ownership

- (1) The Rosebud Sioux Tribe is the owner of the full equitable title to the rights to the use of all of the Waters of the Rosebud Sioux Indian Reservation, as defined herein, and that the United States holds only the naked legal title to those waters solely as trustee for the Rosebud Sioux Tribe.
- (2) All rights to the use of the Waters of the Rosebud Sioux Indian Reservation, as defined herein, are held by the Rosebud Sioux Tribe in perpetuity, for the use and benefit of the Rosebud Sioux Tribe and the lands and other resources of the Rosebud Sioux Indian Reservation. No right or privilege of any kind, from whatever source shall be recognized or granted unless the same shall be subject to overriding, prior and supreme right and interest of the Rosebud Sioux Tribe, and the policy and provisions contained in this Code, amendments hereto, and administrative regulations and determinations hereunder. No agent of the Rosebud Sioux Tribe or the United States shall take any action or grant or recognize any right affecting the water resources of the Rosebud Sioux Indian Reservation which in any way decreases or threatens to decrease the prior and supreme rights and interests of the Rosebud Sioux Tribe.

(C) Waters of the Rosebud Sioux Indian Reservation Defined

- (1) All waters located within the exterior boundaries of the Rosebud Sioux Indian Reservation whether flowing or stationary, whether above or below the surface of the ground, and whether diffused or contained within a defined water course or water body of any kind
- (2) All waters reserved at any time to the Rosebud Sioux Tribe and the Rosebud Sioux Indian Reservation by the United States and the Rosebud Sioux Tribe
- (3) All water which, in the course of nature or as the result of artificial works, flows into or otherwise enhances such waters.

102 Purposes

- (A) To promote the general welfare of the Rosebud Sioux Tribe and develop, manage, and preserve the waters and other resources of the Rosebud Sioux Indian Reservation
- (B) To provide for the exercise by the United States of its duties to preserve and protect in perpetuity all waters reserved for the Rosebud Sioux Tribe and the Rosebud Sioux Indian Reservation as a homeland
- (C) To provide for the exercise of the inherent sovereign power of self-government by the Rosebud Sioux Tribe
- (D) To further the present and future preservation and development of the water resources of the Rosebud Sioux Tribe as a homeland
- (E) To protect the health and welfare of the Rosebud Sioux Tribal population from any adverse impact of any pipeline carrying hazardous materials traversing tribal lands or adjacent to tribal lands.

103 Application of Code

Ninety (90) days after the effective date of this Code, it shall be unlawful to divert or withdraw or otherwise make any use of, or take any action of whatever kind substantially affecting, the Waters of the Rosebud Sioux Indian Reservation unless the applicable provisions of this Code and the regulations and determinations made hereunder have been complied with. No water rights, from whatever source, shall be recognized, except rights obtained under and subject to this Code.

104 Notice of Enactment and Effect

(A) Notice Required

To ensure that all persons and entities affected by this Code are given adequate notice of the enactment and effect of this Code, the Director of the Office of Water Resources shall, within 15 days after the enactment date of this Code, provide for public notice of its enactment and effect in accordance with the provisions of this Section.

(B) Contents of Notice

- (1) Such public notice shall contain the following statement, prominently displayed and in large, boldface type:

NOTICE: AFTER _____ NO PERSON OR PUBLIC OR PRIVATE ENTITY OF ANY KIND SHALL BE ENTITLED TO MAKE ANY USE OF OR OTHERWISE AFFECT THE WATERS OF THE ROSEBUD SIOUX INDIAN RESERVATION, AS DEFINED IN SECTION 101 OF THE ROSEBUD SIOUX TRIBE WATER CODE, UNLESS SUCH USE IS AUTHORIZED BY A WATER USE PERMIT AS

PROVIDED FOR BY THE ROSEBUD SIOUX TRIBE WATER CODE. NO OTHER WATER RIGHTS OF ANY KIND, FROM WHATEVER SOURCE, SHALL BE RECOGNIZED. APPLICABLE PORTIONS OF THE ROSEBUD SIOUX TRIBE WATER CODE ARE QUOTED BELOW. THE NECESSARY FORMS FOR WATER USE PERMIT APPLICATIONS HAVE BEEN INCLUDED WITH THIS NOTICE WHENEVER POSSIBLE. SUCH FORMS MAY ALSO BE PROCURED FROM THE ROSEBUD SIOUX TRIBE OFFICE OF WATER RESOURCES OR THE ROSEBUD SIOUX TRIBE AT THE FOLLOWING ADDRESS OR TELEPHONE NUMBER: Office of Water Resources, BIA Road 903 Hospital Complex, Rosebud, South Dakota, 57570, (605) 747-2559
COMPLETE COPIES OF THE ROSEBUD SIOUX TRIBE WATER CODE ARE ALSO AVAILABLE FOR SALE AT THE ABOVE ADDRESS.

- (2) In addition to the above-quoted statement, such public notice shall also contain, prominently displayed, the Section of this Code declaring the prior and supreme rights of the Rosebud Sioux Tribe, defining the Waters of the Rosebud Sioux Indian Reservation, describing the procedures to be followed in obtaining a permit, and setting forth penalties for use of water without authorization under this Code.
- (3) In addition, the Director of the Office of Water Resources may include in such public notice additional information deemed necessary in order to assure adequate notice of the enactment and legal effect of this Code.

(C) Notice - How Given

The Director of the Office of Water Resources shall give notice of the provisions of this Code as follows:

- (1) The notice provided above shall be placed in at least one regularly published newspaper in Todd, Tripp, Gregory, and Mellette Counties, at least once every other week over a four week period.
- (2) The notice provided above shall be placed in a prominent and conspicuous location in the County Courthouse of Todd, Tripp, Gregory, and Mellette Counties, and at the Tribal Office. The Director of the Office of Water Resources may post notices in other locations as it deems necessary.
- (3) The Director of the Office of Water Resources may take any other steps and post any other notices it deems necessary to provide notice of the provisions of this Code.
- (4) Whenever possible, forms for "Application for Water Use Permit", as provided in Section 400 of this Code, shall be included with notices in order to facilitate compliance with this Code.

105 Definitions

- (A) "Aquifer" means a water-bearing bed or stratum of permeable rock, sand, or gravel capable of



Rosebud Sioux Tribe

Sicangu Oyate

P.O. Box 430

Rosebud, SD 57570

Phone: (605) 747-2381 - Fax: (605) 747-2243

William Kindle

President

Richard Lunderman

Vice President

Bryan Wright

Treasurer

COPY

July 9, 2015

Mr. Steve Pirner, Secretary
Department of Environment & Natural Resources
State of South Dakota
Joe Foss Building
523 E. Capital
Pierre, South Dakota 57501

Subject: Rosebud Sioux Tribe Water Code

Dear Mr. Pirner:

Rosebud Sioux Tribe has an updated Water Code which will be finalized by October 31, 2015 for implementation within the exterior boundary of Rosebud Reservation in Todd County and on Rosebud Tribal lands in Mellette, Tripp, Gregory and Lyman counties.

Rosebud Sioux Tribe has provided safe drinking water to Indians and non- Indians within the exterior boundary of Rosebud Reservation at no cost to them under the Mni Wiconi Rosebud Rural Water System. Free water has also been provided to the South Dakota incorporated towns of Mission and St. Francis located within Rosebud Reservation. Rosebud Sioux Tribe has demonstrated a non- discriminatory water service organization through our Water Resources and Water & Sewer Commission and we expect to do the same with our Water Code.

Implementation of Rosebud Sioux Tribal Water Code over Indians and non- Indians on Rosebud Reservation will allow the RST Water Resources Program to administer efficiently and effectively the assessment, evaluation, monitoring and development of the precious surface and ground water that occurs on Rosebud Reservation. This is particularly important in view of the climate change and drought conditions looming in the horizon.

It is possible to develop a mechanism-instrument of sharing information between Rosebud Sioux Tribe and the State of South Dakota on matters/data related to Water Resources beneficial to the Tribe and the State.

We are enclosing a copy of the draft Water Code for your review and comments, we are also attaching a copy of the Public Notice that is being published in local newspapers. We look forward to working with the State of South Dakota in protecting, preserving and sharing the Water Resources on Rosebud Reservation in a manner that is non - discriminatory and non-detrimental and only beneficial to all Indians and non - non Indians living on Rosebud

3

Reservation within the great Sate of South Dakota. If you or your staff has any questions,
please call me at 605-747-2381 or Syed Huq, Director of Water Resources at 605-747-2559.

Roshat Lalam VP
For

Mr. William Kindle, President
Rosebud Sioux Tribe

Cc: Tribal Council Members
Superintendent, BIA, Rosebud Agency
Mayor, City of Mission
Mayor, City of St. Francis



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

No. 1257-2

October 17, 2017

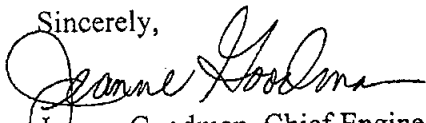
William Kindle, President
Rosebud Sioux Tribe
PO Box 430
Rosebud SD 57570

Honorable President Kindle:

The South Dakota Department of Environment and Natural Resources is in receipt of your letter opposing two water permit applications filed by Milligan, Mace, Boies, Flannery LLC for irrigation in Todd County. You will be receiving notice in the near future scheduling the two water permit applications for hearing before the South Dakota Water Management Board. The Rosebud Sioux Tribe will need to be represented by legal counsel if you choose to participate in the hearing before the Board.

Your letter also requests that Water Right No. 1257-2 be transferred to the Rosebud Sioux Tribe who owns the land authorized for irrigation by this water right. Water Right No. 1257-2 has been transferred to the Rosebud Sioux Tribe. Water Right No. 1257-2 is attached.

Sincerely,


Jeanne Goodman, Chief Engineer
Water Rights Program.

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

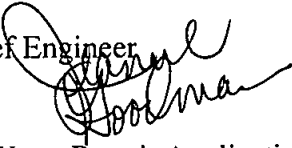
denr.sd.gov

October 20, 2017

NOTICE OF HEARING

TO: Tom Milligan
Milligan Mace Boies Flannery LLC
PO Box 32
Hooper NE 68031

William Kindle, President
Rosebud Sioux Tribe
PO Box 430
Rosebud SD 57570

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program 

SUBJECT: Notice of Hearing on Water Permit Application Nos. 2771-2 and 2772-2

A petition to the Chief Engineer's recommendations for approval of Water Permit Application Nos. 2771-2 and 2772-2 was filed by the Rosebud Sioux Tribe in response to the Notice of Application published in the Todd County Tribune and Pierre Capital Journal. This notice schedules a hearing on Application Nos. 2771-2 and 2772-2 before the South Dakota Water Management Board.

Water Permit Application No. 2771-2 proposes to appropriate 1.25 cubic feet of water per second (cfs) from two wells to be completed into the Arikaree Aquifer (120 feet deep) located in the SW 1/4 SE 1/4 Section 19 and the NW 1/4 NE 1/4 Section 30 for irrigation of 80 acres located in the S 1/2 SE 1/4, SE 1/4 SW 1/4 Section 19 and N 1/2 NE 1/4 Section 30; all in T38N-R28W. Water Right No. 444-2 authorized irrigation of portions of this acreage from Antelope Creek. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Water Permit Application No. 2772-2 proposes to appropriate 0.62 cfs from one additional well to irrigate acres authorized by Water Right Nos. 1258-2 and 1915-2. Water Right Nos. 1258-2 and 1915-2 combined, appropriate 1.27 cfs from the same well located in the SW 1/4 NW 1/4 Section 29-T38N-R28W for irrigation of 89 acres located in the SE 1/4 NE 1/4, NE 1/4 SE 1/4 Section 30, SW 1/4 NW 1/4, W 1/2 SW 1/4 Section 29; all in T38N-R28W. This application proposes to appropriate 0.62 cfs from an additional well to be completed into the Arikaree Aquifer (110 feet deep) located in NW 1/4 SW 1/4 Section 29-T38N-R28W. This application, if approved, and Water Right Nos. 1258-2 and 1915-2 will authorize a total of 1.89 cfs for irrigation of 89 acres.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 2771-2 and 2772-2 with qualifications 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 Water Management Board will consider Application Nos. 2771-2 and 2772-2 at 10:00 AM on Thursday, December 7, 2017, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The agenda time is an estimate. Parties will be provided written notice if there is a change to the hearing time or date.

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 the application after it reaches a conclusion based on the facts presented at the public hearing.

The December 7, 2017, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application. The request for an automatic delay must be filed by November 27, 2017.

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

Contact Eric Gronlund at the above Chief Engineer's address to request the staff report, recommendation, application or any other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Enclosed is a copy of the report, recommendations, affidavits of publication and the petition filed in the matter of Water Permit Application Nos. 2771-2 and 2772-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." You are encouraged to review these documents prior to the hearing.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is October 30, 2017. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

Questions regarding the hearing process may be directed to Ann Mines Bailey, Assistant Attorney General at (605) 773-3215 or Eric Gronlund, Water Rights Program at (605) 773-3352

c: Ann Mines Bailey, Assistant Attorney General
Margo Northrup, Riter, Rogers, Wattier & Northrup Law Firm, 319 S Coteau St, Pierre SD 57501

CERTIFICATION

I hereby certify that on October 20, 2017, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice of Hearing dated October 20, 2017, regarding notice of hearing for Water Right Permit Application No. 8284-3, as addressed below:

Tom Milligan
Milligan Mace Boies Flannery LLC
PO Box 32
Hooper NE 68031

William Kindle, President
Rosebud Sioux Tribe
PO Box 430
Rosebud SD 57570

Margo Northrup
Riter, Rogers, Wattier & Northrup Law Firm
319 S Coteau St
Pierre SD 57501

Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



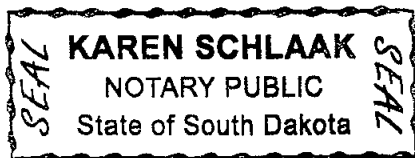
Eric Gronlund
Water Rights Program, DENR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 20th day of October, 2017



Karen Schlaak
Notary Public
My Commission expires April 1, 2019



State of South Dakota
Water License No. 1257-2

(1) L-7 Ranch Company
of c/o Robert J. Lamoureux, Box 297, Mission, South Dakota 57555
made Application No. 1257-2 April 7, 1975 for a water permit to appropriate
6.0 cubic feet per second of water from groundwater (three wells)
Todd County, South Dakota for Irrigation purposes.
Permit No. 1257-2, with a priority date of April 7, 1975
was approved July 24, 1975 and issued to applicant(s) for diversion of water with construction of the described
water supply system to be completed on or before July 24, 1980 and for the application to beneficial use of said
water on or before July 24, 1984.

and

(2) It is certified that the application has complied with the provisions of South Dakota State Law relating to completion of
the construction of the water supply system and is entitled to divert 1.9 cubic feet per second of water
for beneficial use. The location of the diversion point(s) is 1350'S and 150'E of the NW Corner of
Section 35, T4N, R29W (BC)

and

(3) The applicant has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to the following extent, to irrigate the following lands all in T38N, R29W

Section 35

NW $\frac{1}{4}$ NW $\frac{1}{4}$ 33.8 Acres (BB)

NE $\frac{1}{4}$ NW $\frac{1}{4}$ 34.0 Acres (BA)

SW $\frac{1}{4}$ NW $\frac{1}{4}$ 32.5 Acres (BC)

SE $\frac{1}{4}$ NW $\frac{1}{4}$ 34.3 Acres (BD)

TOTAL 134.6 ACRES

(4) Pursuant to §46-5-30.1 L-7 Ranch

of c/o Robert J. Lamoureux, Box 297, Mission, SD 57555

the holder(s) and/or owner(s) of Water Permit No. 1257-2 is issued a license to appropriate water, the right to use 1.9 cubic feet per second of water from groundwater (one well) Ogallala with a priority date of April 7, 1975 from the location specified in (2) of this license. The water to be conducted to and upon lands specified in (3) of this license for the purpose of Irrigation

This license is subject to any limitations or qualifications listed in Water Permit No. 1257-2 and subject to South Dakota State Law.

John Hatch
Chief Engineer, Water Rights Division
Department of Water and Natural Resources

JOHN HATCH

APR 29 1985

Form 8

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)

County of Hughes) SS

I, Marylinn Baker

certify that the attached printed Notice was taken

from the Capital Journal

printed and published in Pierre

County of Hughes and

state of South Dakota. The notice was published

in the newspaper on the following date:

10-4-17

Cost of Printing

\$41.16

Marylinn Baker
(Signature)

Bookkeeper
(Title)

10-16-17
(Date Signed)

SNAXLP 15952
10/1/16

NOTICE OF
APPLICATION NOS.
2771-2 and 2772-2 to
Appropriate Water
Notice is given that Milligan
Mace Boies Flannery LLC,
c/o Tom Milligan, PO Box
32, Hooper, NE 68031 has
filed the following applica-
tions for a water permit:

Application No. 2771-2
proposes to appropriate
1.25 cubic feet of water per
second (cfs) from two wells
to be completed into the
Arikaree Aquifer (120 feet
deep) located in the SW 1/4
SE 1/4 Section 18 and the
NW 1/4 NE 1/4 Section 30
for irrigation of 80 acres lo-
cated in the S 1/2 SE 1/4,
SE 1/4 SW 1/4 Section 18
and N 1/2 NE 1/4 Section
30; all in T38N-R26W, Wa-
ter Right No. 444-2 author-
ized irrigation of portions of
this acreage from Antelope
Creek. The applicant is re-
questing a diversion rate
greater than the statutory
rate of 1 cfs per 70 acres.

Application No. 2772-2
proposes to appropriate
0.62 cfs from one additional
well to irrigate acres author-
ized by Water Right Nos.
1258-2 and 1915-2. Water
Right Nos. 1258-2 and
1915-2 combined, appropri-
ate 1.27 cfs from the same
well located in the SW 1/4
NW 1/4 Section
29-T38N-R26W for irriga-
tion of 89 acres located in
the SE 1/4 NE 1/4, NE 1/4
SE 1/4 Section 30, SW 1/4
NW 1/4, W 1/2 SW 1/4 Sec-
tion 29; all in
T38N-R26W. This applica-
tion proposes to appropri-
ate 0.62 cfs from an addi-
tional well to be completed
into the Arikaree Aquifer
(110 feet deep) located in
NW 1/4 SW 1/4 Section
29-T38N-R26W. This appli-
cation, if approved, and
Water Right Nos. 1258-2
and 1915-2 will authorize a
total of 1.89 cfs for irrigation
of 89 acres.

Pursuant to SDCL
46-2A-2, the Chief Engineer
recommends APPROVAL
of Application Nos. 2771-2
and 2772-2 with qualifica-
tions because 1) unappropri-
ated 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 in-
terest. The Chief Engineer's
recommendations with
qualifications, the applica-
tions, and staff report are
available at
<http://denr.sd.gov/public> or
contact Eric Gronlund for
this information, or other in-
formation, at the Water
Rights Program address
provided below.

Any person interested in
opposing or supporting
these applications or rec-
ommendations must file a
written petition with BOTH
the applicant and Chief En-
gineer. The applicant must
file a petition if contesting
the Chief Engineer's recom-
mendations. The Chief En-
gineer's address is "Water
Rights Program, Foss
Building, 523 E Capitol, Pi-
erre, SD 57501 (605
773-3552)" and the appli-
cant's mailing address is
given above. A petition filed
by either an interested per-
son or the applicant must
be filed by October 18,
2017.

The petition may be infor-
mal, but must include a
statement describing the
petitioner's interest in the
applications, the petitioner's
reasons for opposing or
supporting the applications,
and the signature and mail-
ing address of the petitioner
or the petitioner's legal
counsel, if legal counsel is
obtained.

If the applicant does not
contest the recommenda-
tions of the Chief Engineer
and no petition to oppose
the applications is received,
the Chief Engineer shall act
on the applications pursu-
ant to the recommendations
with no hearing held before
the Water Management
Board. If a petition opposing
the applications or contest-
ing the recommendations is
filed, then a hearing will be
scheduled and the Water
Management Board will
consider these applica-
tions. Notice of the
hearing will be given to the
applicant and any person
filing a petition.

Steven M. Pinner,
Secretary,
Department of Environment
and Natural Resources

Published once at the total
approximate cost of \$41.16

RECEIVED

OCT 18 2017

WATER RIGHTS
PROGRAM

Legal Notices

Invitation for Bids

Post #1
The BGC of Rosebud is seeking bids for construction of a restroom within existing interior space. Contact 605-519-5389 for more information. Closes October 11.

Post #2
The BGC of Rosebud is seeking bids for installation of HVAC system in newly remodeled 25' x 100' space. Contact 605-519-5389 for more information. Closes October 11.

Published twice at the total approximate cost of \$16.12
Published: September 27, October 4, 2017

Notice to Bidders

Todd County School District
To Box 17
Mission, South Dakota 57555

The Board of Education of the Todd County School District will receive bids in envelopes clearly marked "SEALED BID" for 840 cases dual bond, 92 white high-speed xerographic paper, sub. 20, long grain, 10 reams per case, P.O.B. Mission, South Dakota. Delivery to be made no later than Friday, October 27, 2017. Bids will be received up until 1:00 (C.D.T.), Friday October 6, at the District Office, Mission, South Dakota and awarded Tuesday, October 10, 2017 at the regular Board of Education meeting. The Board reserves the right to accept or reject any or all bids.

Chad M. Blotzky
Business Manager

Published twice at the total approximate cost of \$23.56
Published: September 27, October 4, 2017

Notice of an Application for Tribal Land Assignment

Notice is hereby given that applications for a Tribal Land Enterprise (T.L.E.) Assignment of land have been filed by two (2) Rosebud Sioux Tribal members on the following tracts described as:

Type: Potential TLE Assignment
Tract No. T-6403, Ref. #946
Description: Northwest Quarter (NW/4) of Section 14, T.38 N., R. 28 W., 6th P.M., Todd Co., SD, 150.70 acres more or less.
Applicant: Llewellyn G. Wright
Type: Potential TLE Assignment
Tract No. T-6401, Ref. #3292
Description: Northeast Quarter (NE/4) of Section 14, T.38 N., R. 28 W., 6th P.M., Todd Co., SD, 135.50 acres more or less.
Applicant: Llewellyn G. Wright

Please be advised that anyone interested can submit written objections and/or make an application for the land. Said objections and further applications will be accepted at the Tribal Land Enterprise office for thirty (30) days following the date of the publication. Additional information may be obtained from the Tribal Land Enterprise office, P.O. Box 159, Rosebud, SD 57570, telephone no. (605) 747-2371.

Published three times at the total approximate cost of \$48.33
Published: September 20, 27, October 4, 2017

Notice to Creditors

STATE OF SOUTH DAKOTA)
COUNTY OF TODD)
IN the matter of the estate of)
Roger Paulson,)
Deceased.)

IN THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
60P017-00007

Notice to Creditors
Notice is given that on September 7, 2017, Gregory S. Paulson, whose address is 8230 West Park Ave., Hastings, NE 68001, was appointed as Personal Representative of the Estate of Roger Paulson. Creditors of decedent must file their claims within four months after the date of the first publication of this notice or their claims may be barred.

Claims may be filed with the Personal Representative or may be filed with the Clerk, and a copy of the claim mailed to the Personal Representative.

Dated this 15th day of September, 2017.

/s/ Gregory S. Paulson
Personal Representative
8230 West Park Ave.
Hastings, NE 68001
(308) 390-0219

Jodi Calhoun
Todd County Clerk of Court
200 East 3rd St.
Winner, SD 57580
605-842-2266

Published three times at the total approximate cost of \$75.18
Published: September 20, 27, October 4, 2017

Notice to Creditors

STATE OF SOUTH DAKOTA)
COUNTY OF TODD)
IN the matter of the estate of)
Daniel E. Vavra,)
Deceased.)

IN THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
Case No. PR 17-08
Notice to Creditors

Notice is given that on 9-18-17, Michelle M. Henderson whose address is 119 Lakshore Dr., Valentine, NE 69201 and Carrie J. Hand whose address is 90045 Sandbur Ridge Dr., Valentine, NE 69201, were appointed as Co-Personal Representatives of the estate of Daniel E. Vavra.

Creditors of decedent must file their claims within four months after the date of the first publication of this notice or their claims may be barred.

Claims may be filed with the Attorney for the Estate, or may be filed with the Clerk of Court and a copy of the claim mailed to the Attorney for the Estate.

/s/ Michelle M. Henderson
119 Lakshore Dr.
Valentine, NE 69201

/s/ Carrie J. Hand
90045 Sandbur Ridge Dr.
Valentine, NE 69201

Todd County Clerk of Court
PO Box 31
Winner, SD 57580

Scott D. Peterson SPSD #4265
Personal Representative's Attorney
Peterson Beel, LLP
PO Box 46
Valentine, NE 69201
Telephone: (402) 376-2271

Published three times at the total approximate cost of \$76.76
Published: September 27, October 4, 11, 2017

Summons

Rosebud Sioux Tribal Court)
Rosebud Indian Reservation)
Rosebud, South Dakota)

The People of the Rosebud Sioux Tribe)
In the interest of)
M.R.)
Minor child(ren) and concerning.)

TO: Cynthia Doran
Bryce Larvie

PLEASE TAKE NOTICE that the Hearing on the Petition For Termination of Parental Rights concerning the above named minor(s) has been set for the Day of October 25, 2017 at 2:00 p.m. in the Rosebud Sioux Children's Court House at the Wanbli Wiconi Tribal Wellness and Renewal Center (JDC) at Ring Thunder, South Dakota. This is your official notice of said hearing.

Date this 20th day of September, 2017

By The Court:
Cheryl Three Stars Valandra
Children's Court Judge

Attest:
Lynn Means
Clerk of Courts

Published four times at the total approximate cost of \$77.55
Published: September 27, October 4, 11, 18, 2017

Invitation for Bids

SWA 17-18
Liquefied Petroleum Gas (Propane)
The Slangwa Wicoo Awaayankapi (SWA) Corporation is seeking bid for Liquefied Petroleum Gas (Propane).

Scope Of Work
Firm fixed bid price for period October, 2017 to September 30, 2018 shall include services, handling and delivery of Liquefied Petroleum Gas. On a fill and keep, full basis for the SWA Corporation office space, Warehouse, Cabinet Shop, four (4) elderly complexes and on an as needed basis for all orders placed for vacant units and authorized by the SWA for all housing units managed by the SWA Corporation. Each bid must state if leak tests performed by certified SWA maintenance staff will be accepted. If the tests will not be accepted a letter from the applicants insurance company and a copy of said policy must accompany bid. We are estimating around 30,000 gallons of propane will be needed.

Award
Any firm seeking Indian preference in this award must provide evidence that it is not less than 51 percent Indian owned and controlled. A prequalification application is being provided to you if you wish to claim the Indian preference. This application can be returned with your bid proposal. The bid proposal shall be returned to SWA Corporation by October 12, 2017 at 2:00 p.m. (central time). The Indian preference evaluation process shall be conducted prior to the bid evaluation and you shall be officially informed in writing as to your qualification for Indian preference. If a prequalification form has been submitted to us in the last six months and your firm is determined to be qualified for the preference, then fax or mail to us with your bid proposal a written statement identifying any changes in your organization and we will determine if you continue to be eligible for the preference.

The contract(s) will only be awarded to responsible individual(s) or firm(s). The contract(s) will be awarded to qualified Indian enterprise(s) submitting the lowest responsive bid if such bid is within budgeting limits established for this solicitation and is within ten percent (10%) of the lowest responsive quotation from any qualified individual or firm.

If no responsive bid by a qualified Indian enterprise is within the above-stated limits, then award will be made to the individual or firm with the lowest responsive bid.

Proposed Process
Bids will be received at the RST TECRO or at SWA Corporation, attention Danielle Burnette, Procurement/Property Manager until 2:00 p.m. (CST) on October 12, 2017 at which time the bids will be opened and read aloud and accepted for consideration. All bids shall be submitted in a sealed envelope clearly marked "SEALED BID-PROPANE BID SWA 17-18" NO FAX OR E-MAIL BIDS WILL BE ACCEPTED.

If there are any questions, please contact Danielle Burnette at (605) 747-2203 ext. 280. SWA will let you know the decision on the awards.

Published twice at the total approximate cost of \$70.68
Published: October 4, 11, 2017

Proceedings

Todd County, South Dakota
September 20, 2017

The meeting of the Todd County Commissioners was called to order by the Chairman in the Commissioner Room at the County Building at Mission on September 20, 2017 at 10:18 a.m. A Roll call showed Board members Gregg Grimshaw, William Giroux, Patay Valandra, Ales Whipple and Marshall Tinnant. Also present was Auditor Barbara DeSera.

Valandra presented Rosebud Sioux Tribe Map 21-Tiger Grant, came to the meeting to give the Commissioners a summary total of the rights-of-way and temporary construction easement, drainage easements and staging area costs. The original estimate was for \$350,000.00 and now it will cost \$334,000.00. Mrs. Douville will get an itemized list of land owners and parcels. The Commissioners also requested an itemized list of what the County is expected to pay and the outcome of the road project when it is completed.

Whipple made the motion, seconded by Tinnant, to approve the minutes from September 5, 2017.

Roll call: All ayes. Motion carried.

Discussion was held on the State Fire Premium that is to be distributed to the local Fire Department's.

Giroux made the motion, seconded by Whipple, to give the St. Francis Fire Department portion to the Mission Fire Department, as they do not respond to the fires.

Roll Call: Ayes: Grimshaw, Tinnant, Whipple and Giroux. Nays: Valandra. Motion carried.

At 11:00 a.m. the 2018 Budget Adoption was held as advertised with no one appearing to attend.

Whipple made the motion, seconded by Giroux, to adopt the following:

RESOLUTION (35-2017):
ADOPTION OF ANNUAL BUDGET FOR TODD COUNTY, SOUTH DAKOTA.

Whereas, (7-21-5 thru 13), SDCL provides that the Board of County Commissioners shall each year prepare a Provisional Budget of all contemplated expenditures and revenues of the County and all its institutions and agencies for such fiscal year and

Whereas, the Board of County Commissioners did prepare a Provisional Budget and cause same to be published by law, and

Whereas, said legal notice has been given to the meeting of the Board of County Commissioners for the consideration of such Provisional Budget and all changes, deletions and additions have been made thereto.

NOW THEREFORE BE IT RESOLVED, That such provisional budget as amended and all its purposes, schedules, appropriations, amounts, estimates and all matters therein set forth, SHALL BE APPROVED AND ADOPTED AS THE ANNUAL BUDGET OF THE APPROPRIATION AND EXPENDITURES FOR TODD COUNTY, SOUTH DAKOTA and all its Institutions and Agencies for calendar year beginning January 1, 2018 and ending December 31, 2018 and the same is hereby approved and adopted by the Board of County Commissioners of Todd County, South Dakota, this 20th day of September, 2017. The Annual Budget so adopted is available for public inspection during normal business hours at the office of the County Auditor, Todd County, South Dakota. The accompanying taxes are levied by Todd County for the year January 1, 2018 through December 31, 2018.

Tax Levy in
COUNTY TAX LEVIES WITHIN LIMITED LEVY: DOLLARS,
\$w/1,000

General County Purposes (10-12-9): 706,648.00, 3.737
LIMITED LEVY (10-12-21) SUB TOTAL, 706,648.00, 3.737

OUTSIDE LIMITED LEVY:
Courthouse, Jail, etc, Bldg: (7-25-1)

UNLIMITED LEVY-SUB TOTAL
LIMITED AND UNLIMITED LEVY-SUB-TOTAL, 706,648.00, 3.737
OTHER SPECIAL LEVIES
Secondary Road (Unorg. PT-76) (31-12-27)
TOTAL TAXES LEVIED BY COUNTY, 706,648.00, 3.737
Dated at Mission, South Dakota this 20th day of September, 2017.

Chairman, Gregg Grimshaw
County Auditor
ATTEST:

Roll call: Ayes: Grimshaw, Whipple, Giroux, Tinnant and Valandra. Nays: None. Resolution adopted.

Wade Isler, RDO, and Hugh Storms, Highway Superintendent, came to the meeting to discuss the JD 772CP motor grader. RDO proposed to the Commissioners earlier this month. Mr. Isler wanted to tell them the pricing will go up October 1. Mr. Isler also gave the Commissioners information on the price they have for \$22,500.00.

No decision was made on either of these items and Mr. Isler left the meeting. Discussion was held on various roads; trees are being removed and mowing is being done.

At 11:05 a.m. Tinnant made the motion, seconded by Valandra, to enter into Executive session to discuss a personnel issue pursuant to SDCL 1-25-2 (1).

Roll call: All ayes. Motion carried.

At 11:09 a.m. Giroux made the motion, seconded by Whipple, to return to regular session.

Roll call: All ayes. Motion carried.

Mr. Storms left the meeting.

Carl Runger, Sheriff, entered the meeting.

At 11:11 a.m. Whipple made the motion, seconded by Valandra, to enter into Executive session to discuss a personnel issue pursuant to SDCL 1-25-2 (1).

Roll call: All ayes. Motion carried.

At 11:42 A.M. Tinnant made the motion, seconded by Valandra, to return to regular session.

Roll call: All ayes. Motion carried.

Whipple made the motion, seconded by Giroux, to authorize the necessary expenses for Carl Runger, Sheriff, to attend a Conference in Sioux Falls, SD on November 7-8, 2017.

Roll call: All ayes. Motion carried.

The Register of Deeds Statement of Fees Collected during the Month of August, 2017 showed \$1,707.00.

Whipple made the motion, seconded by Valandra, to approve the following claims:

Payroll: Courthouse: \$247.64; Veterans' Office: \$778.68; Sheriff's Office: \$2,138.77; Road & Bridge: \$14,120.35; Emergency Management: \$527.98; Various Deductions: First Fidelity Bank, Withholding, Social Security & Medicare: \$4,110.96; St. Public Entity Fund: \$2,728.70; General Deductions: Accounts Management Inc, Wage Garnishment, \$50.00; Aaa Collections Inc, \$50.00; Sd Retirement System, \$1,907.32.

Commissioners: Golden West Telecommunication, Phone Sw, \$56.79; Todd County Tribune, Publishing, \$770.75; Auditor: Todd County Tribune, Subscription Fee, \$44.40; State's Attorney: Public Law Office, Atty Fee, \$939.67; Court Appointed Atty: Stenhouse Law Office, P.C. Fees, \$596.18; Sandy Steffen, Cae Fees, \$3,032.89; County Building Maint: Country Pride Coop, Propane, \$194.04; Golden West Telecom, Phone Sw, \$123.16; Register Of Deeds: Microfilm Imaging Systems, Rental Scan Equip, \$118.00; Veterans' Service Office: Golden West Telecom, Phone Sw, \$63.03; Ronald Valandra, Mileage Reimb, \$141.12; Information Tech: Golden West Telecommunication, 3rd Qtr Phone/Net Sw, \$320.00; Sheriff: A&T Mobility, Utilities, \$189.85; Golden West Telecom, Phone Sw, \$227.99; Modern Marketing, Supplies, \$331.14; Office Products Center, Supplies, \$440.00; Sd Department Of Revenue, Blood Alc Test, \$35.00; United States Post Office, \$70.00; Jail: Winner Regional, Drug Test, \$90.00; Winner Police Dept, Prisoner Care, \$1,670.00; Mental Illness: Audra Hill Consulting Inc, MI Hearing, \$202.50; Lincoln County Treasurer, MI Expenses, \$190.70; Road & Bridge: Astman Implement Inc, Repairs, \$135.16; Country Pride Coop, Fuel, \$13,143.56; Corky's Auto Supply, Supplies, \$520.26; Golden West Telecommunications, Phone Sw, \$181.06; Harry K. Auer, Repairs, \$357.55; Harry K. Auer, Supplies, \$12,435.45; Mission Lumber Hardware & Supplies, Supplies, \$186.60; Mission Ace Hardware, Supplies, \$30.99; Office Products Center, Supplies, \$226.88; Running Supply, Supplies, \$82.94; Rosebud Rental, Supplies, \$92.09; Rac Alcohol Treatment Program, Drug Testing, \$40.00; Serrall Uniform/Linen Co., Supplies, \$104.20; Sdsu-South Dakota Leap, Conference, \$100.00; Verizon Wireless, Cell Sw, \$30.90; We Tire Service Inc, Repairs, \$1,135.88; Emergency Management: Kara Walking, Int/Mcal/Mileage Reimb, \$246.12.

Roll call: All ayes. Motion carried.

At 11:45 a.m. Whipple made the motion to adjourn until the next meeting to be held on October 4, 2017, seconded by Tinnant.

Roll call: All ayes. Motion carried.

Chairman, Gregg Grimshaw
County Auditor
ATTEST:

Published once at the total approximate cost of \$98.28
Published: October 4, 2017

Notice of Application NOS. 2771-2 and 2772-2 to Appropriate Water

Notice is given that Milligan MacBee Boes Flannery LLC, c/o Tom Milligan, PO Box 32, Hooper NE 68031 has filed the following applications for a water permit.

Application No. 2771-2 proposes to appropriate 1.25 cubic feet of water per second (cfs) from two wells to be completed into the Arkanear Aquifer (120 feet deep) located in the SW 1/4 SE 1/4 Section 19 and the NW 1/4 NE 1/4 Section 30 for irrigation of 80 acres located in the S 1/2 SE 1/4, SE 1/4 SW 1/4 Section 19 and N 1/2 NE 1/4 Section 19, all in T38N-R28W, Water Right No. 444-2 authorized irrigation of portions of this acreage from Anchole Creek. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Application No. 2772-2 proposes to appropriate 0.62 cfs from one additional well to irrigate acres authorized by Water Right Nos. 1258-2 and 1915-2. Water Right Nos. 1258-2 and 1915-2 combined, appropriate 1.27 cfs from the same well located in the SW 1/4 NW 1/4 Section 29-T38N-R28W for irrigation of 89 acres located in the SE 1/4 NE 1/4, NE 1/4 SE 1/4 Section 30, SW 1/4 NW 1/4, W 1/2 SW 1/4 Section 29; all in T38N-R28W. This application proposes to appropriate 0.62 cfs from an additional well to be completed into the Arkanear Aquifer (110 feet deep) located in NW 1/4 Section 29-T38N-R28W. This application, if approved, and Water Right Nos. 1258-2 and 1915-2 will authorize a total of 1.89 cfs for irrigation of 89 acres.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 2771-2 and 2772-2 with qualifications 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 recommendations with qualifications, the applications, and staff report are available at: todd.sd.gov/public or contact Eric Gronlund for more information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing or supporting these applications 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 recommendations. The Chief Engineer's address is "Water Rights Program, Post Building, 523 E Capitol Pierre, SD 57501 (605) 773-3352" and the applicant's mailing address is given above. A petition filed by an interested person or the applicant must be filed by October 16, 2017.

The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

If the applicant does not contest the recommendations of the Chief Engineer and no petition to oppose the applications is received, the Chief Engineer shall act on the applications pursuant to the recommendations with no hearing held before the Water Management Board. If a petition opposing the applications or contesting the recommendations is filed, then a hearing will be scheduled and the Water Management Board will consider these applications. Notice of the hearing will be given to the applicant and any person filing a petition.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Published once at the total approximate cost of \$45.54
Published: October 4, 2017

Tom Milligan

Affidavit of Publication

State of South Dakota

County of Todd

RECEIVED

OCT 20 2017

WATER RIGHTS
PROGRAM

Taylor Risse, being, first duly sworn, on oath, says: That he/she is an employee of Huether Brothers Publishing, Inc., and that the Todd County Tribune is, and during all the times hereinafter mentioned was, a weekly legal newspaper as defined in the SDCL 17-2-2.1 through the 17-2-2.4 inclusive; that said newspaper has been published within the said county of Todd and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for 1 successive week(s) to wit:

October 4, 2017

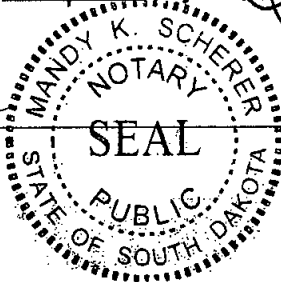
That the full amount of the fee charged for the publication of the attached public notice, \$45.54 insures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are:

Signed: _____

Subscribed and sworn to before me this 4 day of October, 2017.

Notary Public

My Commission Expires
December 9, 2021





Rosebud Sioux Tribe

Sicangu Oyate

P.O. Box 430

Rosebud, SD 57570

Phone: (605) 747-2381 – Fax: (605) 747-2243

William Kindle
President
Scott Herman
Vice President
Wayne Boyd
Treasurer
Linda Marshall
Secretary
Edward Clairmont
Sergeant-At-Arms

10/4/17

Ms. Jeanne Goodman, Chief Engineer
Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

RECEIVED

OCT 06 2017

**WATER RIGHTS
PROGRAM**

Ref: Water Permit applications NO 2771-2 and 2772-2

Dear Ms. Goodman:

We are in receipt of your recommendations to the above permits under reference. We appreciate the fact that you have conducted a hydrologic evaluation of the impacts of the two permits and your recommendation is based on it. However Rosebud Sioux Tribe has claimed jurisdiction over water resources both surface and ground water within the exterior boundaries of the Reservation which is Todd County and tribal lands in Mellette, Tripp and Gregory Counties. Rosebud Sioux Tribe has a water Code approved by Tribal Council Resolution 2015-339 that serves as the mechanism to exercise Tribal jurisdiction over all water resources within the Reservation. I have attached a copy of the Tribal council resolution 2015-339 along with few pages of the Water Code depicting the Table of Contents, Declaration of Rights and Ownership, Purpose, Application of Code, Notice of Enactment and Effect etc. A full copy of the Water Code was provided to the Secretary, SD Department of Environment and Natural Resources with a cover letter (attached) dated July 9, 2015.

In the Report to the Chief Engineer on the two permits by Mr. John Farmer, Water Rights Program on page 4 it is mentioned "In addition to the State of South Dakota Water Rights Program, the Rosebud Sioux Tribe also manages water use on tribal lands within Todd County." We take serious exception to this statement, the State of South Dakota Water Rights Program has absolutely no jurisdiction to manage water use on tribal lands within Todd County, it is well managed by the Rosebud Sioux Tribe Water Resources Program under the supervision of RST Land and Natural Resources Committee and Tribal Council. It is also mentioned in the report that the land for Water Right 1257-2 has been purchased by Rosebud Sioux Tribe Tribal Land Enterprise and the Water Right has not been transferred. Please make arrangement to transfer the said Water Right to the Rosebud Sioux Tribe.

In view of the facts enumerated above, Rosebud Sioux Tribe opposes the two water permit applications filed by Milligan Mace Boies Flannery LLC in Todd County. As mentioned above the exterior boundary of Rosebud Sioux Reservation comprises entire Todd County and tribal lands in Mellette, Tripp and Gregory Counties.

Thank you for the opportunity to explain our position and we request you to direct the applicant Milligan Mace Boies Flannery LLC to contact Rosebud Sioux Tribe Water Resources Program as per the Rosebud Sioux Tribe Water Code and I can assure that the applicant will receive a fair treatment as enumerated in the code including a hydro-geologic evaluation.

If you have any questions or comments, please direct them to me at (605) 747-2381 or Water Resources Program at (605) 747-2559.

Sincerely,

A handwritten signature in black ink, appearing to read "William Kindle". The signature is stylized with a large, looped "W" and a cursive "Kindle".

William Kindle, President
Rosebud Sioux Tribe

Attachment.

Cc: Eric Gronlund, Water Rights Program

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2015-339**

WHEREAS, the Rosebud Sioux Tribe is a federally recognized Indian tribe organized pursuant to the Indian Reorganization Act of 1934 and all pertinent amendments thereof; and

WHEREAS, the Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and Bylaws; and

WHEREAS, free access and unhindered control of the water of the Rosebud Sioux Tribe is essential to the existence of the Rosebud Sioux Tribe and its people and without such access and control, the viability of the Rosebud Sioux Indian Reservation as a permanent home and abiding place will be increasingly threatened and the economic development of the Rosebud Sioux Indian Reservation thwarted; and

WHEREAS, the uncontrolled use and obstruction of the water of the Rosebud Sioux Indian Reservation causes or will cause over appropriation, waste, interference between users, unreliable water supplies, lowering of water quality, dangerously low lake and stream levels, destruction of fish and other wildlife habitats, and the loss of other economic and environmental amenities needed to ensure an acceptable quality of life within the Rosebud Sioux Indian Reservation; and

WHEREAS, the Rosebud Sioux Tribe has sovereign jurisdiction over and beneficial ownership of waters of the Rosebud Sioux Tribe and the Rosebud Sioux Indian Reservation; and

WHEREAS, the current Rosebud Sioux Tribe Water Code contains outdated provisions, is difficult to administer, and does not address issues of current importance such as extended droughts, climate change, depletion of aquifers, and risks to the quality of the waters of the Rosebud Sioux Tribe; and

WHEREAS, the water resources of the Rosebud Sioux Tribe has to be protected from potential contamination by pipelines carrying hazardous materials and injection of hazardous materials into or through the aquifers; and

WHEREAS, assessment, evaluation, monitoring, protection and development of the water resources of Rosebud Sioux Tribe is in need of a framework such as the Water Code; and

WHEREAS, comprehensive management of the water resources on the Rosebud Reservation is in need of an up to date Water Code; and

WHEREAS, the enforcement of the Rosebud Sioux Tribal Water Code will allow the RST Water Resources Program to implement a fair water use permit system for all residing within the exterior boundary of the reservation in Todd County and tribal lands in Mellette, Tripp, Lyman and Gregory counties; and

WHEREAS, the previous resolution no. 77-32 adopting a water code for Rosebud Sioux Tribe is rescinded and is replaced by a new one under this resolution; and

WHEREAS, the new Water Code has gone through the process of a public hearing, review by a tribal attorney, and Land & Natural Resources Committee; now

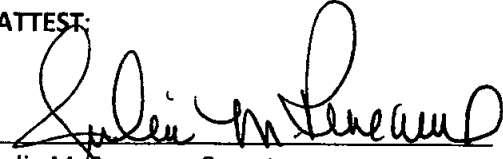
THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribal Council approved the new RST Water Code and direct the RST Water Resources Program Director for implementation.

**ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2015-339**

CERTIFICATION

This is to certify that the above Resolution No. 2015-339 establishing the Water Code was duly approved by the Rosebud Sioux Tribal Council in session on June 14, 2016, for a first reading with a vote of fifteen (15) in favor, zero (0) opposed and zero (0) not voting. A second reading was duly approved on January 31, 2017, by a vote of fifteen (15) in favor, zero (0) opposed and zero (0) not voting. The said Water Code was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:



Julia M. Peneaux, Secretary
Rosebud Sioux Tribe

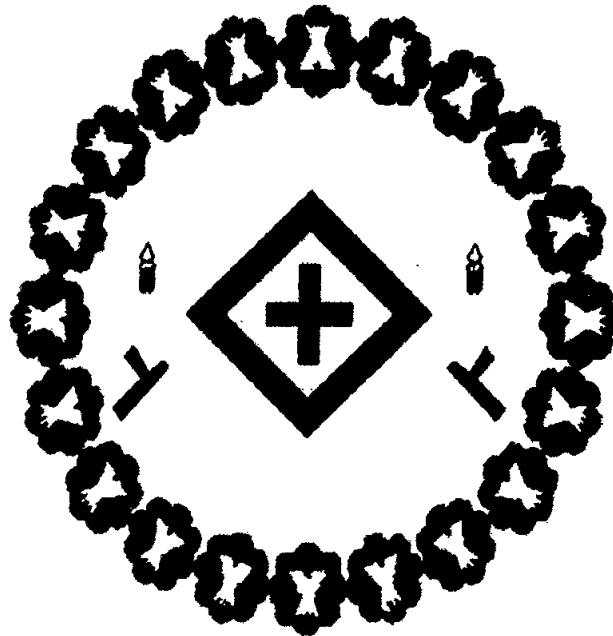


William Kindle, President
Rosebud Sioux Tribe

ROSEBUD SIOUX TRIBE

WATER CODE

Tribal Council Resolution 2015- 339



May 2015

Rosebud Sioux Tribe

June 2015

WATER CODE

President – William Kindle

Vice President – Richard “Tuffy” Lunderman

Secretary – Julie Peneaux

Treasurer – Byron “Barney” Wright

Land and Natural Resources Committee

Chairman – William Bear Shield

Members: Wayne Fredrick

Brian Dillon

Michael Boltz

Mary Waln

Richard “Smokey” Whipple

Keith Fielder

Lydia Whirlwind Solder

Keith Horse Looking Sr.

Eric Antoine – RST Attorney

Syed Huq, Director
RST Water Resources

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CHAPTER 11 - ROSEBUD SIOUX TRIBE WATER CODE

100 General Provisions

101 Declarations of Rights and Ownership

(A) Declaration

The Rosebud Sioux Tribe hereby asserts its prior, exclusive, and supreme rights in ownership of and jurisdiction over the Waters of the Rosebud Sioux Indian Reservation, defined herein, for all purposes for a homeland.

The Rosebud Sioux Tribal Council has the right to amend this Water Code by a 2/3rds majority of the Tribal Council, and any amendment will be published in a newspaper of general circulation and all Water Use Permits held shall be reviewed by RST Land and Natural Resources Committee for approval in writing.

(B) Nature of Ownership

- (1) The Rosebud Sioux Tribe is the owner of the full equitable title to the rights to the use of all of the Waters of the Rosebud Sioux Indian Reservation, as defined herein, and that the United States holds only the naked legal title to those waters solely as trustee for the Rosebud Sioux Tribe.
- (2) All rights to the use of the Waters of the Rosebud Sioux Indian Reservation, as defined herein, are held by the Rosebud Sioux Tribe in perpetuity, for the use and benefit of the Rosebud Sioux Tribe and the lands and other resources of the Rosebud Sioux Indian Reservation. No right or privilege of any kind, from whatever source shall be recognized or granted unless the same shall be subject to overriding, prior and supreme right and interest of the Rosebud Sioux Tribe, and the policy and provisions contained in this Code, amendments hereto, and administrative regulations and determinations hereunder. No agent of the Rosebud Sioux Tribe or the United States shall take any action or grant or recognize any right affecting the water resources of the Rosebud Sioux Indian Reservation which in any way decreases or threatens to decrease the prior and supreme rights and interests of the Rosebud Sioux Tribe.

(C) Waters of the Rosebud Sioux Indian Reservation Defined

- (1) All waters located within the exterior boundaries of the Rosebud Sioux Indian Reservation whether flowing or stationary, whether above or below the surface of the ground, and whether diffused or contained within a defined water course or water body of any kind
- (2) All waters reserved at any time to the Rosebud Sioux Tribe and the Rosebud Sioux Indian Reservation by the United States and the Rosebud Sioux Tribe
- (3) All water which, in the course of nature or as the result of artificial works, flows into or otherwise enhances such waters.

102 Purposes

(A) To promote the general welfare of the Rosebud Sioux Tribe and develop, manage, and preserve the waters and other resources of the Rosebud Sioux Indian Reservation

(B) To provide for the exercise by the United States of its duties to preserve and protect in perpetuity all waters reserved for the Rosebud Sioux Tribe and the Rosebud Sioux Indian Reservation as a homeland

(C) To provide for the exercise of the inherent sovereign power of self-government by the Rosebud Sioux Tribe

(D) To further the present and future preservation and development of the water resources of the Rosebud Sioux Tribe as a homeland

(E) To protect the health and welfare of the Rosebud Sioux Tribal population from any adverse impact of any pipeline carrying hazardous materials traversing tribal lands or adjacent to tribal lands.

103 Application of Code

Ninety (90) days after the effective date of this Code, it shall be unlawful to divert or withdraw or otherwise make any use of, or take any action of whatever kind substantially affecting, the Waters of the Rosebud Sioux Indian Reservation unless the applicable provisions of this Code and the regulations and determinations made hereunder have been complied with. No water rights, from whatever source, shall be recognized, except rights obtained under and subject to this Code.

104 Notice of Enactment and Effect

(A) Notice Required

To ensure that all persons and entities affected by this Code are given adequate notice of the enactment and effect of this Code, the Director of the Office of Water Resources shall, within 15 days after the enactment date of this Code, provide for public notice of its enactment and effect in accordance with the provisions of this Section.

(B) Contents of Notice

- (1) Such public notice shall contain the following statement, prominently displayed and in large, boldface type:

NOTICE: AFTER _____ NO PERSON OR PUBLIC OR PRIVATE ENTITY OF ANY KIND SHALL BE ENTITLED TO MAKE ANY USE OF OR OTHERWISE AFFECT THE WATERS OF THE ROSEBUD SIOUX INDIAN RESERVATION, AS DEFINED IN SECTION 101 OF THE ROSEBUD SIOUX TRIBE WATER CODE, UNLESS SUCH USE IS AUTHORIZED BY A WATER USE PERMIT AS

PROVIDED FOR BY THE ROSEBUD SIOUX TRIBE WATER CODE. NO OTHER WATER RIGHTS OF ANY KIND, FROM WHATEVER SOURCE, SHALL BE RECOGNIZED. APPLICABLE PORTIONS OF THE ROSEBUD SIOUX TRIBE WATER CODE ARE QUOTED BELOW. THE NECESSARY FORMS FOR WATER USE PERMIT APPLICATIONS HAVE BEEN INCLUDED WITH THIS NOTICE WHENEVER POSSIBLE. SUCH FORMS MAY ALSO BE PROCURED FROM THE ROSEBUD SIOUX TRIBE OFFICE OF WATER RESOURCES OR THE ROSEBUD SIOUX TRIBE AT THE FOLLOWING ADDRESS OR TELEPHONE NUMBER: Office of Water Resources, BIA Road 903 Hospital Complex, Rosebud, South Dakota, 57570, (605) 747-2559. COMPLETE COPIES OF THE ROSEBUD SIOUX TRIBE WATER CODE ARE ALSO AVAILABLE FOR SALE AT THE ABOVE ADDRESS.

- (2) In addition to the above-quoted statement, such public notice shall also contain, prominently displayed, the Section of this Code declaring the prior and supreme rights of the Rosebud Sioux Tribe, defining the Waters of the Rosebud Sioux Indian Reservation, describing the procedures to be followed in obtaining a permit, and setting forth penalties for use of water without authorization under this Code.
- (3) In addition, the Director of the Office of Water Resources may include in such public notice additional information deemed necessary in order to assure adequate notice of the enactment and legal effect of this Code.

(C) Notice - How Given

The Director of the Office of Water Resources shall give notice of the provisions of this Code as follows:

- (1) The notice provided above shall be placed in at least one regularly published newspaper in Todd, Tripp, Gregory, and Mellette Counties, at least once every other week over a four week period.
- (2) The notice provided above shall be placed in a prominent and conspicuous location in the County Courthouse of Todd, Tripp, Gregory, and Mellette Counties, and at the Tribal Office. The Director of the Office of Water Resources may post notices in other locations as it deems necessary.
- (3) The Director of the Office of Water Resources may take any other steps and post any other notices it deems necessary to provide notice of the provisions of this Code.
- (4) Whenever possible, forms for "Application for Water Use Permit", as provided in Section 400 of this Code, shall be included with notices in order to facilitate compliance with this Code.

105 Definitions

- (A) "Aquifer" means a water-bearing bed or stratum of permeable rock, sand, or gravel capable of



Rosebud Sioux Tribe

Sicangu Oyate

P.O. Box 430

Rosebud, SD 57570

Phone: (605) 747-2381 - Fax: (605) 747-2243

William Klindt

President

Richard Lunderman

Vice President

Bryon Wright

Treasurer

COPY

July 9, 2015

Mr. Steve Pirner, Secretary
Department of Environment & Natural Resources
State of South Dakota
Joe Foss Building
523 E. Capital
Pierre, South Dakota 57501

Subject: Rosebud Sioux Tribe Water Code

Dear Mr. Pirner:

Rosebud Sioux Tribe has an updated Water Code which will be finalized by October 31, 2015 for implementation within the exterior boundary of Rosebud Reservation in Todd County and on Rosebud Tribal lands in Mellette, Tripp, Gregory and Lyman counties.

Rosebud Sioux Tribe has provided safe drinking water to Indians and non- Indians within the exterior boundary of Rosebud Reservation at no cost to them under the Mni Wiconi Rosebud Rural Water System. Free water has also been provided to the South Dakota incorporated towns of Mission and St. Francis located within Rosebud Reservation. Rosebud Sioux Tribe has demonstrated a non- discriminatory water service organization through our Water Resources and Water & Sewer Commission and we expect to do the same with our Water Code.

Implementation of Rosebud Sioux Tribal Water Code over Indians and non- Indians on Rosebud Reservation will allow the RST Water Resources Program to administer efficiently and effectively the assessment, evaluation, monitoring and development of the precious surface and ground water that occurs on Rosebud Reservation. This is particularly important in view of the climate change and drought conditions looming in the horizon.

It is possible to develop a mechanism-instrument of sharing information between Rosebud Sioux Tribe and the State of South Dakota on matters/data related to Water Resources beneficial to the Tribe and the State.

We are enclosing a copy of the draft Water Code for your review and comments, we are also attaching a copy of the Public Notice that is being published in local newspapers. We look forward to working with the State of South Dakota in protecting, preserving and sharing the Water Resources on Rosebud Reservation in a manner that is non – discriminatory and non-detrimental and only beneficial to all Indians and non – non Indians living on Rosebud

3

For

**Cc: Tribal Council Members
Superintendent, BIA, Rosebud Agency
Mayor, City of Mission
Mayor, City of St. Francis**

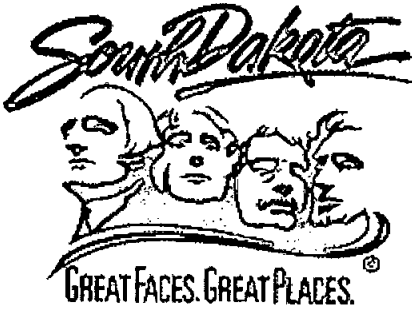
Gronlund, Eric

From: Gronlund, Eric
Sent: Monday, November 20, 2017 3:57 PM
To: 'shuq@sicangu.com'
Subject: water permit applications for Milligan Mace Boies Flannery LLC for irrigation in Todd County
Attachments: 1257-2letter.pdf; 2771-2noticeofhearing.pdf

Mr Huq:

Rosebud Sioux Tribe petitioned in response to the public notice regarding two water permit applications filed by Milligan Mace Boies Flannery LLC for irrigation in Todd County. Upon receiving the petition, DENR sent the attached letter and notice of hearing to President William Kindle. DENR is uncertain whether these documents were passed on to you. Therefore, as a courtesy these two documents are attached.

Eric Gronlund
Water Rights Program, DENR
605 773-3352
Eric.gronlund@state.sd.us



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

DEC 20 2017

Milligan Mace Boies Flannery LLC
c/o Tom Milligan
PO Box 32
Hooper NE 68031

Dear Mr. Milligan:

Enclosed are Water Permit Nos. 2771-2 and 2772-2 authorizing construction of the water diversion systems and beneficial use of the water, not exceeding the limits as specified in the Water Permits.

Water Permit No. 2771-2 was submitted with a fee of \$1,050.00. The application /license fee for Permit No. 2775-2 is \$950.00. Therefore, \$100.00 will be refunded to you. The refund check should be received within a couple of weeks.

Form 10's, *Notice of Completion of Works and Application of Water to Beneficial Use*, are enclosed. Please return the completed form after you have finished each 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,

Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

2771-2

**NOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USE**

RECEIVED**AUG 13 2018****WATER RIGHTS
PROGRAM**Date Aug. 9, 2018

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

FROM: Milligan Mace Boies Flannery LLC
(name)

P.O. Box 32
(address)

Hooper, NE 68031
(city, state, zip)

402-459-5620
(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. 2771-2 states that the water use system is to be constructed by

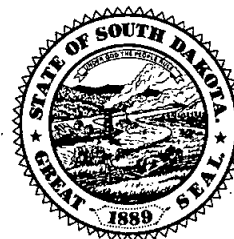
Dec 7, 2022 , and water is to be put to beneficial use by Dec 7, 2026
(date) (date)

The water use system was completed on June 28, 2018
(date)

Applying the water to beneficial use was completed on July 30, 2018
(date)

You may schedule an investigation so that the water license may be issued.

Tom Milligan
(signature)



RECEIVED
JUL 1 1994
FREMONT

Whatever date works
for you on scheduling an
investigation to check
out the system is fine.

Please call Scott at
402-322-0724 or Tom at
402-459-5620 before coming
out.

Thank you



First National Bank
Fremont

402.721.1050
800.317.2265
fnbfremont.com



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

August 13, 2018

2771-2

Tom Milligan
Milligan Mace Boies Flannery LLC
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 the irrigation system authorized under No. 2771-2.

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 black ink, appearing to read "Genny McMath".

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