

WATER PERMIT NO. 2871-2

Name of Applicant: **Kimberly & Deborah Marcus**

Address: **102 N. Ridge Rd, Valentine NE 69212**

Phone: **605-454-0389**

Amount of Water Claimed: **1.78 cfs**

Total Acres: **135**

Source of Water Supply: **Groundwater**

Water to be used for: **Irrigation**

County: **Todd**

Type of Waste Disposal System:

Location: **Approx. 9 miles south of Rosebud SD**

PRIORITY Date Received: **6-15-2023**

Application/License Fee: **\$1,050.00**

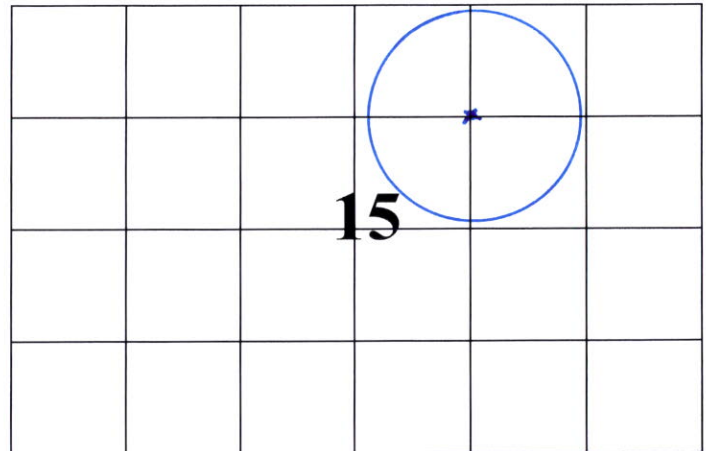
Corrected Application Received: **7-5-2023**

Period of Annual Use: **May 1 – September 30**

Remarks: **1 or 2 wells**

Diversion Point: **NE 1/4 Section 15 -T36N-30W**

Land to be Irrigated: **NE 1/4 Section 15 -T36N-30W**



Depth of Well: **240-260**

Well Driller: **Becks Well & Irrigation**

Remarks:

Type of Map: **aerial**

Reviewed and the Number Assigned on: **7-5-2023**

By: **Rachel Rodriguez**

Notice of Hearing - date to intervene: _____

**SOUTH DAKOTA
WATER PERMIT NO. 2871-2**

Date of first receipt of application June 15, 2023.

Date of return to applicant for corrections, amendments or changes June 21, 2023.

Date of receipt of corrected application July 5, 2023.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 2871-2 to Kimberly and Deborah Marcus, 102 N Ridge Road, Valentine NE 69212 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. 2871-2 appropriates 1.78 cubic feet of water per second from up to two wells to be completed into the Ogallala Aquifer (approximately 260 feet deep) located in the approximate center of the NE 1/4 Section 15 for irrigation of 135 acres located in the NE 1/4 Section 15; all in T36N-30W. This site is located approximately 9 miles south of Rosebud SD.
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: May 1 – September 30.
3. The date from which applicant may claim right is June 15, 2023.
4. The date of approval of Permit No. 2871-2 is September 25, 2023.
5. One-fifth of the construction is to be completed on or before March 25, 2026.
6. All construction is to be completed on or before September 25, 2028.
7. Water is to be put to beneficial use on or before September 25, 2032.
8. 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 Water Permit No. 2871-2 are located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled 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. 2871-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

By: Eric Gronlund
Eric Gronlund, Chief Engineer
Water Rights Program
Department of Agriculture and Natural Resources

OCT 10 2023
date



JUN 15 2023

OFFICE OF
WATER

Mail to: SD DANR, Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>2871-2</u> Hydrologic Unit <u>10150004</u> Basin <u>Middle Niobrara</u> Newspaper <u>Mission Todd Co Tribune</u> <u>Rapid City Journal</u> (office use only)
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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 Kimberly and Deborah Marcus
Note: The "Name to Appear on Irrigation Permit" must be the name in which the property to be irrigated is held in.
Mailing Address 26601 299th Ave Crookston NE 69212
(Address) (City) (State) (Zip Code)
Phone 605 429-3246 Mobile 605-454-0389 Email walking@gpcom.net
2. Amount of water claimed 1.78 *CFS or 800 **GPM ***AF Total Acreage 135
(*Cubic Feet per Second) (**Gallons per Minute) (**Acre Feet - storage capacity of dam/dugout or annual use if applicable)
3. Source of water supply Ogallala Aquifer
4. Location of point of diversion 1 or 2 wells in NE 1/4 section 15 36N-30W
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)
County Todd
5. County or counties where water will be used Todd
6. Annual period during which water is to be used May - 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
Section 15 NE 1/4 36N-30W	135ac		

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

Drill test wells, if water pressure is good, establish an 120-135 acre irrigation system. - See attached

I, Kim Marcus, 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.

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 Becks Well & Irrig
(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) 240'-260' Depth to Top of Water Bearing Material 140' Depth to Water from Surface 100'
- d) Distance to nearest domestic well on applicant's property none Property owned by others 1.5 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

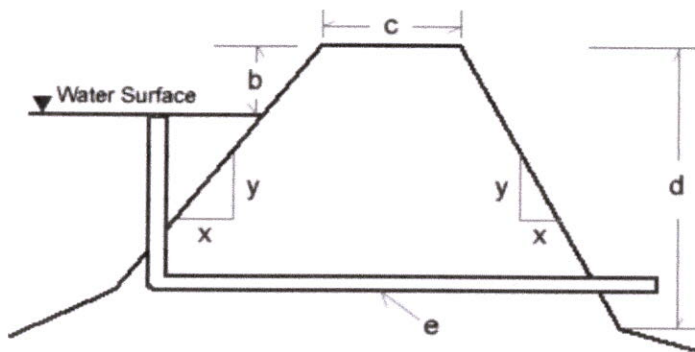
- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

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) Area of Impoundment _____
- i) Storage _____ Acre Feet
- j) Drainage Area Above Dam _____ Acres

10140203 Little White

36N 30W
Section: 05

36N 30W
Section: 04

36N 30W
Section: 03

36N 30W
Section: 02

36N 30W
Section: 01

10150006 Keya Paha

36N 30W
Section: 08

36N 30W
Section: 09

36N 30W
Section: 10

36N 30W
Section: 11

36N 30W
Section: 12

36N 30W
Section: 17

36N 30W
Section: 16

36N 30W
Section: 15

36N 30W
Section: 14

36N 30W
Section: 13

10150004 Middle Niobrara

36N 30W
Section: 20

36N 30W
Section: 21

36N 30W
Section: 22

36N 30W
Section: 23

36N 30W
Section: 24

36N 30W
Section: 29

36N 30W
Section: 28

36N 30W
Section: 27

36N 30W
Section: 26

36N 30W
Section: 25



United States
Department of
Agriculture

NRCS

Natural
Resources
Conservation
Service

A product of the National
Cooperative Soil Survey,
a joint effort of the United
States Department of
Agriculture and other
Federal agencies, State
agencies including the
Agricultural Experiment
Stations, and local
participants

Custom Soil Resource Report for **Todd County, South Dakota**

Section 15 36N-30W



June 9, 2023



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participants

Custom Soil Resource Report for **Todd County, South Dakota**

NE 1/4 section 15 36N-30W



June 9, 2023

7

Extra Notes

Matthew and Kara Walkling are managing this property for Kim Marcus. The address on the application is Walkling's.

Kim's address is
102 N. Ridge Rd
Valentine NE 69212

He doesn't have an e-mail.

We are hoping the well driller will get test wells drilled this fall. We will only drill one well if we have the pressure. We will not do the project if it takes more than 2 wells.

There is an established solar well in the SE corner we hope to avoid by pushing the system as far NW as possible.

There is a 5 phase highline in the NE corner preventing us from going too far north.

Any question, call me. Thanks
Kara Walkling

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date July 5, 2023

RECEIVED OF Kara/Matthew Walkling 26601 299th Ave., Crookston NE 69212

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

Fee for Application for Permit No. <u>2871-2</u> 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. <u>2871-2</u>	\$200.00
Fee for Filing Transfer Form _____	\$ _____
Fee for _____	\$ _____
Fee for Issuing New Well Driller's License No. _____	\$ _____
Fee for Renewal of Well Driller's License No. _____	\$ _____
Fee for Issuing Well Pump Installer's License No. _____	\$ _____
Fee for Renewal of Well Pump Installer's License No. _____	\$ _____
(Any Other Work Provided by Law) TOTAL	\$1050.00

By Eric Stenlund
Chief Engineer
Em

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Tuesday, October 10, 2023 8:54 AM
To: walkling@gpcom.net
Subject: Water Permit
Attachments: 2871-2.pdf

Good morning,

Attached is a copy of the permit that was mailed to Deborah and Kimberly Marcus today.

Thank you,

Rachel Rodriguez
DANR | Program Assistant
Rachel.Rodriguez@state.sd.us



Gronlund, Eric

From: Gronlund, Eric
Sent: Thursday, September 21, 2023 11:04 AM
To: 'syedhuq.waterresources@rst-nsn.gov'; Syed Huq
Subject: Water Permit Application No. 2871-2, Kimberly and Deborah Marcus
Attachments: PetitionForm (1).pdf

Mr. Huq:

The Water Rights Program of DANR received your letter dated September 18, 2023, regarding Water Permit Application No. 2871-2 in Todd County filed by Kimberly and Deborah Marcus. The letter concludes by recommending that the application to appropriate water be denied.

The letter does not conform with South Dakota Codified Law 46-2A-4(5) in that the statement that a petition to oppose an application shall be in writing, on a form provided by the chief engineer, and shall contain the following:

- (a) A statement describing the unique injury upon approval of the application on the petitioner;
- (b) The reasons for the petitioner's opposition to the application; and
- (c) The name and mailing address of the petitioner or the petitioner's legal counsel;

Please find below the links for filing a petition or comment and the petition form. The petition form is also attached to this email in pdf format. Please note the petition to opposition must be submitted by September 25, 2023, as set forth in the public notice.

Link to the page describing either filing a petition or a comment with links available to do either:

<https://danr.sd.gov/public/wrctpn.aspx?intervene=09/25/2023&number=2871-2&applicant=Kimberly%20&%20Deborah%20Marcus>

Link to the petition in opposition form:

<https://danr.sd.gov/public/PetitionForm.pdf>

Eric



Eric Gronlund, PE
Chief Engineer, Water Rights Program
Department of Agriculture and Natural Resources
523 E. Capitol Ave. Pierre SD, 57501
605.773.3352
danr.sd.gov



Rosebud Sioux Tribe

Sicangu Oyate

P.O. Box 430

Rosebud, SD 57570

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

Scott Herman
President
William Kindle
Vice President
Wayne Boyd
Treasurer
Nicole Marshall
Secretary

RECEIVED

SEP 21 2023

**OFFICE OF
WATER**

September 18, 2023

Mr. Eric Gronlund, Chief Engineer
Department of Agriculture and Natural Resources
Joe Foss Building
523 E. Capitol Ave
Pierre, SD 57501-3182

Reference: Water Permit Application no. 2871-2

Dear Mr. Gronlund:

Let me first appreciate your efforts to share the application for water permit no. 2871-2 with Rosebud Sioux Tribe, your hydro geologic assessment, analysis and evaluation of the Ogallala Aquifer in and around the application site is praise- worthy. However, I like to be brief, the water permit application no. 2871-2 is located within the exterior boundary of Rosebud Sioux Tribe Reservation in Todd County. Rosebud Sioux Tribe has a water code, a copy of which is attached and it has the full support of the Federal Government- Department of Interior, a copy of their letter of support is attached. We are dismayed by the fact that the State of South Dakota knowing full well and recognizes the exterior boundary of Rosebud Reservation in Todd County has proposed to issue the water permit usurping the right of Rosebud Sioux Tribe to issue the permit based on the Rosebud Sioux Tribal Water Code. I believe the State of South Dakota and Rosebud Sioux Tribe should complement each other in the management of the Ogallala Aquifer on Rosebud Reservation in South Dakota and it can be a win win outcome for both Rosebud Sioux Tribe and South Dakota. Water is too precious to be fought and the situation will be aggravated by climate change and drought. Since the water permit application 2871-2 is located on Rosebud Reservation, they be directed to apply to Rosebud Sioux Tribe Water Resources Office so that a tribal water permit can be issued based on the RST Water Code.

We have a network of 28 monitor wells copy of a location map is attached, to monitor the water table fluctuation of the High Plains/ Ogallala Aquifer, 15 of which are monitored on a real time basis using satellite technology. Isopach map of the Aquifer has been generated and hydrographs of the water table fluctuation in the monitor wells have been compiled for over 35 years, a copy of which are attached. We tend to agree with your analysis that right now the Aquifer is holding good in response to the water withdrawal but the elephant in the room is climate change and drought, no body knows what it can do to the recharge of the Aquifer, once the recharge is impacted, there is no way to control the depletion of the Aquifer and such depletion has occurred in the Southern part of the Aquifer in Texas, Oklahoma, New Mexico, Colorado, Kansas etc.

Ogallala Aquifer within the exterior boundary of Rosebud Reservation is a sole source Aquifer for the population of Rosebud Reservation unlike the State of South Dakota which has several different water sources and Aquifers.

Ogallala Aquifer is the only tangible natural resources that the Tribe possess and there is no room for going wrong. Your assessment, analysis and evaluation of the Aquifer based on which you are recommending approval of the water permit is not one hundred percent sanguine of success but is probable. Rosebud Sioux Tribe cannot rest with probable on having a secure source of drinking water for their population.

Based on the uncertainty of the Aquifer recharge, particularly in view of climate change and drought, it is recommended that water permit 2871-2 to appropriate water be denied. Thank you.

A handwritten signature in dark ink, appearing to read 'Syed Huq', is written over a circular stamp or seal.

Syed Huq, Director
Water Resources
Rosebud Sioux Tribe

Cc: Mr. Scott Herman, President, Rosebud Sioux Tribe

ROSEBUD SIOUX TRIBE

WATER CODE

Tribal Council Resolution 2015- 339



May 2015



Rosebud Sioux Tribe

Sicangu Oyate

P.O. Box 430

Rosebud, SD 57570

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

Scott Herman
President
William Kindle
Vice President
Steven DeMeyer III
Treasurer
Nancy Marshall
Secretary

July 6, 2022

Ms. Joelynn Ashley, Superintendent
BIA Rosebud Agency
Rosebud, SD 57570

Subject: Rosebud Sioux Tribal Water Code

Dear Ms. Ashley:

It is my privilege to submit to you the Rosebud Sioux Tribal Water Code duly reviewed and approved by Tribal Council (copy attached) for BIA – Department of Interior review and approval.

We take the liberty to submit the RST Water Code as a result of Department of Interior Secretary Deb Haaland taking action to restore tribal authority to adopt the water laws on April 7, 2022. The Secretary of Interior Deb Haaland rescinded a memorandum issued in 1975 by then Secretary Rogers C.B. Morton regarding the authority to approve Tribal Water Codes.

We expect that the action by Deb Haaland will streamline Department of Interior review of Tribal Water Codes and has removed a widely perceived obstacle to their approval.

You are requested to make arrangements for prompt review and approval of the attached Rosebud Sioux Tribal Water Code.

If you have any questions or comments, please direct them to Syed Huq, Director Water Resource at 605-747-2559. Thank you for your kind assistance.

Sincerely,

Scott Herman, President
Rosebud Sioux Tribe

Attachments



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Secretary Haaland Takes Action to Restore Tribal Authority to Adopt Water Laws

Rescission of previous Secretary's Order will streamline Departmental review of Tribal water codes

4/7/2022

Date: Thursday, April 7, 2022

Contact: Interior_Press@ios.doi.gov

WASHINGTON — Secretary of the Interior Deb Haaland today rescinded a memorandum issued in 1975 by then-Secretary Rogers C.B. Morton regarding the authority to approve Tribal water codes. Today's action will streamline Departmental review of Tribal water codes and remove a widely perceived obstacle to their approval.

Secretary Haaland also announced that the Department will engage in Tribal consultations to discuss Tribal self-determination, Tribal approval authority and guidance on approval standards related to the review and processing of Tribal water codes.

“If we are to truly support Tribal self-determination, we cannot be afraid to review and correct actions of the past that were designed to create obstacles for Tribal nations. The ‘Morton moratorium’ is inconsistent with the Department’s commitment to upholding Tribal self-determination and the federal trust responsibility to support Tribal sovereignty,” said **Secretary Haaland**. “Today’s action underscores our efforts to move forward in this new era.”

In 1975, Secretary Morton issued a memorandum to the Commissioner of Indian Affairs directing “all [Bureau of Indian Affairs] superintendents and area directors to disapprove any tribal ordinance, resolution, code, or other enactment” that would regulate water use on Indian reservations and that under Tribal law required Departmental approval or review.

The memorandum imposed a procedural hurdle to adoption or enactment of water codes for Tribes with constitutions that require Secretarial approval of such codes. The action has created unnecessary confusion for nearly 50 years regarding the Department’s willingness to work with and support Tribes considering water regulation within their reservations.

Most Tribes have constitutions that do not require Secretarial approval of Tribal water codes. In circumstances where Tribes have congressionally enacted Indian water settlements, they often include Tribal water code provisions that otherwise avoid potential conflicts with states or non-Indians.

Even for those Tribes whose constitutions require Secretarial approval of Tribal water codes, those Tribes may still amend their constitutions to remove Secretarial approval requirements.

Any approval of Tribal water codes must be done consistent with applicable court decisions and laws, including any enacted Indian water settlement, and contain provisions for the protection of Indian allottees consistent with advice previously provided by the Solicitor.

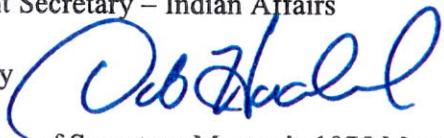


THE SECRETARY OF THE INTERIOR
WASHINGTON

APR 06 2022

Memorandum

To: Assistant Secretary – Indian Affairs

From: Secretary 

Subject: Rescission of Secretary Morton's 1975 Memorandum Regarding Tribal Water Codes

In 1975, former Secretary of the Interior, Rogers C.B. Morton, issued a memorandum to the Commissioner of Indian Affairs regarding the review and approval of Tribal water codes. Secretary Morton directed the Commissioner to "instruct all [Bureau of Indian Affairs'] superintendents and area directors to disapprove any Tribal ordinance, resolution, code, or other enactment" that would regulate water use on Indian reservations and that, under Tribal law, required the Department of the Interior's (Department) approval or review. The directive was transmitted to all Bureau of Indian Affairs (BIA) area directors for "information, guidance, and action," and instructed them to notify their respective BIA superintendents to comply.

The memorandum imposed a procedural hurdle in the adoption or enactment of water codes for Indian Tribes with constitutions that require Secretarial approval of such codes. This "temporary moratorium" created unnecessary confusion for nearly 50 years regarding the Department's willingness to work with and support Indian Tribes considering water regulation within their reservations. The Morton memorandum is inconsistent with modern principles of Tribal self-determination and the Federal trust responsibility to support Tribal sovereignty. It no longer serves any useful purpose.

Accordingly, I hereby rescind Secretary Morton's memorandum. I ask that you conduct Tribal consultations consistent with the Solicitor's February 24, 2022, memorandum and develop guidance related to the review and processing of Tribal water codes.

cc: Solicitor
Director, Bureau of Indian Affairs



Syed Huq <syed.huq@sicangu.gov>

Chapter 4 review of Proposed Water Code

messages

Lloyd Guy <lloyd.guy@rst-nsn.gov>

Mon, May 2, 2022 at 1:0

o: Paula - Wopilawin Antoine <Paula.Antoine@rst-nsn.gov>, Syed Huq <syed.waterresources@rst-nsn.gov>, Russell Eagle Bear <reaglebear@yahoo.com>, Dera Iyotte <dera.iyotte@rst-nsn.gov>

Good afternoon.

I have read through Chapter 4 and have made some suggestions as to a few of the changes.

I have some initial concerns about some of the general verbiage that makes reference to reservation boundaries. I think that we should be thinking broadly as we have our inherent sovereignty over all of our resources for thousands of years.

What tempers this thought is there are references throughout our code that reference the 1889 Act, Such as that found in 18-1-106

18-1-106 Territory, Persons and Property Affected

To the extent not prohibited by federal law, this Title shall apply to the following.

(1) The Rosebud Sioux Reservation within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, and bridges, or any interests therein, whether in trust or non-trust status and notwithstanding the issuance of any patent or right-of-way, and such off lands, islands, waters or any interest therein thereafter added to the Reservation;

(2) All trust or restricted land of the Tribe or any enrolled member of the Tribe situate within the historical boundaries of the Reservation established in Section Two of the Act of March 2, 1889, 25 Stat. 888, including all lands, islands, waters, roads, or any interests therein, including Tripp, Mellette, Gregory and Lyman Counties; and

(3) All persons and property within any geographical area referred to in Subsections (1) and §18-2-101(2), (40)(b) that is subject to the jurisdiction and governmental power of the Tribe.

--
Lloyd E. Guy, III
Attorney General
Rosebud Sioux Tribe
P.O. Box 500
Rosebud, SD 57570
(605) 747-2900

ROSEBUD SIOUX TRIBE
Resolution No. 2022-191

- 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 By-Laws;
- WHEREAS,** Rosebud Sioux Tribe Resolution no 2015-339 approved the RST Water Code (copy attached); and
- WHEREAS,** Department of Interior Secretary Haaland took action to restore tribal authority to adopt the water laws on April 6, 2022; and
- WHEREAS,** Secretary of the Interior Deb Haaland rescinded (copy attached) a memorandum issued in 1975 by then Secretary Rogers C.B. Morton regarding the authority to approve Tribal Water Codes; and
- WHEREAS,** this action by Deb Haaland will streamline Department of Interior review of Tribal Water Codes and remove a widely perceived obstacle to their approval; and
- WHEREAS,** the RST Water Code has been reviewed by the RST Attorney General's office (copy attached); and
- WHEREAS,** the updated RST Water Code has been reviewed by the Land and Natural Resources Committee and they have recommended approval to the Tribal Council; and
- BE IT FURTHER RESOLVED,** that the Rosebud Sioux Tribal President submit the RST Water Code to the Superintendent of BIA, Rosebud Agency for review and approval by BIA- Department of Interior, now that the moratorium on Tribal Water Codes has been lifted by Secretary Deb Haaland.

CERTIFICATION

This is to certify that the above Resolution No. 2022-191 was duly passed by the Rosebud Sioux Tribal Council in session on June 30, 2022, by a vote of thirteen (13) in favor zero (0) opposed and one (1) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:



Nicole Marshall, Secretary
Rosebud Sioux Tribe



Scott Herman, President
Rosebud Sioux Tribe

**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

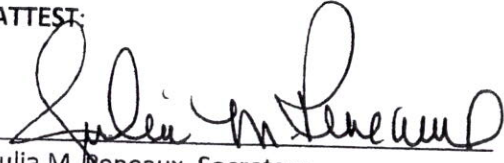
THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribal Council approved the new RST Water Code and direct the RST Water Resources Program Director for implementation.

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

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.

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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

Article VI of the Constitution of the United States includes among others "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land"

Rosebud Sioux Tribe and its membership posses valuable rights, title and interests in the rivers and aquifers of the Reservation. In the 1851 treaty a vast territory was recognized by the United States and the Tribes as the Country of the Indians. In 1868 the Great Sioux Reservation was set apart for the absolute and undisturbed use and occupation of the Indians, including the Sicangu Lakota – Rosebud Sioux Tribe.

The Rosebud Sioux Tribe is a successor to the signatory Great Sioux Nation Tribes to the 1851 treaty of Fort Laramie and the 1868 treaty of Fort Laramie.

The purpose of the Reservation was use without disturbance of the lands and resources of the Great Sioux Reservation for activities including but not limited to agriculture, milling, timber harvest, hunting, fishing and all other beneficial industries necessary for the use and occupation of those lands.

The Rosebud Sioux Tribe Reservation includes tribally- owned trust lands and allotted lands owned by enrolled tribal members within Todd, Mellette, Tripp, Gregory and Lyman Counties, South Dakota.

The extent of permissible Indian Water Use in the United States in determined by the Indian "reserved rights" doctrine, pronounced in *Winters v. United States*. The Supreme court there ruled that Indian water rights were impliedly reserved at the time of the reservation's creation for the benefit of the Indians, and for the use necessary to fulfill the purpose of the reservation.

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
- (3) 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.

(D) Territory, Persons and Property affected, reference the 1889 Act, such as that found in 18-1-106.

To the extent not prohibited by federal law, this Title shall apply to the following.

- (1) The Rosebud Sioux Reservation within the historical boundaries of the Reservation established in Section two of the Act of March 2, 1889, 25 Stat.888, including all lands, islands, waters, roads, and bridges, or any interests therein, whether in trust or non-trust status and notwithstanding the issuance of any patent or right-of-way, and such other lands, islands, water or any interest therein thereafter added to the Reservation.
- (2) All trust or restricted land of the Tribe or any enrolled member of the Tribe situate within the historical boundaries of the Reservation established in Section two of the Act of March 2, 1889, 25 Stat.888, including all lands, islands, waters, roads, or any interests therein, including Todd, Tripp, Mellette, Gregory and Lyman Counties.
- (3) All persons and property within any geographical area referred to in Subsections (1) and § 18-2-101 (2), (40)(b) that is subject to the jurisdiction and governmental power of the Tribe.

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

storing, transmitting or yielding water.

(B) "Boundaries of the Rosebud Sioux Indian Reservation" means all lands located in Todd County and all Trust Lands located in Tripp County, Gregory County, and Mellette County.

(C) "Community or Municipal Uses" means all reasonable water uses necessary in carrying out the functions of municipal government.

(D) "Domestic Use" means any use of water for individual personal needs or for household purposes such as drinking, bathing, heating, cooking, or sanitation.

(E) "Effective Date" referred to herein shall be a date set by resolution of the Rosebud Sioux Tribal Council after which the water code is effective.

(F) "Fee Lands" means a land ownership status in which the owner holds title to and control of the property. Fee lands are not held in trust for a tribal member by the United States government.

(G) "Hazardous" means any radioactive, toxic, or other hazardous material, whether in liquid, solid, gaseous, or explosive form which may be discharged, deposited, generated, spilled, or disposed of and that will or may pose adverse effects to the surface or subsurface land, including existing rivers, streams, lakes, reservoirs, groundwater or aquifers, water recharge areas, as well as to the human environment.

(H) "Irrigation Uses" means any use of water for the purpose of facilitating the growth of agricultural crops.

(I) "Pollution" means such artificial or induced natural contamination, or other alteration of the physical, chemical, biological, radiological, or thermal properties of any Water of the Rosebud Sioux Indian Reservation, or such discharge of any liquid, gaseous, or solid substance into any Water of the Rosebud Sioux Indian Reservation that will create a nuisance or render such waters harmful or detrimental or injurious to public health; safety; welfare; domestic, commercial, industrial, agriculture, traditional, cultural, recreational, or other beneficial uses; or to livestock, wild animals, birds, fish, or other aquatic life and organisms.

(J) "Trust Lands" means all lands held in trust for the Rosebud Sioux Tribe by the United States government.

106 Severability

If any provision of this Code or the application thereof to any person or circumstance is held invalid, the Code can be given effect without the provision or application; and to this end, the provisions of this Code are declared to be severable.

107 Construction

This Code shall be liberally construed to effectuate its purposes.

108 Extension of Time Limits

The time limits provided in various places of this Code may be extended, for good cause shown, by the agency or committee before whom the proceeding is pending when the ends of justice so require.

109 Representation

Parties appearing at hearings and other proceedings provided for in this Code may be represented by attorneys if they desire.

200 Water Administration

201 Land and Natural Resources Committee

(A) Powers and Duties

The Land and Natural Resources Committee is responsible for providing oversight and direction for the Office of Water Resources. All powers of the Office of Water Resources shall only be exercised with the approval of the Land and Natural Resources Committee. The Office of Water Resources is the administrative arm of the Land and Natural Resources Committee.

202 Office of Water Resources

(A) General Powers

In administering this Code, the Office of Water Resources may, in concurrence with the Land and Natural Resources Committee, in addition to other actions:

- (1) Enter appropriate orders
- (2) Grant, deny, modify, and revoke water use permits
- (3) Make determinations of water rights
- (4) Make determinations of water availability
- (5) Start proceedings involving penalties
- (6) With the permission of the Rosebud Sioux Tribal Council
- (7)
 - (a) Enter into administrative agreements, exchange information, and otherwise cooperate with governmental agencies both on and off the Reservation;
 - (b) File or intervene in any lawsuit;

- (8) Ensure adequate water levels in groundwater wells;
- (9) Ensure adequate levels in streams and lakes for wildlife conservation and other values;
- (10) In cooperation with the other departments, offices, and agencies of the Rosebud Sioux Tribe, determine existing and foreseeable uses of and needs for water and other related resources
- (11) With the approval of the Rosebud Sioux Tribal Council, reserve and set aside water for future use
- (12) Take other actions provided for under this Code.

(B) Power to Establish Water Reserves

The Office of Water Resources, with the approval of the Rosebud Sioux Tribal Council, may establish reserve supplies within particular areas, watersheds, or aquifers that are dependent upon common supplies. However, the reserve supplies may be subject to existing use on an interim basis or set aside for future Tribal use and other needs.

(C) Power to Make Water Assessments

Whenever the Office of Water Resources determines that water not presently available is necessary for purposes and projects that benefit all or a portion of the Reservation and the inhabitants thereof, the Office of Water Resources may, upon approval of the Rosebud Sioux Tribal Council, reduce and assess individual water users a fair share of water, in predetermined units for such purposes.

(D) Power to Designate Local Water Management Areas and Subareas

In areas where the surface and ground water systems are used by individual water uses but are to some degree related by reason of common supply, the Office of Water Resources may isolate and define "local management areas and subareas," for specialized administration and regulation under this Code.

202 Director of Water Resources

(A) Designation.

The Director of Water Resources shall, with concurrence of the Land and Natural Resources Committee, shall be responsible for administration of this Code.

(B) Information Function.

It shall be the duty of the Director of Water Resources and his/her staff to gather for their own use and for submission to the Land and Natural Resources Committee information related to the waters administered under this Code. To this end, the Director of Water Resources shall:

- (1) Collect, organize and catalog existing information and studies available from all resources, both public and private, pertaining to the Waters of the Rosebud Sioux Tribe.

- (2) Develop such additional data and studies pertaining to water and water resources as are necessary to accomplish the objectives of this Code.
- (3) Solicit public comment and obtain expert advice when appropriate.
- (4) Investigate water uses and other activities affecting the Waters of the Rosebud Sioux Tribe to determine whether they are in compliance with this Code and with applicable regulations, orders, determinations, permits, water quality standards, etc. issued under this Code.
- (5) Investigate water quality whenever appropriate.

(C) Enforcement Function

It shall be the duty of the Director of Water Resources and his staff to insure compliance with this Code, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken under this Code, as well as the policies and guidelines expressed throughout the Code. To this end the Director of Water Resources and his staff may with concurrence of the Land and Natural Resources Committee:

- (1) Remove, render inoperative, shut down, close, seal, cap, modify, or otherwise control methods of diversion and withdrawal, obstructions to the flow of water, and activities that adversely affect water quality.
- (2) Initiate by citation and other means, as provided herein, proceedings involving penalties for violations of this Code and the actions taken under this Code.
- (3) Enter upon land, inspect methods of diversion and withdrawal, inspect other activities that affect water quality and quantity, install and monitor measuring and recording devices when necessary, and elicit testimony and data concerning actions that affect the quality or quantity of the Waters administered under this Code.

(D) Advisory Function.

In addition to the duties of the Director of Water Resources and his staff with respect to information and enforcement, the Director of Water Resources and his staff may, from time to time make proposals to the Land and Natural Resources Committee concerning the following:

- (1) The advisability of establishing local management areas and subareas as provided elsewhere in this Code
- (2) The advisability of making determinations of water availability for specific watersheds or aquifers
- (3) The advisability of taking other actions and adopting other plans and methods to optimize available water supplies and minimize pollution and thermal degradation

- (4) The advisability of purchasing or selling any interest including interests in real or personal property
- (5) The advisability of participating in lawsuits and other actions
- (6) The advisability of entering into administrative agreements and other cooperative ventures with various agencies outside of the Rosebud Sioux Tribal Council and the Office of Water Resources
- (7) The advisability of amending or otherwise changing various sections of this Water Code or adding new sections
- (8) The advisability of taking any other action which will further the purposes and increase the effectiveness of this Code.

(E) Other Functions

- (1) Rules and Regulations.

The Director of Water Resources is authorized and directed to adopt such rules and regulations as it deems necessary to implement the objectives and purpose of this Code. Such rules and regulations shall not be valid until they have been submitted to and approved by the Rosebud Sioux Tribal Council through the Land and Natural Resources Committee.

- (2) Review of Authority.

The Director of Water Resources shall, from time to time, review the authority granted under this Code and propose amendments and additions thereto to the Land and Natural Resources Committee to improve administration under this Code.

- (3) Establish Water Charges.

A reasonable charge may be imposed at the option of the Tribal Council for the use of the Water administered under this Code.

203 Administration Policies and Guidelines

In taking any action under this Code, the Director of Water Resources shall be guided by the following policies and guidelines:

(A) Policies

- (1) Whenever practicable, actions taken shall benefit the Rosebud Sioux Tribe and their members and further the objective for which the Rosebud Sioux Indian Reservation was created, namely, to provide a permanent home and abiding place for the Rosebud Sioux Tribe and their members, both now and in the future. Alternatives to existing and proposed uses are to be considered whenever practicable to achieve this goal. Included in those

alternatives shall be the option to restrict or prohibit entirely any further use of water for any reason. If a conflict between the Rosebud Sioux Tribe and any of the members with non-Tribal projects or uses is presented to the Director of Water Resources, the Director of Water Resources will grant appropriate preference to the Tribe or its members over non-Tribal projects or uses.

(2) In taking any action under this Code that may impose substantial economic hardship on persons or entities presently using water, or that threatens degradation of other economic, cultural, historic, aesthetic, natural, or environmental values, the Director of Water Resources shall, in reaching decisions, carefully consider and give weight to:

- (a) The economic dislocation and hardship that will be imposed by its actions
- (b) The investment in time, money and other resources that is made by the parties affected in relying upon the existing system of distribution and use of water
- (c) Other burdens that may be imposed by the

action. (B) Guidelines

(1) In promoting the most effective use of Tribal water resources, the Director of Water Resources shall take appropriate action to:

- (a) Ensure adequate water supplies
- (b) Maintain water levels for diversion and withdrawal systems
- (c) Maintain head and pressure in groundwater
- (d) Prevent or reduce obstruction of surface water flows
- (e) Increase efficiency of conveyance systems, increase efficiency in water application, increase return flow, prevent waste, and maximize use of the available water supply
- (f) Increase and enhance the efficiency of natural and artificial surface and underground storage
- (g) Define and control interbasin transfers of both surface and groundwater
- (h) Provide for some degree of overdraft from aquifers when short-term recharge is not possible
- (I) Minimize interference between competing users of water sources, whether surface or groundwater
- (j) Minimize water quality degradation and the adverse effects of water pollution, whether

from point or non point sources

(k) Minimize thermal degradation or the adverse effects of thermal degradation (I)

Minimize interaquifer communication

(m) Shape how available water supplies are used to promote economic, scenic, aesthetic, historical, cultural, natural, or domestic values

(n) Provide for long-term development and prevent untimely quantification

(o) Penalize misuse

(p) Prevent interference with Tribal administration of water

(q) Otherwise ensure conformity with the provision of this Code. (2)

Additional Guidelines

(a) Rivers and streams of the Rosebud Sioux Indian Reservation should be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic, and other environmental and navigational values. Lakes and ponds should be retained substantially in their natural condition. Withdrawals of water that would conflict therewith should be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(b) Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given to means and methods for protection of wildlife and fishery resources in the planning for the construction of water impoundment structures and other artificial obstructions.

(c) Individuals; corporations, groups, associations, and other entities shall be encouraged to carry out practices of conservation and environmental protection as they relate to the use of the Waters of the Rosebud Sioux Indian Tribe.

300 Water Rights

301 Ownership

The Rosebud Sioux Tribe is the owner of the full equitable title to the rights to the use of all waters originating and flowing into the Exterior boundary of the Rosebud Sioux Indian Reservation as defined herein and all other waters, including implied and granted to the tribe, and that title resides undiminished in the Rosebud Sioux Tribe. The United States hold only the legal title to those waters solely as trustee for the Rosebud Sioux Tribe pursuant to the rights and responsibilities included in the

following treaties and acts: The Portage des Sioux Treaty (July 1815); the Treaty of Ft. Laramie, 11 Stat. 749 (September 17, 1851); the Treaty with the Omaha, 10 Stat. 1043 (March 16, 1854); the Treaty of Ft. Laramie, 15 Stat. 635 (April 29, 1868); Title VI-Cheyenne River Sioux Tribe, Lower Brute Sioux Tribe, and State of South Dakota Terrestrial Wildlife Habitat Restoration Act of the Omnibus Consolidated and Emergency Appropriations Act of 1999, PL 105-277, 112 Stat. 2681, 2861-660-670 (October 21, 1988), as amended by Title IV of the Water Resources Development Act of 1999, PL 106-53, 113 Stat 269, 385-397 (August 17, 1999), and as otherwise amended; and any other treaty or right. These water rights include tribal reserved water rights, treaty rights, and water rights administered by the Rosebud Sioux Tribe, including the "Winters' Doctrine", *Winters v United States*, 207 U.S. 564 (1908).

302 Water Right Required

The right to the use of Waters of the Rosebud Sioux Indian Reservation as defined in Section 101(c) is recognized through obtaining a water right pursuant to the provisions of this Code. A water right is needed for all uses of water except certain exempt uses (see Section 402) and is administered through a water use permitting system.

303 Tribal Waters

All Waters of the Rosebud Sioux Indian Reservation are the property of the Rosebud Sioux Tribe, and the right of the use of that water may only be acquired as provided for in this Code.

304 Right to Use Tribal Waters

A Water Use Permit is an authorization granted by the Rosebud Sioux Tribe to make a beneficial use of Waters of the Rosebud Sioux Indian Reservation. An approved Water Use Permit authorizes use of either ground or surface water upon compliance with the conditions provided for in the Water Use Permit. The Rosebud Sioux Tribe recognizes the need to allow the use of Waters of the Rosebud Sioux Indian Reservation for basic domestic and sanitary needs of tribal members, as well as for other minor and temporary uses that promote the health, education, safety, and welfare of the Rosebud Sioux Tribe. Therefore, water diverted or pumped for certain basic domestic and other minor and temporary purposes defined in Section 300 are exempt from obtaining a Water Use Permit; however, a well construction permit is still required for those exempt purposes whose water source is from groundwater. The Office of Water Resources may issue temporary Water Use Permits for those activities that are temporary in nature and will not place a long term draw on the Tribal water resources.

305 Beneficial Uses

Beneficial Use refers to a reasonable quantity of water applied to a non-wasteful use. Beneficial Uses for water of the Rosebud Sioux Tribe are as follows:

- Domestic (including drinking, sanitary, and limited irrigation)
- Livestock watering

- Industrial
- Commercial
- Agriculture irrigation
- Mining
- Fishery
- Wildlife maintenance and enhancement
- Recreational
- Fire protection
- Dust suppression.

Beneficial Uses reserved for use by the Rosebud Sioux Tribe are as follows:

- Preservation of environmental and aesthetic values
- Cultural
- All other uses compatible with the goals and priorities of the Rosebud Sioux Tribal Council

Water shall be appropriated for, and the use of such water shall be permitted for, only these beneficial uses.

306 Water Conservation

Water resources for the Rosebud Sioux Tribe are provided by the Earth, are needed to meet the needs of the natural communities and ecosystems as well as the needs of the Rosebud Sioux Tribe, and are of limited supplies. Recognition of this requires all water users who use water from the Rosebud Indian Reservation to conserve water to the maximum extent practicable. All water users and uses shall include water conserving fixtures and facilities to reduce the water demand on the Rosebud Sioux Tribe's water resources.

400 Water Use Permits

401 General

Ninety days after the effective date of this Code no use of water within the jurisdiction of this Code shall occur without first being approved through a Water Use Permit except as provided for in Sections 402 and 403.

402 Exempt Water Uses

The following water uses are exempt from the requirement to obtain a Water Use Permit:

- (1) Domestic Uses that do not exceed 20 gpm and 0.5 acre-feet per year.

403 Existing Water Uses

All uses of water existing on the effective date of this Code are exempt from the requirement of obtaining a Water Use Permit for a period of one year after the effective date as long as the following conditions are met:

- (1) The existing water use continues at the same or less rates and volumes and for the same uses as existed before the effective date of this Code
- (2) The existing water use is for an allowed beneficial use as defined in this Code
- (3) The Director of Water Resources is provided substantiating evidence upon application for a Water Use Permit that the water use existed before the effective date of this Code.

Before one year after the effective date of this code, all existing water uses not exempt as provided for in Section 402 shall apply for a Water Use Permit using an administrative registration and permitting process upon forms provided by the Office of Water Resources. This process allows existing water users to obtain a Water Use Permit for the same rate, volume, and use that was occurring before the effective date of this Code. Any increases in rate, volume, or changes in use of water shall require the user to file for and obtain a new Water Use Permit before increasing the rate, volume, or changing the use for which the water is being used.

404 Permit Applications

Applications for Water Use Permits shall be on forms provided by the Director of Water Resources and shall as a minimum include the following information in addition to any other information deemed necessary by the Director of Water Resources:

- (A) The name and mailing address of the applicant
- (B) The name of, if available, or a description of, the source or sources from which water is or will be diverted or withdrawn
- (C) The rate and quantity of water that is or will be diverted or withdrawn and used during each month of the year
- (D) A map and legal description, if such is readily available, or other description that reasonably describing, the point or points of diversion, withdrawal, or impoundment
- (E) A description of the method or methods of diversion, withdrawal, or impoundment
- (F) The purpose or purposes for which water is or will be used
- (G) A description of how water will be applied or consumed, including acreage and crop if the

water is for irrigation, the kind and number of stock if water is for stock watering, or other measure of water application and consumption for other water uses

(H) The best estimate reasonably possible of how much water will be returned to the source or sources, and how, when, at what point or points, and with what changes in quality and temperatures

(I) The estimated date on which the use or uses were commenced or will be commenced

(J) If a use is an existing use, the history of the use, including the names of any predecessors in title and the dates of their ownership, if known and including a description of their water uses

(K) If any pre-existing right is claimed, a description of any documents or programs upon which it is based, any statute or statutes or legal doctrine upon which the claim is based, and any pertinent litigation creating or affecting the claim

(L) If a pre-existing use or uses are described, an indication whether problems of declining water levels and supply or problems of declining quality have been encountered in the past

(M) The water users plan for future development of the water use or uses and related activities.

405 Application Fee

An application for a Water Use Permit shall be accompanied by a \$50.00 filing fee except for registration of an existing use pursuant to Section 403, which shall require no filing fee. The Director of Water Resources may waive payment of an application fee in cases of demonstrated financial hardship.

406 Public Notice of Water Use Permit Application

(A) As soon as possible and no more than 30 days after the Director of Water Resources receives an application for a Water Use Permit the Director of Water Resources shall provide public notice that the applicants described in the application have applied for a Water Use Permit under the Rosebud Sioux Tribe Water Code and that any persons claiming that their rights may be adversely affected by the issuance of such permit may object to their issuance in accordance with the provisions for objection, notice and hearing provided elsewhere in this Code.

(B) The notice shall include the following information:

- (1) The information as provided in the Application;
- (2) A brief description of the objection, notice and hearing provisions of this Code;

(C) This notice shall forthwith be published, posted, and mailed at the locations as provided in Section 104(C) herein, except the newspaper publication may be limited to local papers, and except that the notice need be published and distributed only in the hydrologic basins or areas affected by the applied for uses.

407 Objection Procedure

(A) Any person or entity whose interests are or may be affected by a water use described and applied for may, within 30 days from the publishing, posting, and mailing of notice that such use has been applied for, file a formal objection to the issuance of the permit applied for as follows:

- (1) Objections may be on forms prepared and made available by the Director of Water Resources and shall include the name and mailing address of the party objecting, the name of the applicant whose application is objected to, a description of the water use objected to, a short and plain statement of reasons why a permit should not be issued or should be issued in a form different from that applied for, and any suggested conditions or other provisions that should be included in any permit granted.
- (2) Oral objections may be made to the Director of Water Resources or his designee when either determines, in his discretion, that the circumstances permit an oral objection. Such oral objections shall be reduced to writing on the proper forms by the Director of Water Resources or his designee.

(B) Any applicant for a Water Use Permit whose use is objected to may reply in writing or orally in the same manner as provided herein for objections.

408 Application Hearing

Any applicant directly affected or any party objecting in accordance with this Code may request and obtain, as a matter of right, a hearing concerning such objection. In addition, the Director of Water Resources may recommend to the Land Committee that a hearing be scheduled concerning the issuance of a permit or permits on their own motion whenever they determine that such hearings are needed or advisable. Unless otherwise provided in this Code, notice of such hearings shall be in the form as provided for in Section 500, and shall be given to the applicants whose uses are objected to, the objecting parties, other persons designated by the objecting parties and applicants, and all other persons requesting notice. Unless otherwise provided in this Code, hearings shall be conducted as provided in Section 500.

409 Public Comments

In addition to objections, any person or entity may comment orally or in writing upon the proposed issuance of any permit under this Code within 30 days from the publishing, posting, and mailing of notice that such use has been applied for or, if a hearing is scheduled, at the public hearing.

410 Investigations and Review of Application

In addition to gathering information from the objections, comments, and hearings provided above, the Director of Water Resources may make any reasonable investigation of the facts and circumstances that surround the permit application, may solicit comments and information from the public and from appropriate governmental agencies, and may otherwise gather information which will assist in issuing or

denying a permit in accordance with the provisions of this Code. Pertinent to this investigation is a determination by the Director of Water Resources that water is or is not available in the quantities, rates, or quality needed to satisfy the proposed uses and needs presented in the Water Use Permit application. If the Director of Water Resources does not have sufficient evidence that water is available for the proposed application, the Director of Water Resources may require the applicant to provide or fund a study to confirm water availability for the proposed application.

411 Issuance or Denial of Permits

As soon as possible after objections and hearings and after a reasonable period for public comment shall have passed, as provided above, and no more than 90 days after the filing of an Application for a Water Use Permit, the Director of Water Resources shall review the comments and information gathered with respect to a specific application and then recommend to the Land Committee who may then deny a permit or issue a permit in the form provided for Section 413.

412 Appeal Process

Appeals to the decision of the Director of Water Resources shall be as provided for in Section 600.

413 Final Water Use Permit

Water permits issued in accordance with this Code shall be on a form standardized by the Director of Water Resources and his staff and shall contain the following information:

- (1) The name and mailing address of the applicant;
- (2) The name of, if available, or a description of the source or sources from which water is or will be diverted or withdrawn
- (3) The quantity of water which may be diverted or withdrawn and used during each month of the year
- (4) A map and legal description, if such is readily available or other description that reasonably describes the point or points of diversion or withdrawal
- (5) A description of the method or methods of diversion or withdrawal
- (6) The purpose or purposes for which water is or will be used
- (7) A description of how water may be applied or consumed, including acreage and crop if the water is for irrigation, and the kind and number of stock if water is for stock watering.

In addition, the Water Use Permit shall also contain conditions under which the permit may be operated. These conditions will address, as applicable, the following:

- (1) Provisions for surface or ground water storage of surplus flows
- (2) Provisions for increasing the efficiency of diversion or withdrawal and application
- (3) Provisions for maintaining minimal levels for fish, wildlife, recreational and aesthetic values
- (4) Provisions for insuring minimum pumping and diversion levels with respect to both surface and underground water
- (5) Provisions designed to maintain head and pressure in surface and underground water
- (6) Provisions designed to prevent or reduce obstruction of surface and underground flows
- (7) Provisions designed to minimize pollution and thermal degradation
- (8) Provisions designed to ensure minimum recharge of aquifers
- (9) Provisions designed to prevent or reduce loss from losing streams and aquifers (10)Provisions designed to define and limit interbasin transfers from shifting aquifer boundaries
- (11)Provisions for some degree of overdraft from aquifers when short-term recharge is not available or appropriate
- (12)Provisions designed to prevent or reduce interference between competing users or water sources whether above or below ground
- (13)Provisions to insure long term development and prevent untimely quantification
- (14)Penalties for misuse
- (15)Provisions to prevent interference with Tribal administration of water
- (16)Other provisions necessary to insure conformity with this Code and actions taken hereunder.

414 Standard Permit Conditions

All Water Use Permits shall contain the following conditions:

- (1) Entry on Land

No person shall be authorized to use or otherwise take any action affecting the waters administered under this Code unless he shall consent to reasonable entry upon his land by Tribal officers engaged in the administration of this Code. No use or other action affecting the waters in question may be made unless the applicant consents to such reasonable entry upon his land.

Acceptance of the Water Use Permit shall be irrefutable evidence of this consent.

(2) Effect

A Water Use Permit issued under this Code constitutes nothing more than Tribal permission to use the Waters of the Rosebud Sioux Tribe, subject to the terms and conditions of the permit, to this Code and to actions taken pursuant to this Code. No Water Use Permit used hereunder shall be construed as creating or recognizing any right other than Tribal permission to use water. Nor shall any permit ripen into any interest other than such limited permission.

(3) Revocability and Termination

Unless otherwise indicated, water permits issued under this Code are revocable and may be terminated in accordance with the policies, purposes, guidelines, and procedures established in this Code. However, the Director of Water Resources may, at the Director's option or upon application, propose for consideration by the full Rosebud Sioux Tribal Council the granting of permits for specific periods of time, permits revocable or terminable only upon stated conditions, and other forms of permits providing varying degrees of permanence and contractual terms.

(4) Waste of Water Prohibited

No waters that have been withdrawn, diverted or otherwise taken pursuant to a valid permit or otherwise shall be wasted. The withdrawal of reasonable quantities of water in connection with construction, development, testing or repair of diversion and withdrawal works shall not be construed as waste. In the event of inadvertent loss of water owing to defects in equipment for diversions and withdrawals, such shall not be construed a waste if reasonable diligence is shown by the permittee in completing the necessary repairs.

(5) Water Conservation Measures

The use of water allowed by this permit is conditioned upon the installation and use of water conserving fixtures to reduce water demands. Tampering with or removal of these fixtures is grounds for revocation of the Water Use Permit.

(6) Penalties

Any and all misuse of water and other acts in violation of this Code are subject to penalties as provided for in this Code.

415 Transfer of Water Use Permit

Permits issued under this Code shall not be subject to transfer, assignment, or creation of any security interest without the express written permission of the Director of Water Resources with the concurrence of the Tribal Council. Applications for transfer, assignment, or creation of security interest shall be made on forms prepared and made available by the Director of Water Resources. Such forms shall be designed to solicit information concerning any substantial changes which will or may occur as a

result of the transfer, assignment, or creation of a security interest.

416 Modification of Water Use Permit

All Water Use Permits are modifiable upon filing of an application to modify the Water Use Permit using and following the same process for the initial Water Use Application.

417 Termination of Water Use Permit

(A) Nonuse.

Any Water Use Permit shall become void and revert, to the extent of the abandonment or nonuse, to the Rosebud Sioux Tribe when the holder of such Water Use Permit wholly or partially abandons the same, or voluntarily fails without sufficient cause, to use all or a portion of the water available under such Water Use Permit for a period of five consecutive years. This section shall be retroactive to the effective date of the Code.

"Sufficient cause" shall include:

- (a) Drought or other unavailability of water
- (b) Active service in the armed forces of the United States during military crisis
- (c) Non-voluntary service in the armed forces of the United States
- (d) The operation of legal proceedings that may impact the status of the water use permit
- (e) The application of any laws restricting water use
- (f) Incarceration in a penal institution longer than sixty days
- (g) Confinement in a mental institution, longer than sixty days whether voluntary or not
- (h) Incompetence by reason of age or mental incapacity
- (i) Provision for future use as provided in this Code
- (j) Other substantiated causes of nonuse beyond the control of the holder or holders of the right claimed.

Before such water rights may be deemed lost by nonuse or abandonment, the Director of Water Resources or his designee shall serve notice on the holders of such rights to appear at a hearing to be held before the Land and Natural Resources Committee not less than 30 days after the mailing or personal service of such notice and show cause why their rights should not be deemed void. Such notice and hearing shall be in the manner provided for in Section 500.

(B) Loss by Adverse Possession, Prescription, Estoppel, or Acquiescence.

No right to use or otherwise affect the quantity, level, flow, pressure, quality, or temperature of water may be acquired by adverse possession, prescription, estoppel, or acquiescence.

(C) Outside Proceedings.

No right granted under this Code may be reduced or taken or otherwise affected in any procedure or determination or adjudication except as provided in this Code.

500 General Hearing Provisions

501 Hearing Procedures

Whenever not otherwise provided for in this Code, hearings shall be held in accordance with the provisions of this Chapter.

502 Notices

All parties who will be directly affected by a proposed action shall be given notice by registered mail, return receipt requested, of any hearings held under this Code. In addition, notice of hearings shall be published in one paper that has general circulation in the affected area, and notice of hearing shall be posted in prominent places in the affected area.

503 Time and Place of Hearing

Whenever possible hearings shall be held in the affected area a time and place that is convenient for a major portion of the parties affected in the Tribal Council Chambers or as determined by the Director of Water Resources.

504 Continuances

Continuances shall be freely granted when the ends of justice so require and to ensure adequate notice and opportunity to be heard.

505 Presiding Officer

The Chairman of the Land and Natural Resources Committee or his designee shall preside as the hearing officer over hearings provided in this chapter.

506 Forms of Evidence

Evidence may be submitted in any practical form, including oral testimony, *written* evidence, and descriptive evidence. The ordinary rules of evidence shall not apply but evidence which is irrelevant, cumulative, or unduly prejudicial, may be excluded or admitted only under special conditions or stipulations.

507 Consolidation of Hearings

Whenever possible hearings concerning proposed or existing actions, in a particular basin or area shall be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication.

508 Recording

Whenever possible, hearings shall be recorded by mechanical means. However, any person may provide and pay for a stenographic record at their expense.

509 Decisions

Whenever a decision is required in accordance with the provisions of this Code following a public hearing, the hearing officer shall cause such decision to be published and served upon the parties in the same manner as provided in 502 covering notice of hearings.

600 General Appeal Provisions

601 Appeals Provided For

There shall be no appeal from actions taken under this Code except as provided herein. Appeals shall be made to the Rosebud Sioux Tribal Council.

602 Rosebud Sioux Tribal Council - Appeal Board Constituted

(A) Members of the Office of Water Resource and the Land and Natural Resources Committee shall be excluded from hearing and considering an appeal under this Code.

(B) Members of the Rosebud Sioux Tribal Council who have a direct interest in or bias with respect to the outcome of any appeal shall be disqualified from hearing and considering such appeal. Once raised, the matter of direct interest or bias shall be decided by a majority vote of the Rosebud Sioux Tribal Council, excluding the Councilman alleged to be interested or biased.

(C) The remainder of the Rosebud Sioux Tribal Council, after such exclusions and disqualifications, shall constitute an Appeal Board for purposes of this Chapter.

603 Notice of Appeal - Jurisdiction

Except as may be otherwise provided elsewhere in this Code, any party aggrieved by any final action taken under this Code, obtain review of such final action by an Appeal Board may by filing a Notice of Appeal with the Director of Water Resources. The Rosebud Sioux Tribal Council, and the Appeal Board constituted therein, shall have jurisdiction over any appeal brought under this chapter. The Notice of Appeal must be filed with the Rosebud Sioux Tribal Council no more than 30 days after the date when the party appealing knew or should have known that the action appealed from had been taken. By "final action" is meant any action taken under this Code for which no further consideration by the Director of Water Resources is required.

604 Notice

Upon receipt of the Notice of Appeal the Director of Water Resources shall forthwith, and no more than 5 days after receipt of the Notice of Appeal, cause the Notice of Appeal to be published in the same manner as notice was provided in the proceeding leading to the final action appealed from, with notice served to all parties to the proceeding being appealed from.

605 Transmittal of Record

(A) Upon receipt of the Notice of Appeal, the Director of Water Resources shall cause the Notice of Appeal, any pertinent documents in its possession, and any other articles of evidence in its possession, be transmitted to the Rosebud Sioux Tribal Council.

(B) Any party to an appeal, including the Director of Water Resources, may, in addition, cause a transcript of any hearings or other proceedings below to be prepared and transmitted to the Rosebud Sioux Tribal Council provided that the Director of Water Resources, in the Director's discretion, shall bear the financial burden of preparing such transcript when it appears, after good cause shown, that a party is financially unable to do so.

606 Oral Argument

Upon receipt of the Notice of Appeal from the Director of Water Resources, the Rosebud Sioux Tribal Council shall, as soon as possible and no more than 15 days after receipt thereof, notify the Director of Water Resources, the appealing party, and the other parties to the proceeding, of a date certain for full hearing before the Rosebud Sioux Tribal Council. The date for hearing shall be not less than 30, nor more than 90, days after the date notice provided in this section is transmitted.

607 Briefs

Parties may at their own option, or must when requested to do so by the Rosebud Sioux Tribal Council, file briefs in support of their appeal. Briefs shall be due on dates set by the Rosebud Sioux Tribal Council

and no less than 30 days after receipt of the notice provided for in the proceeding section.

608 Scope of Review

The Appeal Board, in reviewing the final action appealed from, shall limit its review to those matters that were before the Director of Water Resources at the time of the action appealed from. The Appeal Board may affirm, reverse, modify in whole or in part, or remand for further consideration, any final action appealed provided the actions appealed may only be reversed when it appears that they are arbitrary and capricious or otherwise not in substantial conformity with this Code.

609 Appeal Board - Additional Powers

(A) An Appeal Board may, on its own motion or upon motion of any party, dismiss an appeal for want of prosecution, gross procedural irregularity, or mootness when the ends of justice so require.

(B) In addition, an Appeal Board may stay the operation of actions appealed from, in whole or in part, and may, when the ends of justice require, provide for a supersedes bond or other security from the parties to the appeal.

700 Enforcement and Penalties

701 Unauthorized Actions Affecting Tribal Waters Prohibited

Whenever any use or other action affecting the Waters of the Rosebud Indian Reservation is required by this Code to be authorized under the provisions of this Code, it shall be an offense punishable by a fine of not more than \$500.00 and/or a sentence of not more than six months in jail, to knowingly make such use or take such other action without the authorization required.

702 Obstruction of Tribal Officers

The willful obstruction of or interference with Tribal officers performing their lawful duties under this Code shall be an offense punishable by a fine of not more than \$500.00 and/or a sentence of not more than six months in jail.

703 Additional Penalties

In addition to the penalties imposed under Section 701 and 702 herein, violations of this Section shall subject the person(s) or entity (ies) responsible to forfeiture of all rights and permits to water administered under this Code.

704 Overstatement of Use

Any person or entity who shall knowingly, when providing information required by this Code, with respect to Descriptions of Use and Applications for Permits or otherwise, misstate material facts shall be guilty of an offense punishable by forfeiture of all right here under and/or by fine of not more than \$500.00.



**ROSEBUD SIOUX TRIBE
WATER USE PERMIT
PERMIT APPLICATION**

DATE: _____

SECTION 1 - GENERAL INFORMATION

(TO BE COMPLETED BY APPLICANT)

A) NAME OF APPLICANT: _____

B) MAILING ADDRESS: _____

C) PHONE: _____ D) FAX: _____ E) EMAIL: _____

F) PROJECT CONTACT: _____

G) PHONE: _____ H) FAX: _____ I) EMAIL: _____

SECTION 2 - PROJECT DESCRIPTION

(TO BE COMPLETED BY APPLICANT)

A) THE NAME, IF AVAILABLE OR A DESCRIPTION OF THE SOURCE(S), FROM WHICH WATER WILL

BE DIVERTED OR WITHDRAWN: _____

B) PROVIDE THE RATE AND QUANTITY OF WATER WHICH WILL BE DIVERTED, WITHDRAWN AND USED DURING EACH MONTH OF THE YEAR: _____

C) PROVIDE THE LEGAL DESCRIPTION OR OTHER DESCRIPTIONS REASONABLY DESCRIBING THE POINT(S) OF DEVERSION, WITHDRAWAL OR IMPOUNDMENT (ATTACH MAP): _____

D) PROVIDE A DESCRIPTION OF THE METHOD(S) OF DIVERSION, WITHDRAWAL OR IMPOUNDMENT: _____

E) THE PURPOSE FOR WHICH WATER WILL BE USED: (CHOOSE ALL THAT APPLY)

- | | | |
|--|---|--|
| ☐ 1. DOMESTIC (INCLUDING DRINKING, SANITARY AND LIMITED IRRIGATION) | | |
| ☐ 2. LIVESTOCK WATERING | ☐ 3. INDUSTRIAL | ☐ 4. COMMERCIAL |
| ☐ 5. AGRICULTURE IRRIGATION | ☐ 6. MINING | ☐ 7. FISHERY |
| ☐ 8. WILDLIFE MAINTENANCE AND ENHANCEMENT | ☐ 9. RECREATIONAL | |
| ☐ 10. FIRE PROTECTION | ☐ 11. DUST SUPPRESSION | |

F) PROVIDE A DESCRIPTION OF HOW WATER WILL BE APPLIED OR CONSUMED, INCLUDING ACREAGE AND CROP IF THE WATER IS USED FOR IRRIGATION; THE KIND AND NUMBER OF STOCK IF WATER IS FOR STOCK WATERING; OR OTHER MEASURE OF WATER APPLICATION AND CONSUMPTION FOR OTHER WATER USES: _____

PAGE 2
SECTION 3 - ADDITIONAL INFORMATION
(TO BE COMPLETED BY APPLICANT)

G) PROVIDE THE BEST ESTIMATE REASONABLY POSSIBLE OF HOW MUCH WATER WILL BE RETURNED TO THE SOURCE(S), INCLUDING HOW, WHEN, AT WHAT POINTS AND CHANGES IN QUALITY AND TEMPERATURES: _____

H) PROVIDE THE ESTIMATED DATE ON WHICH THE USE(S) WILL BE COMMENCED: _____

I) IF A USE IS AN EXISTING USE, THE HISTORY OF USE, INCLUDING THE NAMES OF ANY PREDECESSORS IN TITLE AND THE DATES OF THEIR OWNERSHIP, IF KNOWN AND INCLUDING A DESCRIPTION OF THEIR USES OF WATER: _____

J) IF A PRE-EXISTING USE OR USES ARE DESCRIBED, AN INDICATION WHETHER PROBLEMS OF DECLINING WATER LEVELS AND SUPPLY OR PROBLEMS OF DECLINING QUALITY HAVE BEEN ENCOUNTERED IN THE PAST: _____

K) PROVIDE THE WATER USERS PLAN FOR FUTURE DEVELOPMENT OF THE WATER USES AND RELATED ACTIVITIES: _____

PAGE 3
ACKNOWLEDGEMENT:

BY SIGNING THIS WATER USE PERMIT APPLICATION I HEREBY CERTIFY THAT I HAVE READ THIS APPLICATION, THAT THE MATTERS STATED ARE TRUE AND THAT I WILL COMPLY WITH ALL REQUIREMENTS OF THE ROSEBUD SIOUX TRIBE WATER CODE INCLUDING ALL PROVISIONS FOR ENFORCEMENT AND PENALTIES.

APPLICANT'S SIGNATURE

DATE

PREPARED BY: _____

DIRECTOR, RST WATER RESOURCES

REVIEWED AND APPROVED BY: _____

CHARIMAN

RST LAND AND NATURAL RESOURCES COMMITTEE



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Plains Regional Office
115 Fourth Avenue SE, Suite 400
Aberdeen, South Dakota 57401

IN REPLY REFER TO:
Natural Resources
MC-301

September 7, 2023

The Honorable Scott Herman
President, Rosebud Sioux Tribe
Post Office Box 430
Rosebud, South Dakota 57570

Dear President Herman:

The Bureau of Indian Affairs (BIA) Great Plains Region has revisited your request for review and approval by the BIA and the Department of the Interior of the Rosebud Sioux Tribal Water Code, originally submitted to the BIA Rosebud Agency Superintendent on July 7, 2022. This response follows up on the call with Rosebud Sioux Tribal Council Members, Tribal attorneys, and Gregg Bourland, Deputy Regional Director – Trust Services, on February 10, 2023.

It remains the determination of this office that there is no language in the Rosebud Sioux Tribal Constitution that would require approval by the BIA or the Secretary of the Interior before implementation of a Tribal Water Code. In her April 6, 2022, rescission of Secretary Morton's 1975 memorandum regarding tribal water codes, Secretary Haaland emphasized that the 1975 memorandum was "inconsistent with modern principles of Tribal self-determination and the Federal trust responsibility to support Tribal sovereignty" and thus recognized that the BIA maintains an approval role only in cases where tribal law requires such approval. Accordingly, the Rosebud Sioux Tribe (Tribe) has the full support of the BIA in exercising its tribal sovereignty through its adoption of the Rosebud Sioux Tribal Water Code to regulate water resources in protection of the health, welfare, and economic security of the Tribe, consistent with applicable law.

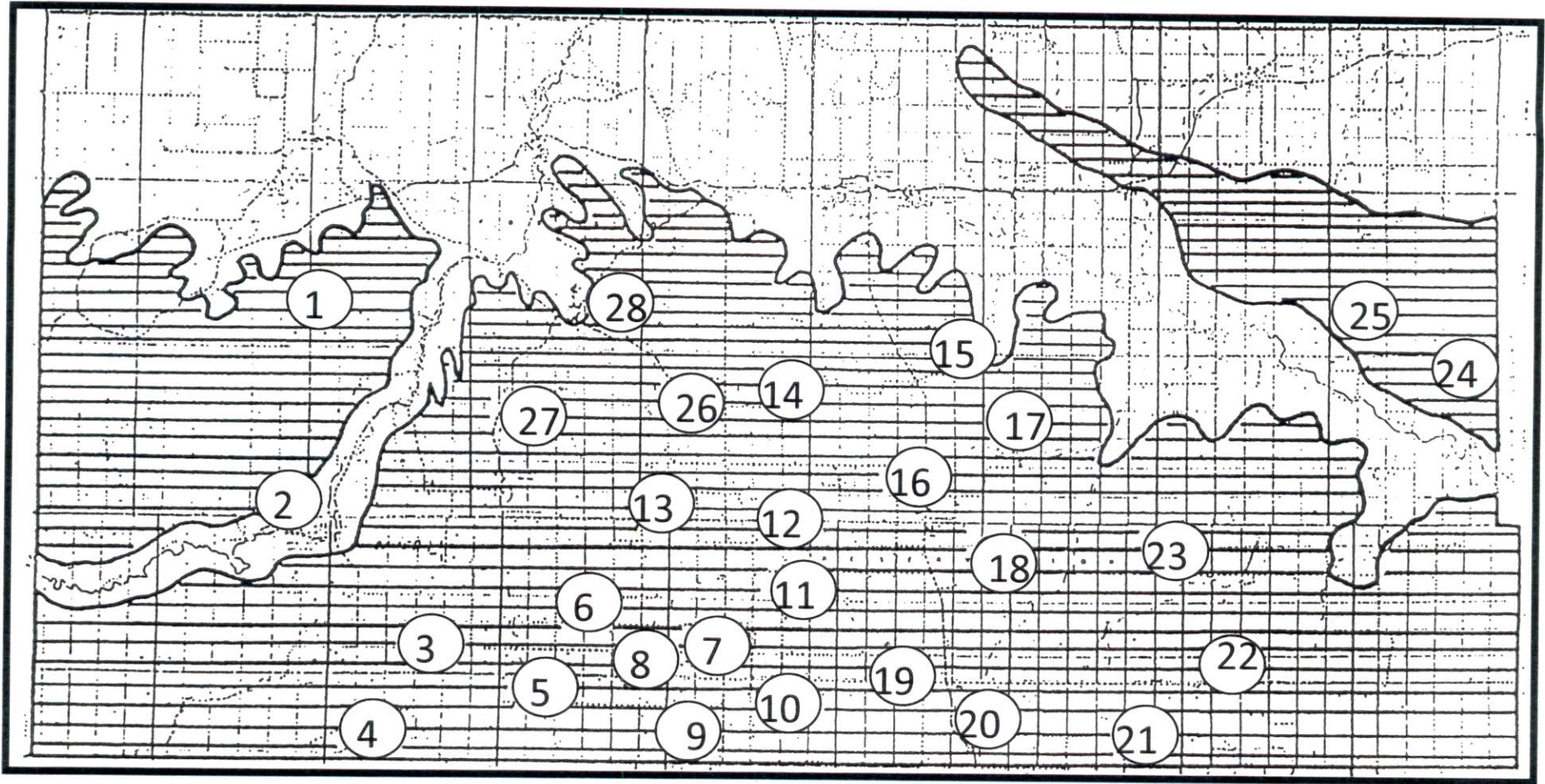
Please do not hesitate to contact me at (605) 226-7343, or Wayne Stone, Water Rights Specialist, Division of Natural Resources, at (605) 226-7621, if you have any questions or need additional information.

Sincerely,

Timothy LaPointe
Regional Director

cc: Director, Water Resources, Rosebud Sioux Tribe
Superintendent, Rosebud Agency

Rosebud Reservation, TODD COUNTY

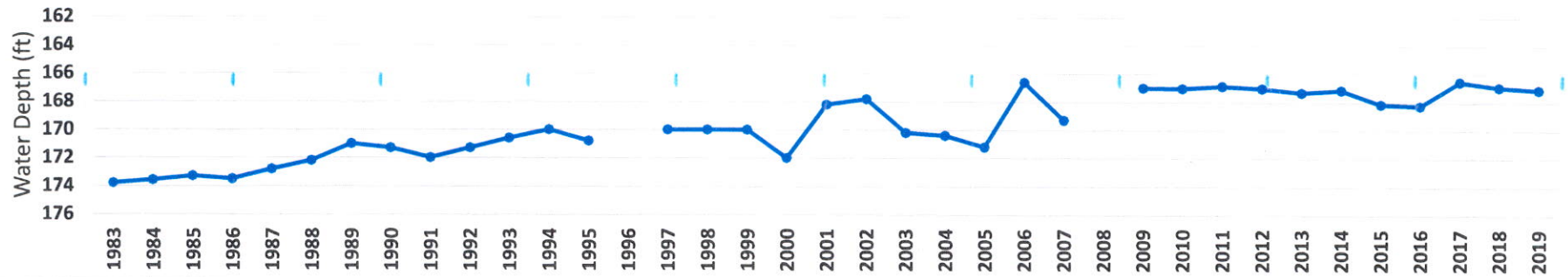


Location of Monitoring Wells On
The Ogallala Aquifer Rosebud Reservation

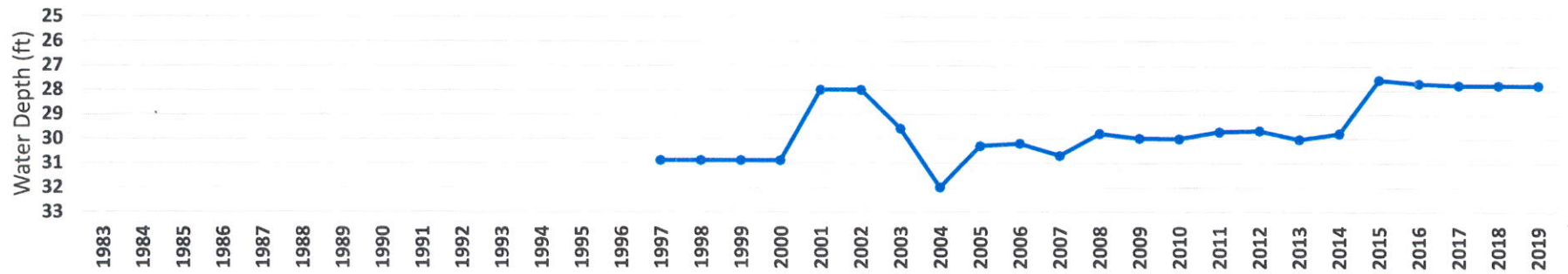
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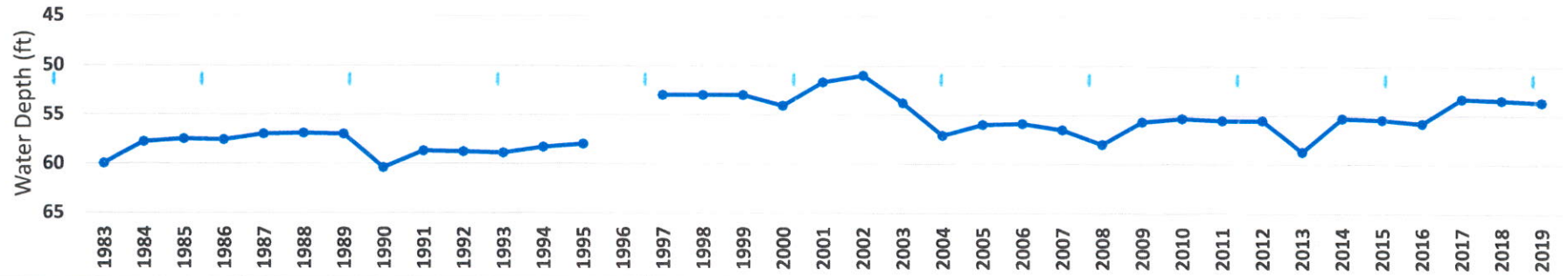
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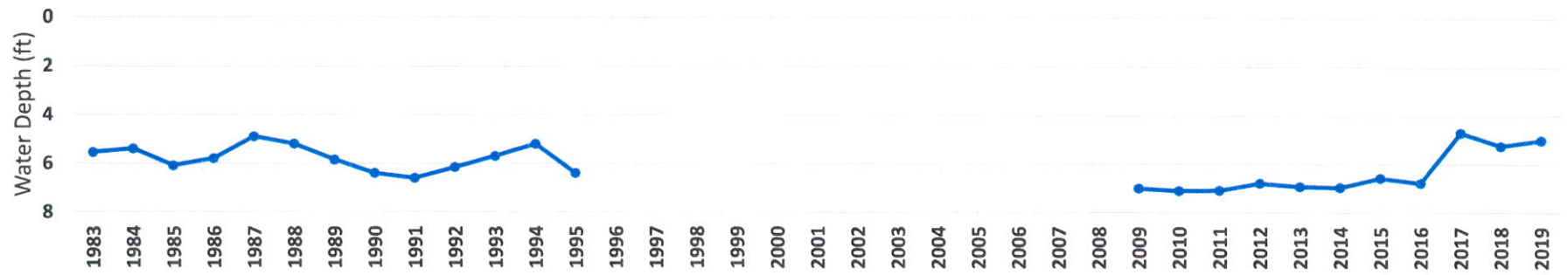
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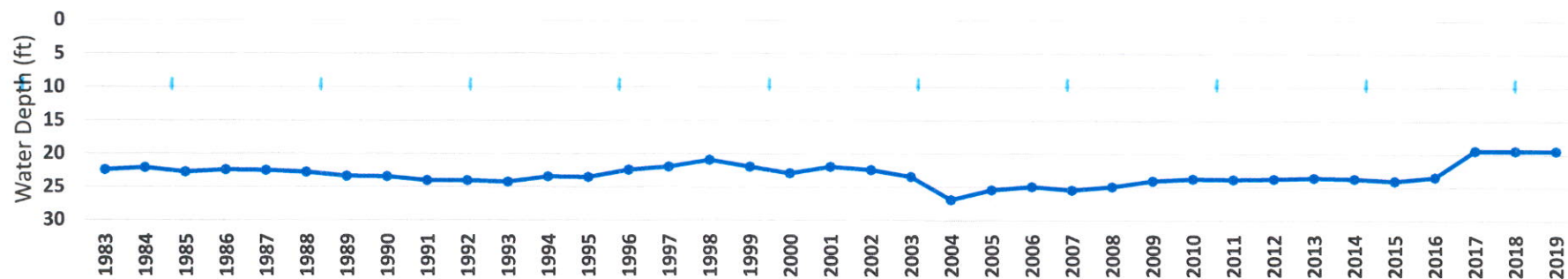
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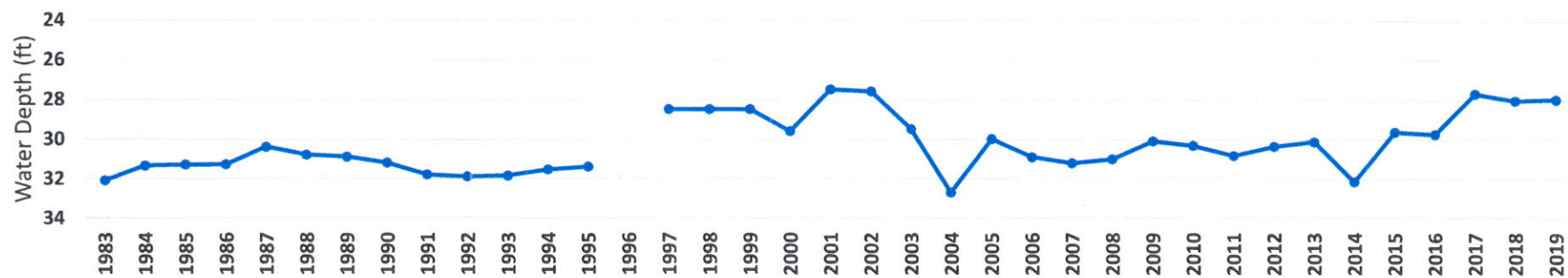
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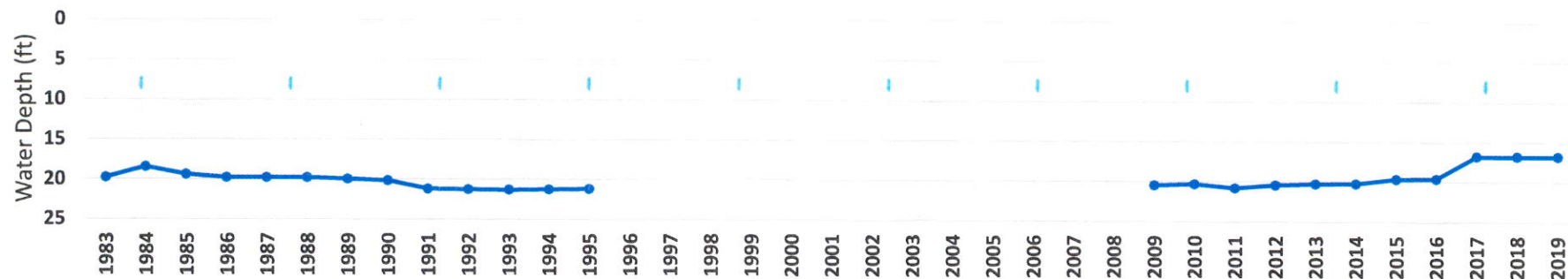
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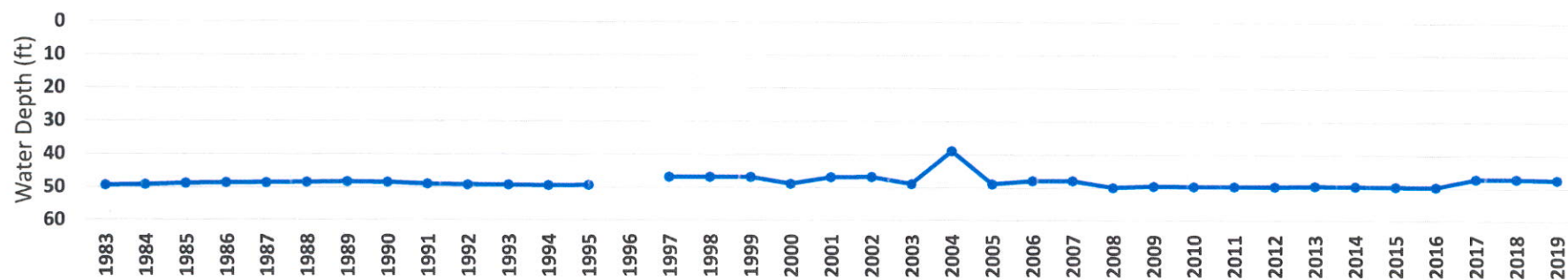
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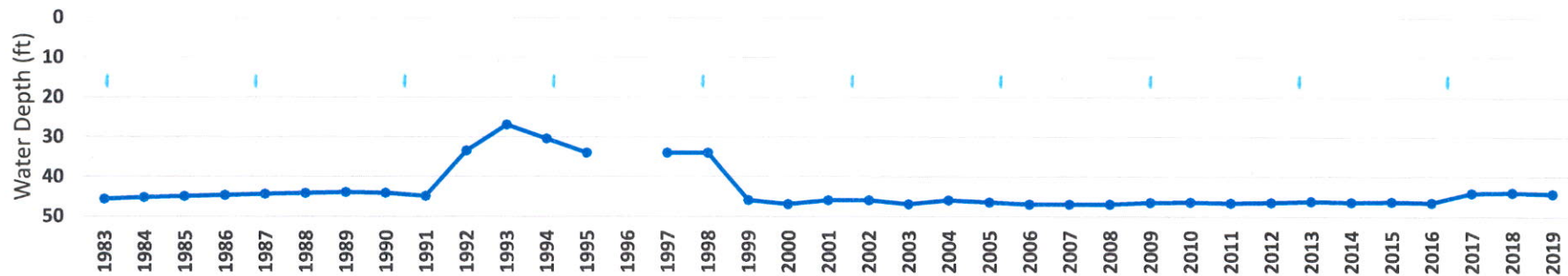
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RST Monitor Well No. 8 1983-2019

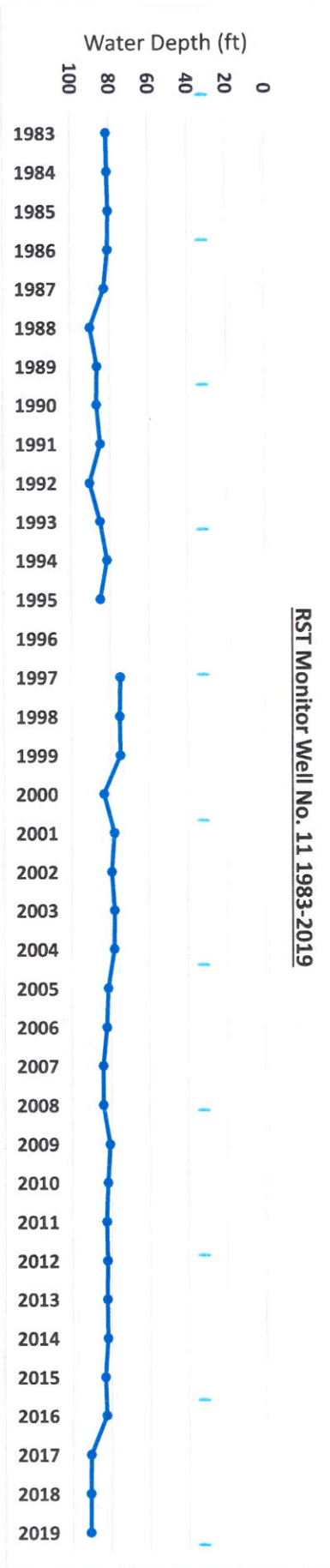
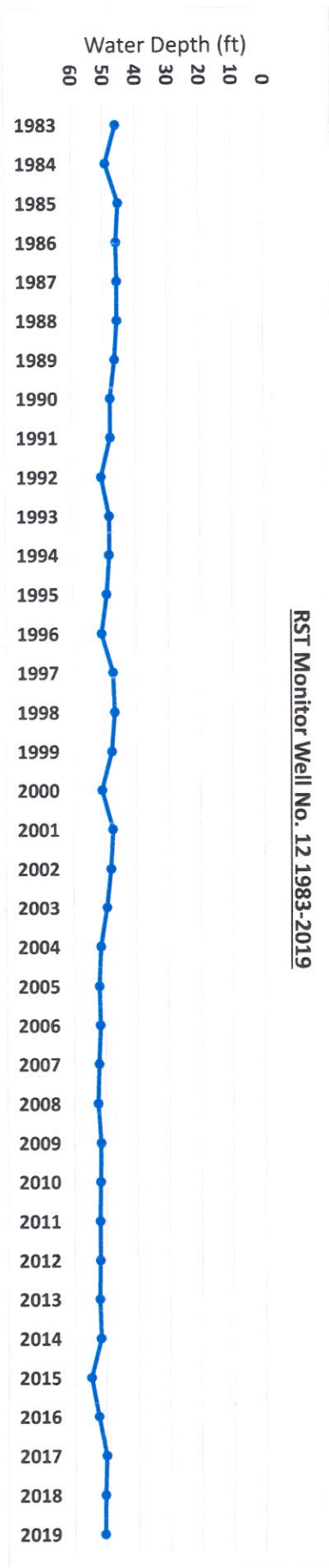


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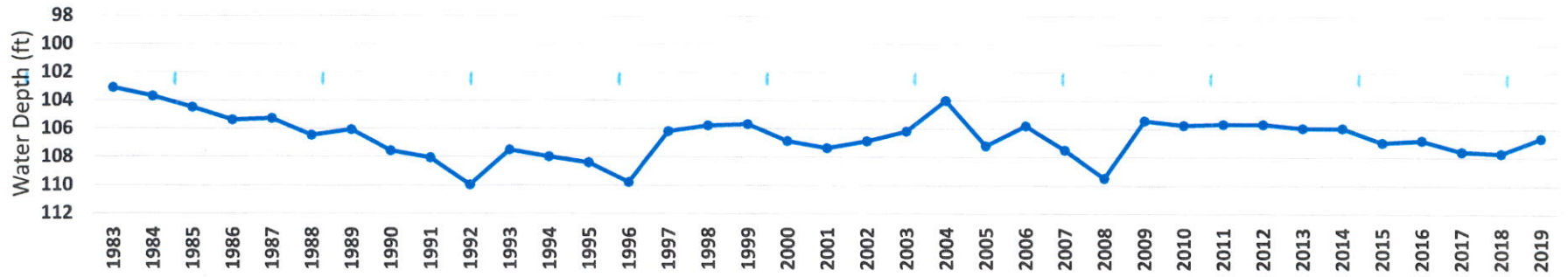


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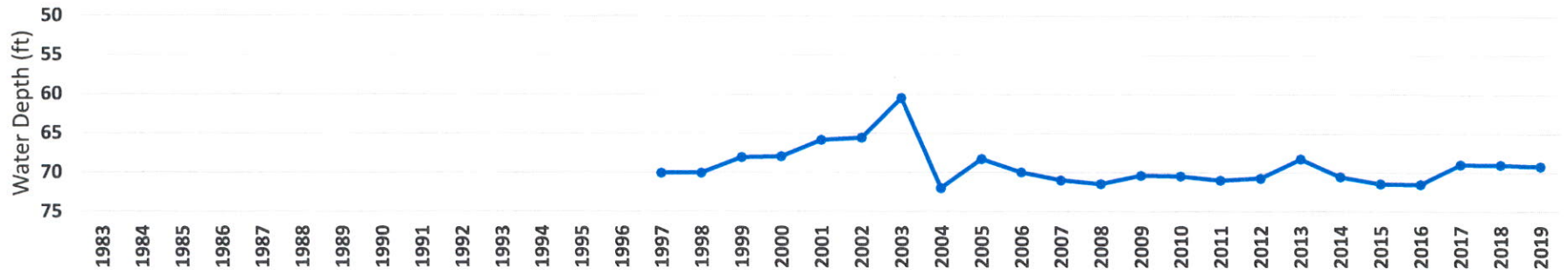




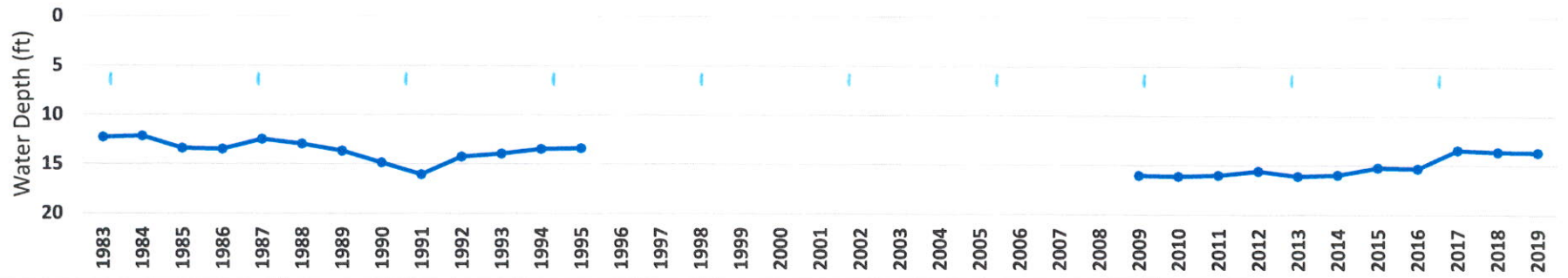
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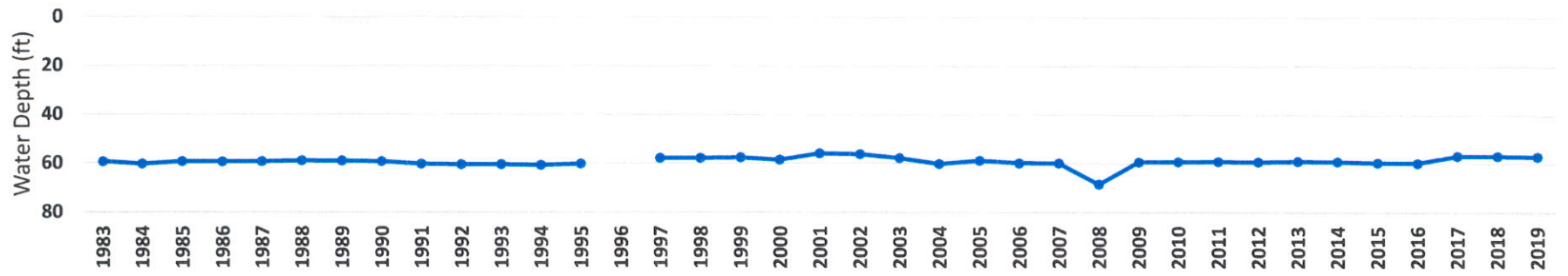
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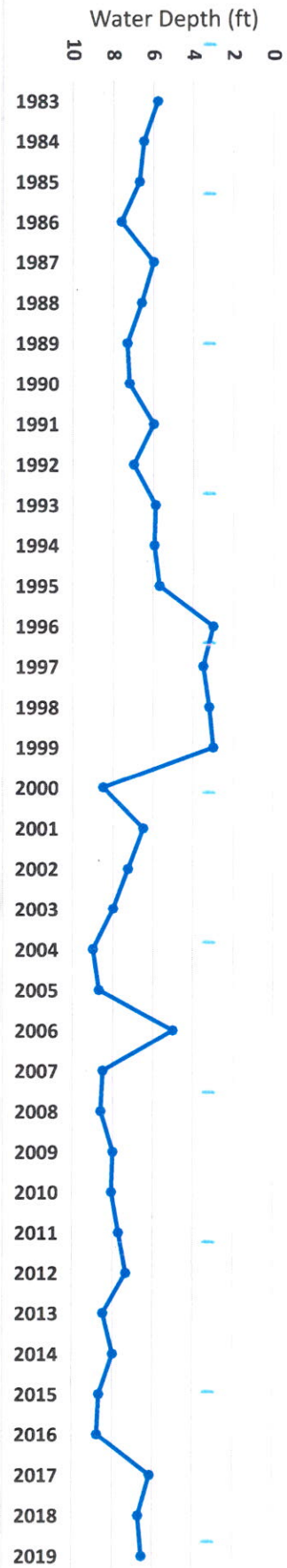
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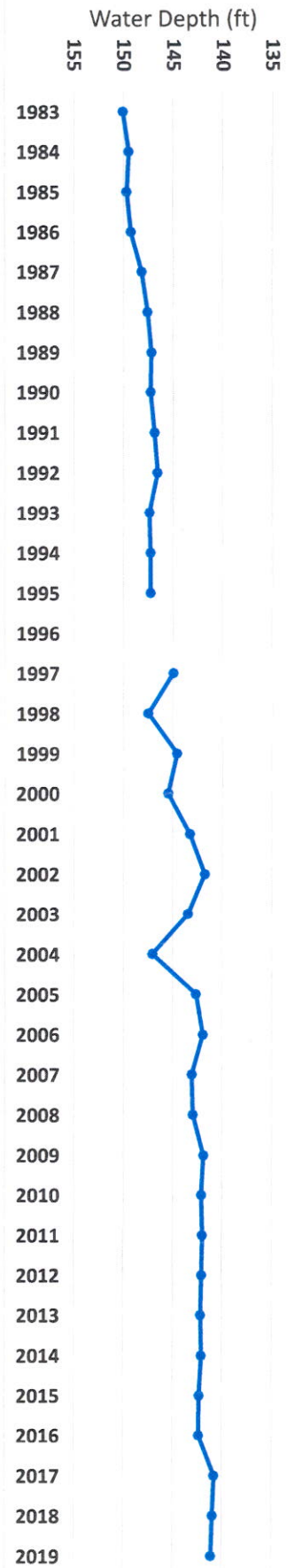
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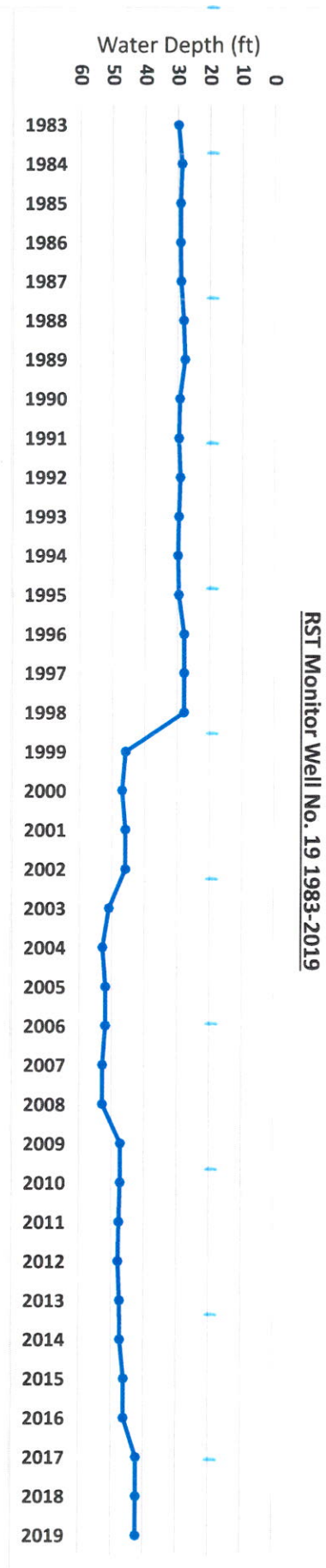
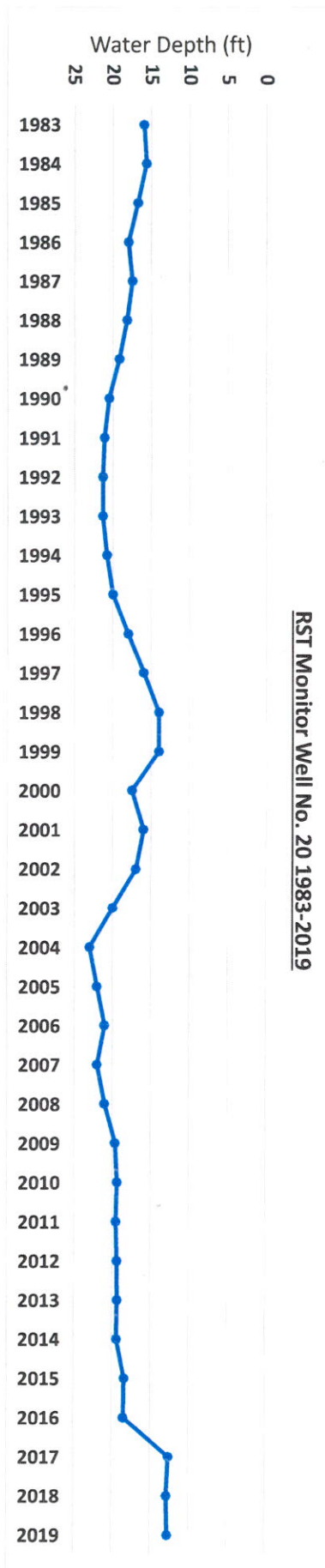


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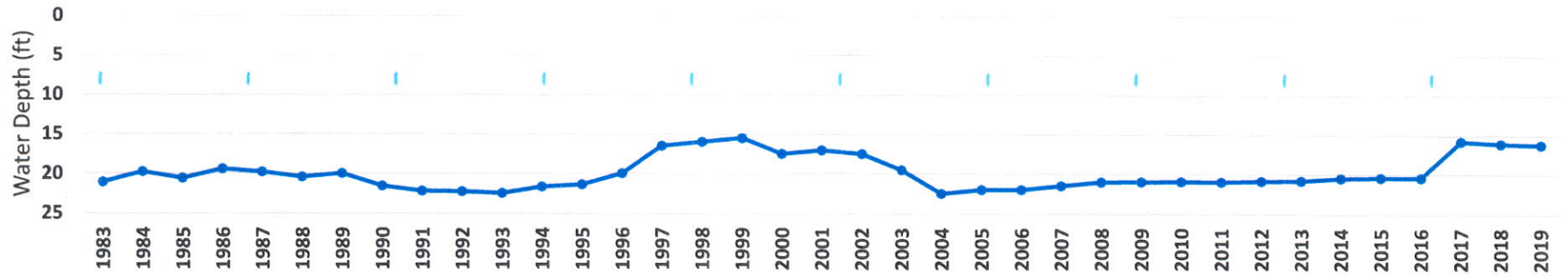


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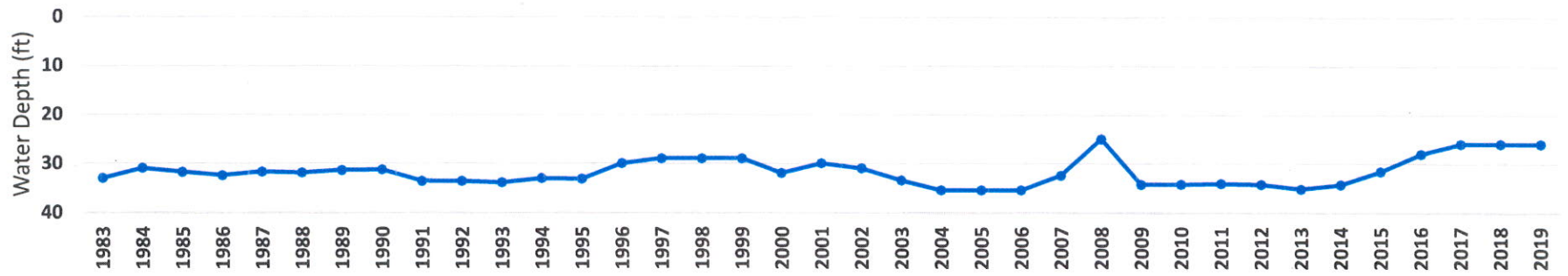




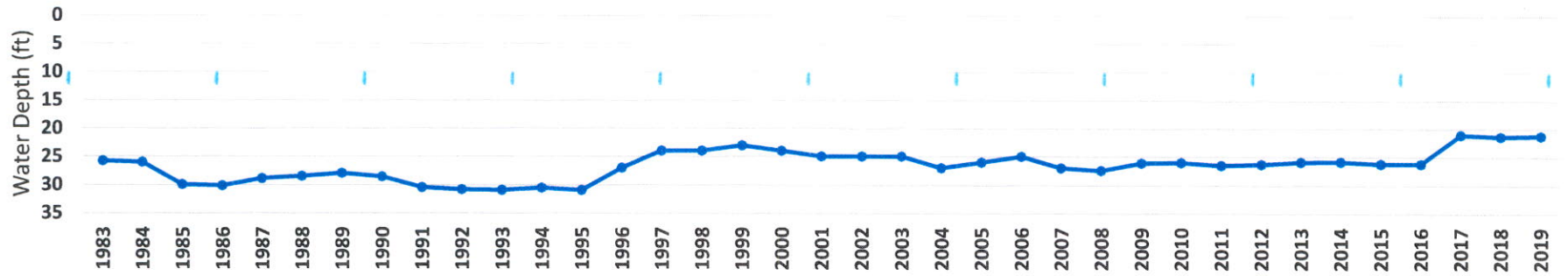
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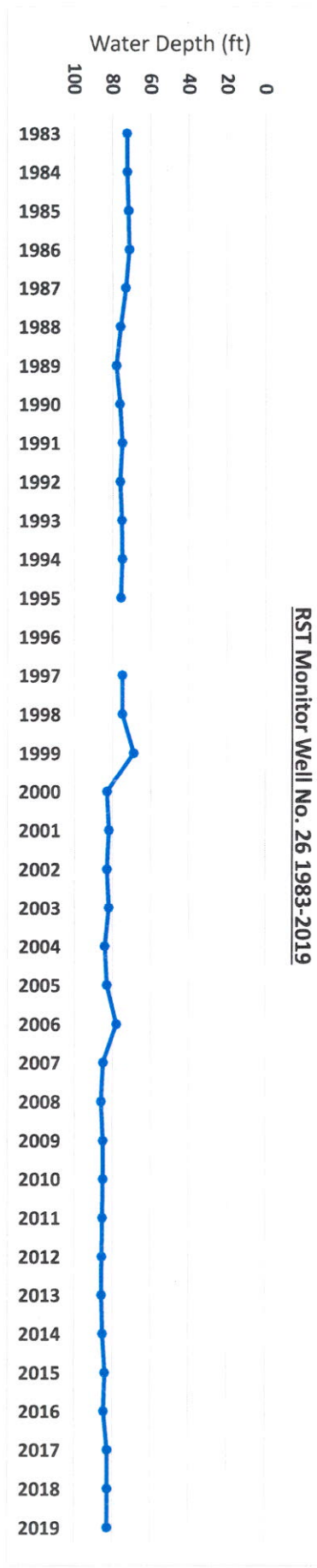
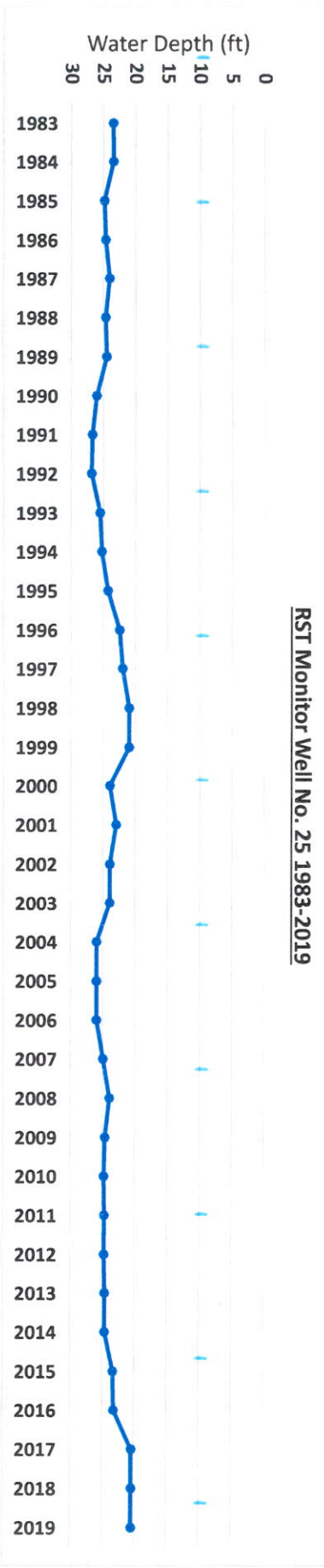


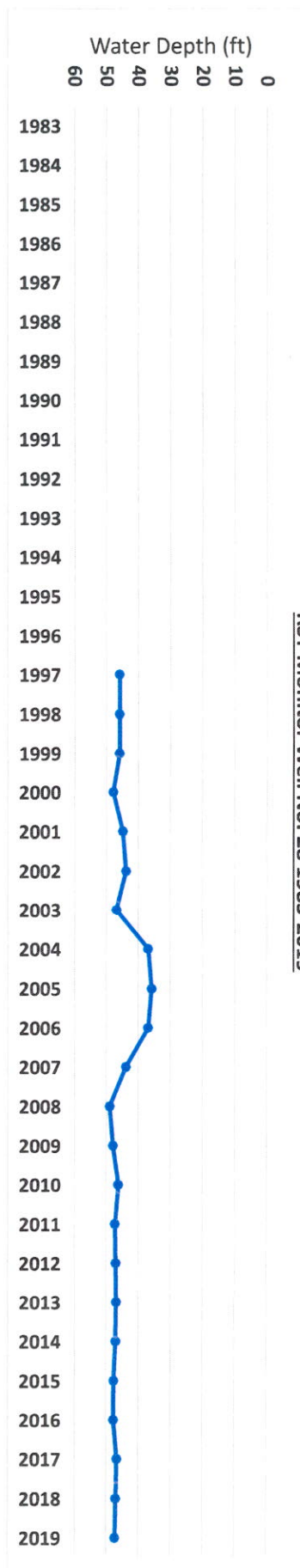
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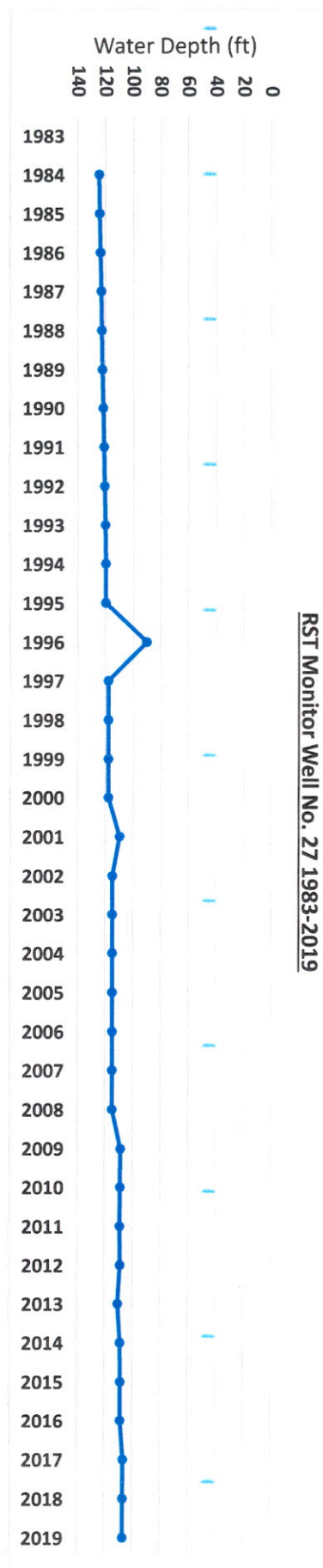
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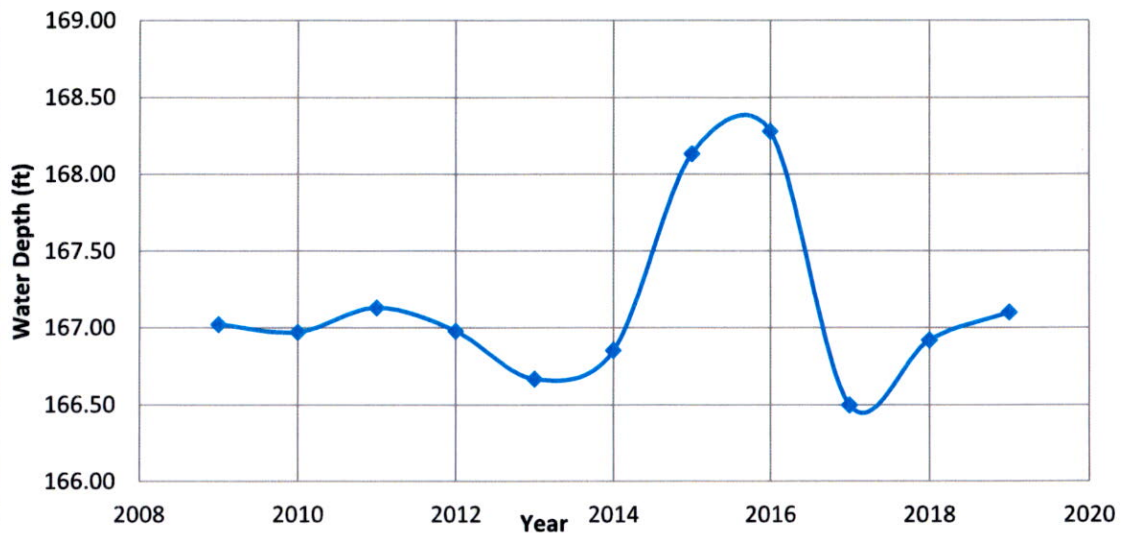


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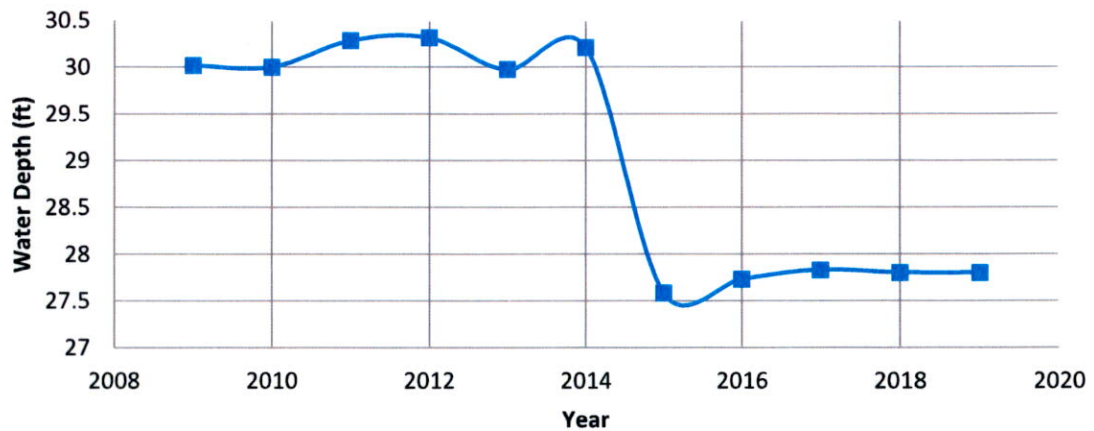


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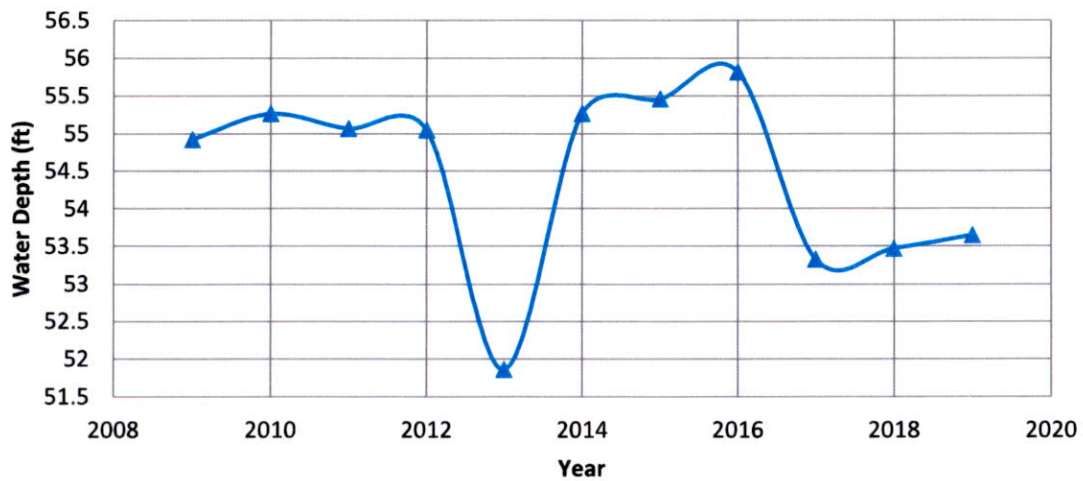
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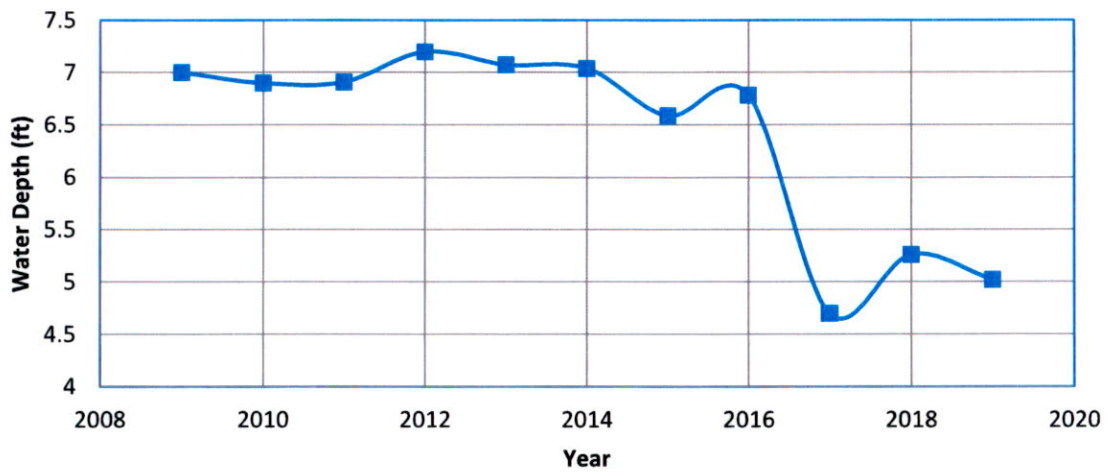
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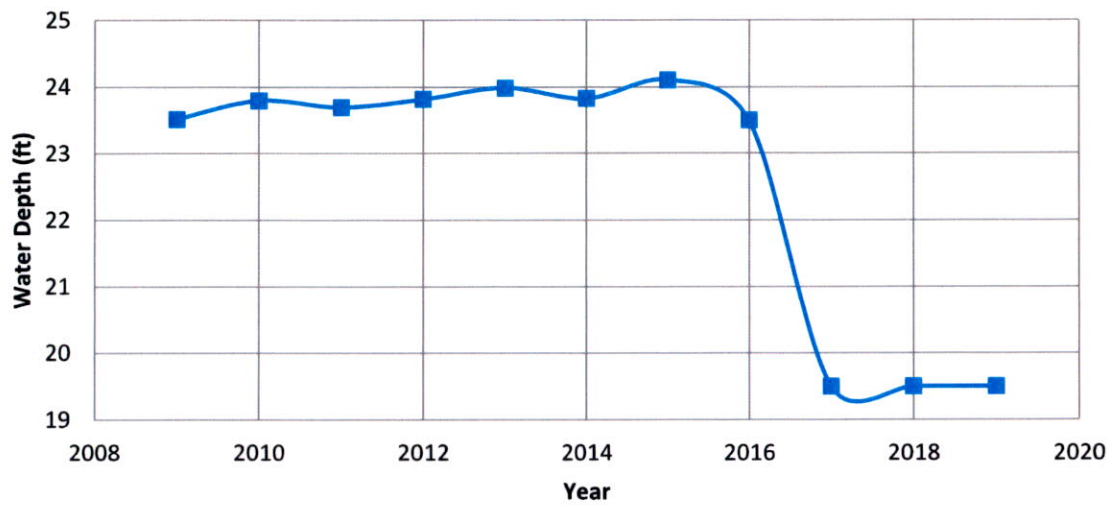
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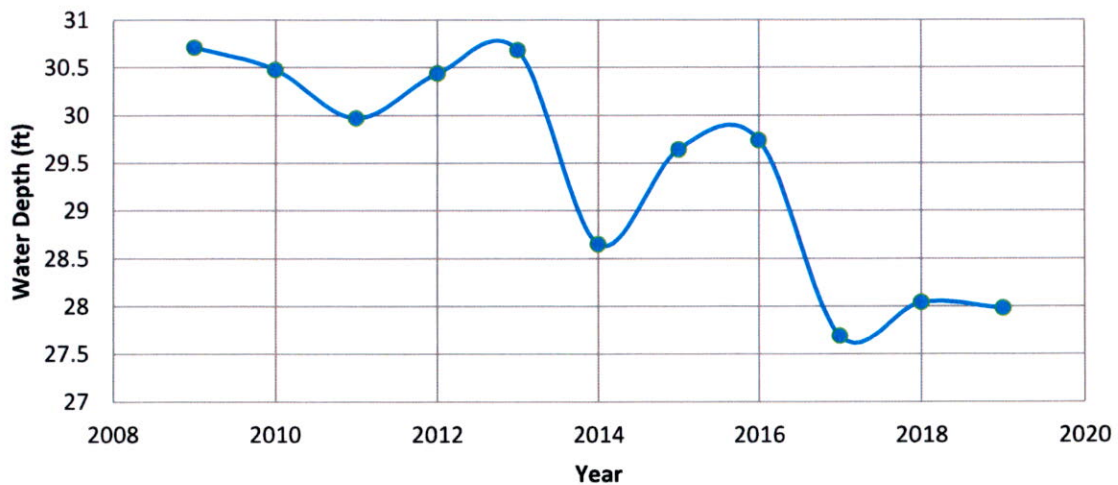
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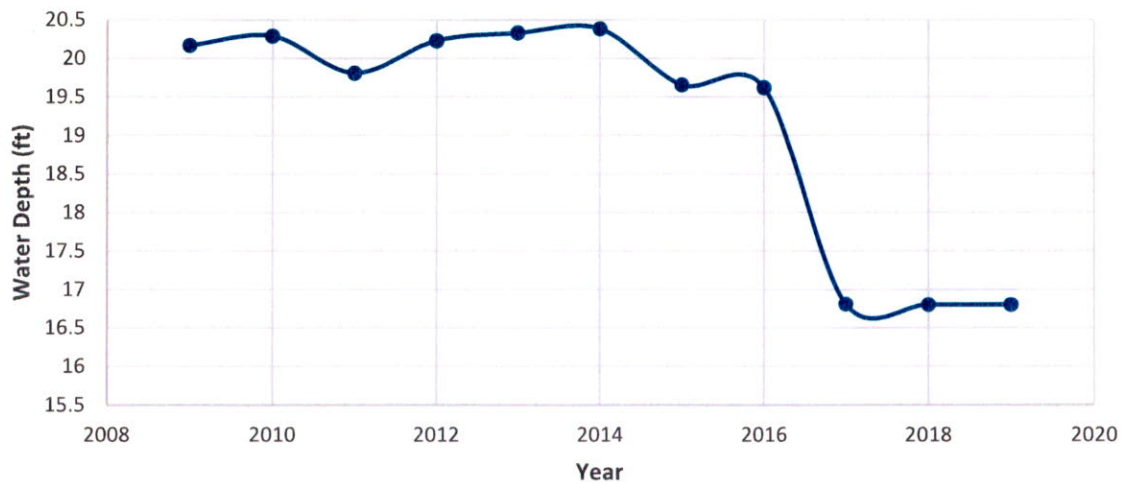
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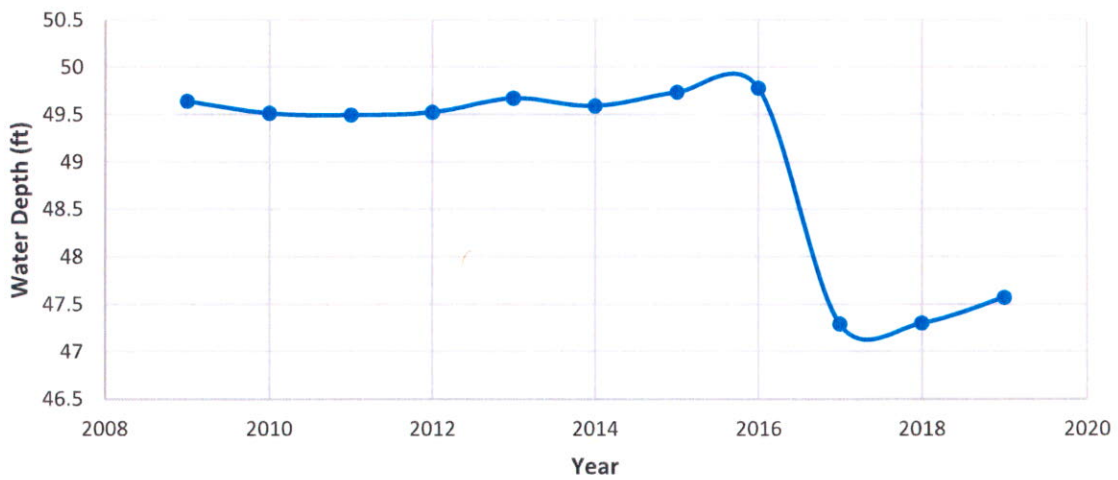
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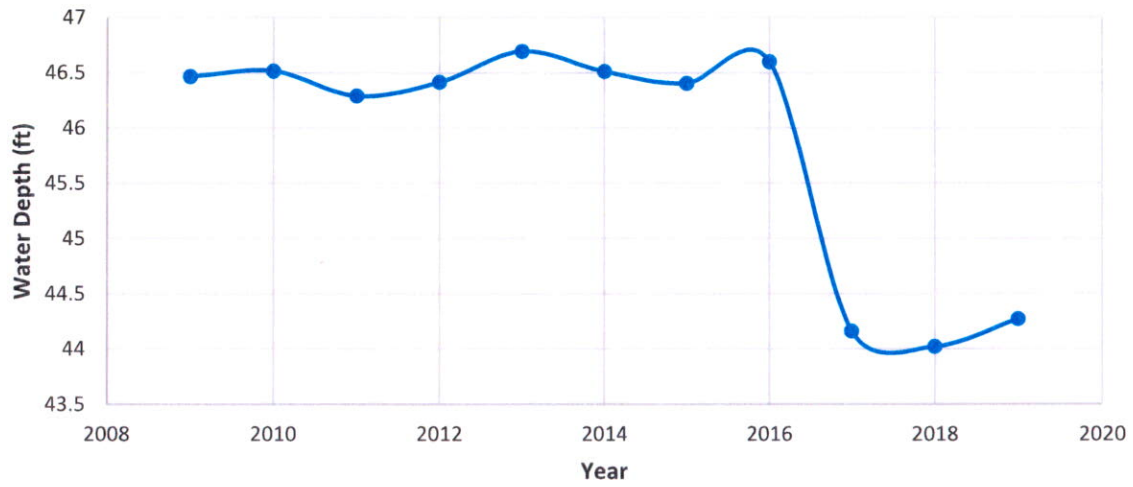
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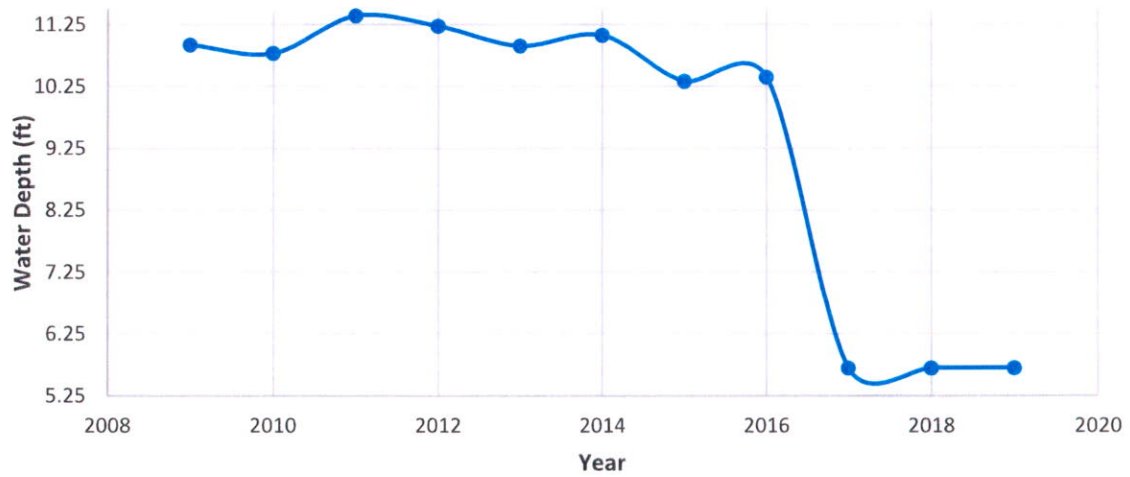
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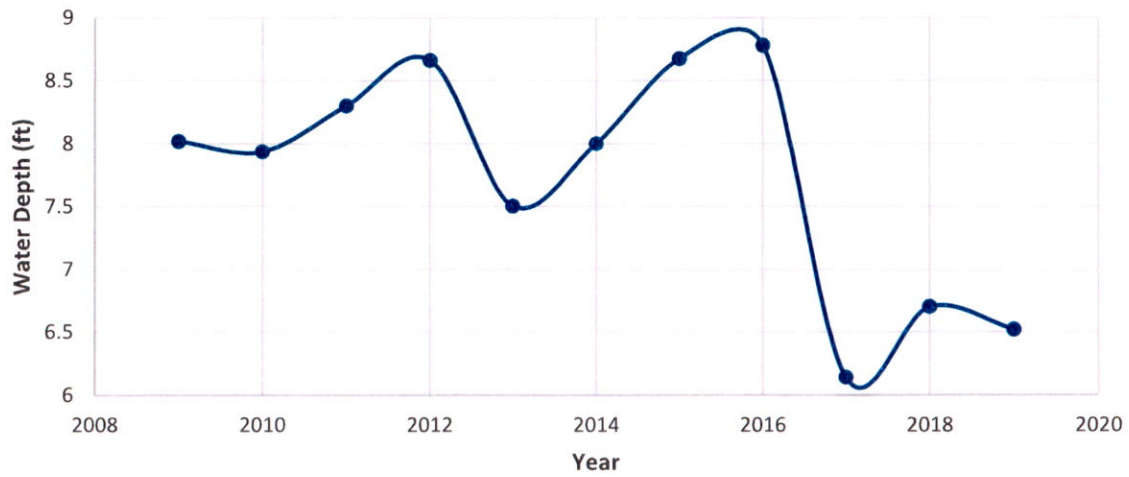
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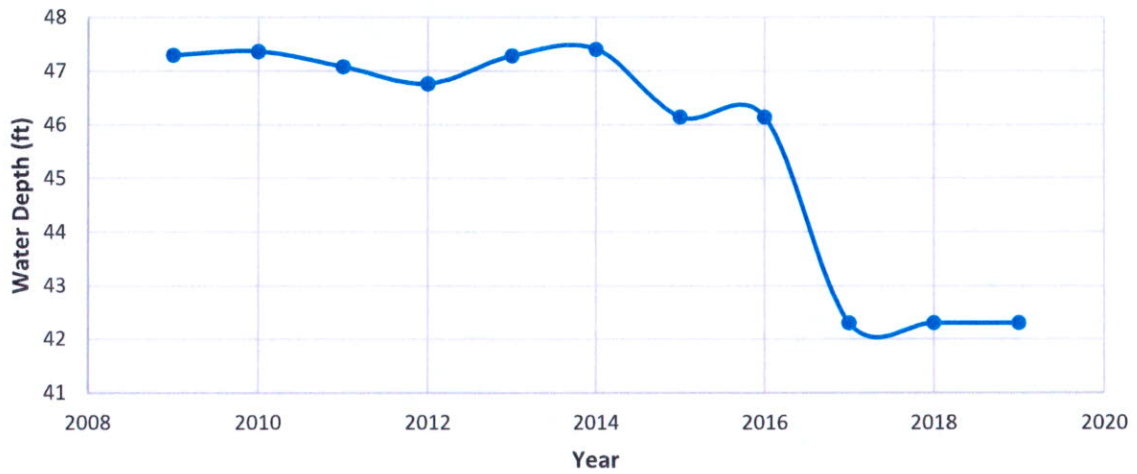
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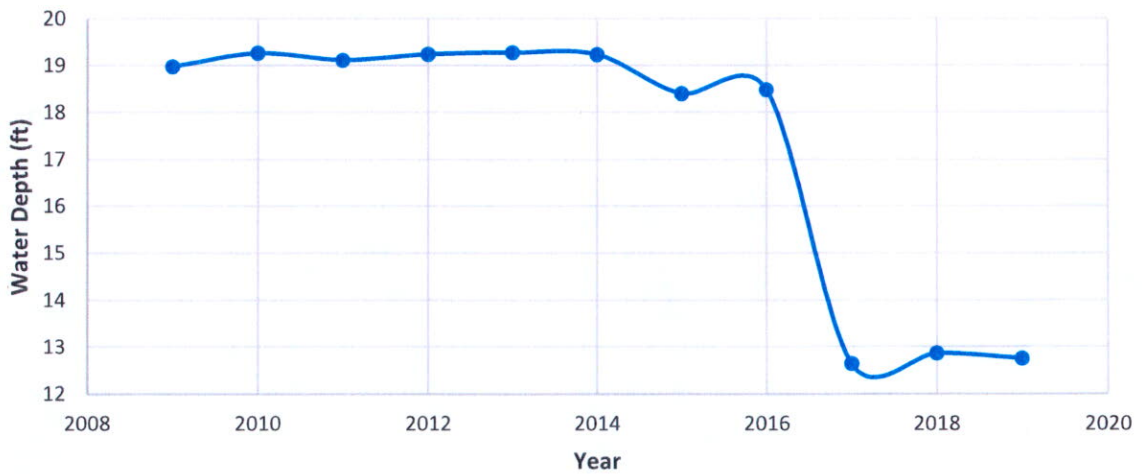
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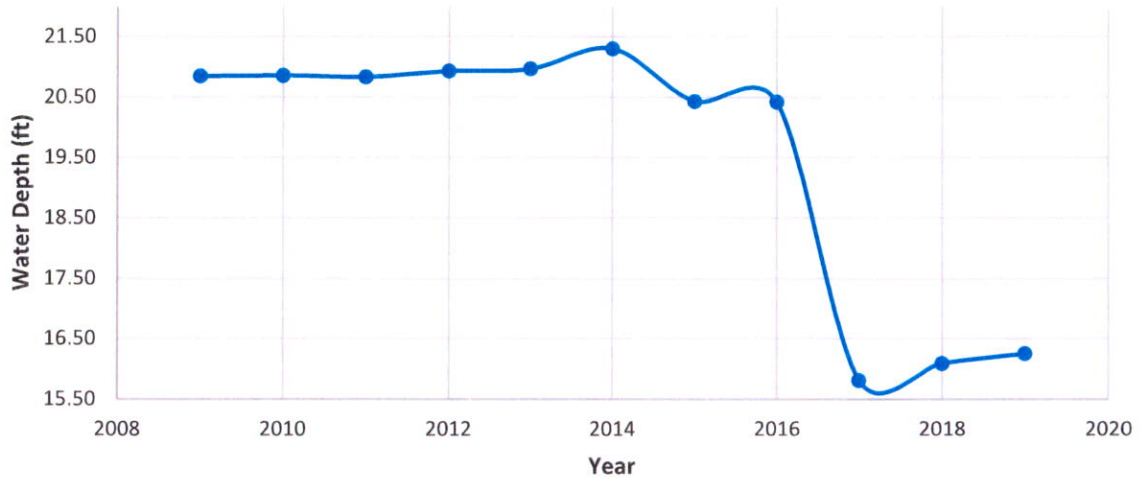
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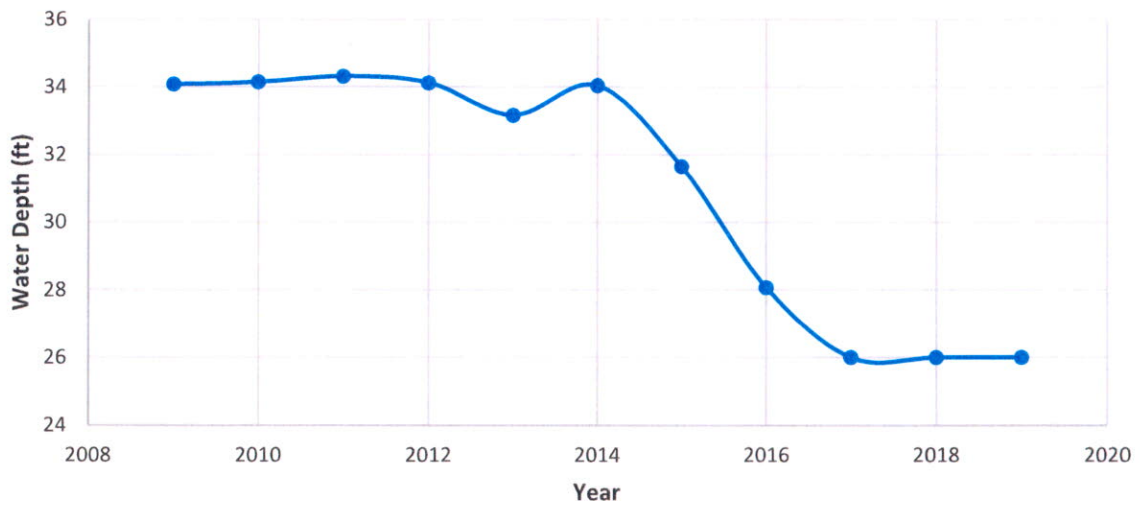
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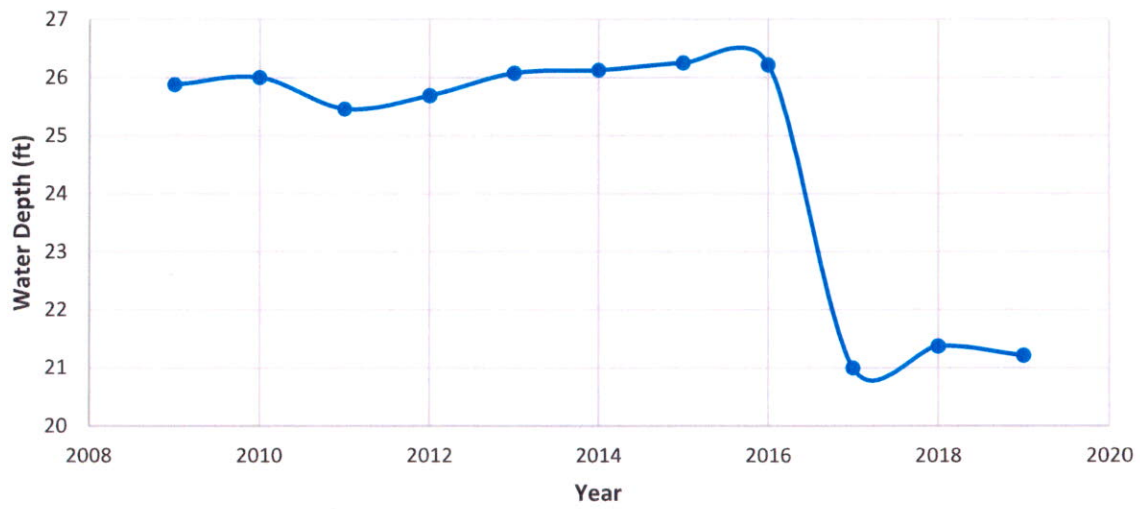
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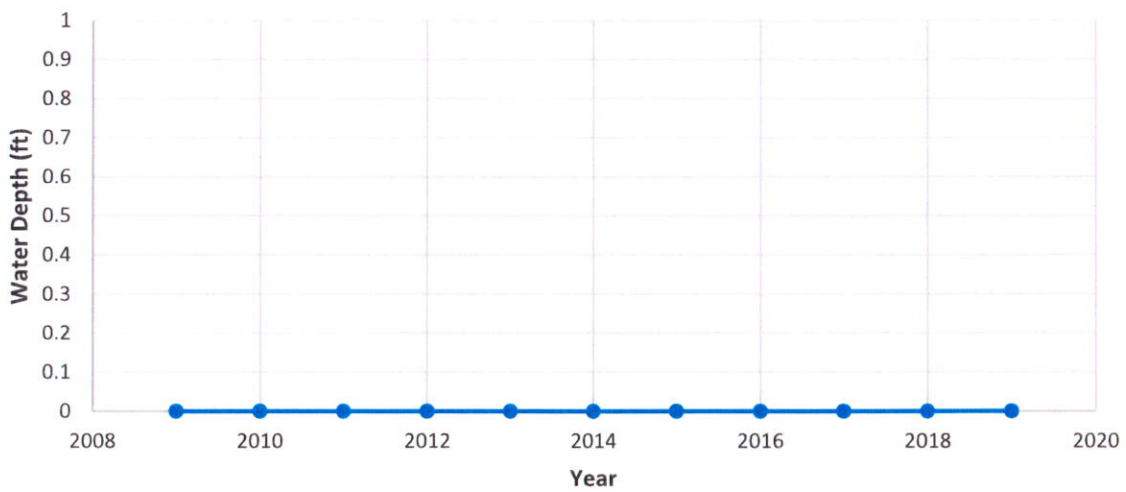
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RST Monitor Well No. 23 2009-2019



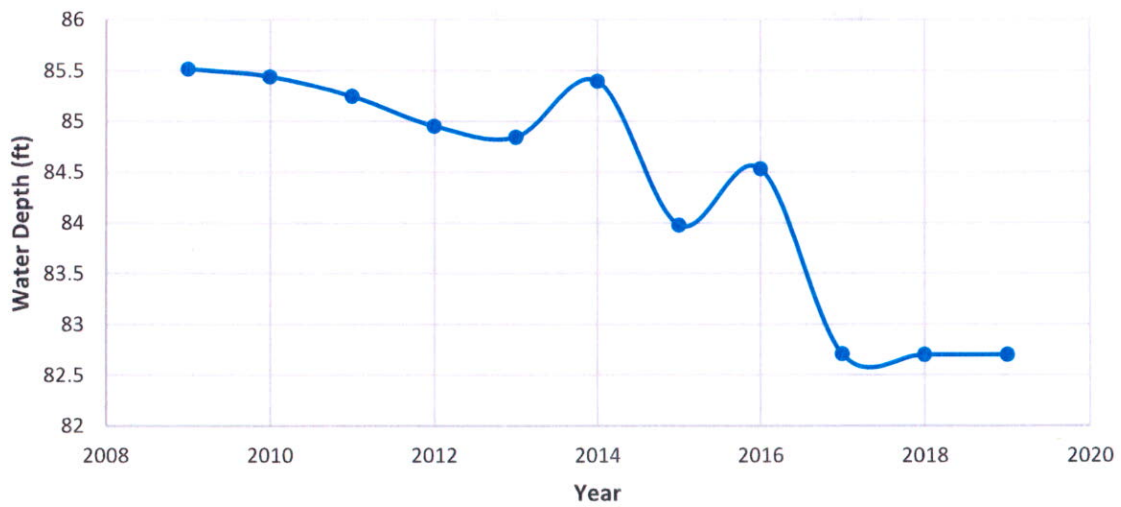
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RST Monitor Well No. 25 2009-2019



RST Monitor Well No. 26 2009-2019





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

File No. 2871-2

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME: Kara Walking

ADDRESS: 102 N. Ridge Rd, Valentine NE 69212

DATE: July 25, 2023

PHONE: 605-454-0389

RE: Property ownership and tribal membership

COMMENTS:

I called to get confirmation that the property was deeded as identified in a handwritten note submitted with the application and to determine whether the property owners, Kimberly and Deborah Marcus, were members of the tribe.

Ms. Walking indicated that the property is deeded and that Kimberly and Deborah are not tribal members. I told Ms. Walking we would proceed with the application.

Ron Duvall, Engineer III
SD DANR, Water Rights Program

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Wednesday, June 21, 2023 2:16 PM
To: walking@gpcom.net
Subject: Application for a Permit to Appropriate Water for Irrigation

Good afternoon,

I am in receipt of the Application for a Permit to Appropriate Water for irrigation in Todd County. I understand that you are managing the property for the Marcus.' To complete the application, the following is required:

- The application/license fee for irrigation of 135 acres \$ 1,050.00 (application fee \$850 plus inspection fee \$200)

Once I am in receipt of the application/license fee, I can start to process your application.

Thank you,

Rachel Rodriguez
DANR | Program Assistant
Rachel.Rodriguez@state.sd.us





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

June 21, 2022

Kimberly and Deborah Marcus
102 N. Ridge Rd
Valentine NE 69212

Dear Kimberly and Deborah:

I am in receipt of your Application for a Permit to Appropriate Water for irrigation in Todd County. I understand that the Walkings are managing the property. To complete the application, the following is required:

- The application/license fee for irrigation of 135 acres \$ 1,050.00 (application fee \$850 plus inspection fee \$200)

Once I am in receipt of the application/license fee, I can start to process the application.

Sincerely,

Rachel Rodriguez

Rachel Rodriguez
Water Rights Program
605 773-3352
rachel.rodriquez@state.sd.us



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2871-2, Kimberly and Deborah Marcus**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 2871-2, Kimberly and Deborah Marcus, 102 N Ridge Road, Valentine NE 69212.

The Chief Engineer is recommending APPROVAL of Application No. 2871-2 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 domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. The wells approved under Water Permit No. 2871-2 are located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled 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. 2871-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Eric Gronlund, Chief Engineer
August 28, 2023

Report to the Chief Engineer
On Water Permit Application No. 2871-2
Kimberly & Deborah Marcus

August 28, 2023

Water Permit Application No. 2871-2 proposes to divert water at a maximum instantaneous diversion rate of 1.78 cubic feet of water per second (cfs) from two wells to be completed into the Ogallala aquifer (approximately 260 feet deep) located near the approximate center of the NE $\frac{1}{4}$ of Section 15 for the irrigation of 135 acres located in the NE $\frac{1}{4}$ of Section 15; all in T36N-R30W. The site of interest is located in Todd County approximately 9 miles south of Rosebud, SD.

AQUIFER: Ogallala (OGLL)

HYDROGEOLOGY:

The Ogallala aquifer is encompassed within the High Plains aquifer (Filipovic, 2004 and 2011). The High Plains aquifer contains geologic units of late Tertiary and Quaternary age that are comprised of the Brule Formation, Arikaree Group, Ogallala Group, as well as other hydrologically connected alluvial, dune-sand, and valley-fill deposits (Gutentag et al., 1984). The Ogallala Group is composed of the Fort Randall, Ash Hollow, and Valentine Formations (Hammond, 1994; Filipovic, 2011; Martin et al., 2004). Within the High Plains aquifer system in South Dakota, the Ogallala aquifer is the uppermost, most readily available aquifer (Filipovic, 2011). The SD DANR-Water Rights Program and Water Management Board have historically considered the High Plains aquifer to be comprised of the Ogallala aquifer and the Arikaree aquifer to manage this regional water resource, and the two aquifers are treated as separate water sources (Water Rights, 2023c).

The Ogallala Group is comprised of gravel, fine to medium sand and sandstone, and poorly consolidated sand, silt, and clay that were deposited from eastward flowing braided streams (Gutentag et al., 1984; Martin et al., 2004). The Ogallala Group has a documented maximum cumulative thickness of approximately 700 feet (Gutentag et al., 1984). The Ogallala aquifer is generally under unconfined conditions but can be overlain by unconsolidated alluvium and eolian deposits (Filipovic, 2004 and 2011; Water Rights, 2023b and 2023d).

The Ogallala aquifer in South Dakota is split into two portions: the main body west of Ponca Creek, and the remnant body east of Ponca Creek (Filipovic, 2004; Martin et al., 2004). Ponca Creek has completely incised through the Ogallala aquifer along its channel. The proposed diversion points for this application are within the main body of the Ogallala aquifer (Martin et al., 2004). For the remainder of this report, references to the Ogallala aquifer specifically reference the main body of the Ogallala aquifer west of Ponca Creek in South Dakota.

No water well or test hole completion reports were submitted with Water Permit Application No. 2871-2. Water well completion reports on file with the DANR-Water Rights Program for wells completed into the Ogallala aquifer within approximately two miles of the proposed diversion points have saturated aquifer thicknesses ranging from approximately 40 to 150 feet, with the depth to the top of aquifer materials ranging from approximately 50 to 150 feet below the ground surface, and static water levels at well completion varying from approximately 50 to 150 feet below the ground surface (Water Rights, 2023d). The Ogallala aquifer is expected to be unconfined at the proposed diversion points based on the well completion reports on file for nearby wells completed into the aquifer and the lithologic logs on file for nearby observation wells (SDGS, 2023; Water Rights, 2023b, 2023c and 2023d).

South Dakota Codified Law (SDCL) 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 diversion point can be developed without unlawful impairment of existing domestic water uses and water rights, and that the proposed use is a beneficial use and in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board as defined by SDCL 46-2-9 and 46-2-11.” This report will address the availability of unappropriated water and the potential for unlawful impairment of existing domestic water uses and water rights within the Ogallala aquifer.

WATER AVAILABILITY:

Water Permit Application No. 2871-2 proposes to appropriate water from the Ogallala aquifer. The probability of unappropriated water being available from the 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. An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems.” The Ogallala aquifer is not older than or stratigraphically lower than the Greenhorn Formation (Fahrenbach et al., 2010), and the applicant’s proposed use is not for use in a water distribution system as defined by SDCL 46-1-6(17). Therefore, the average annual recharge and average annual withdrawal rates to and from the Ogallala aquifer must be considered.

The hydrologic budget completed in this analysis will exclude the water rights/permits not completed into the main body of the Ogallala aquifer. The wells authorized by Water Permit Nos. 2833-2 and 2834-2 are expected to be completed into relatively small sand and gravel deposits of Quaternary Eolian and Quaternary Terrace aquifers that have a significant hydrologic connection to the Ogallala aquifer. However, these deposits are geologically distinct from the Ogallala Group, do not directly overlie the Ogallala aquifer, and have subsequently been identified as independent formations from the Ogallala aquifer. Due to the nature of natural

discharge from the Ogallala aquifer flowing into and subsequently through these two particular deposits before discharging to the Keya Paha River, the estimated annual use by Water Permit Nos. 2833-2 and 2834-2 will be accounted for as Ogallala aquifer withdrawals. A more detailed discussion is available in Mathiowetz (2022). Additionally, Water Right No. 1260-2, which is labeled as withdrawing from the Arikaree aquifer, will be considered as completed into the Quaternary Eolian aquifer based on current lithologic information that was not available at the time the permit was issued and will also be added to the hydrologic budget of the Ogallala aquifer for the previously discussed reasons (Mathiowetz, 2022).

HYDROLOGIC BUDGET:

Recharge

Recharge to the Ogallala aquifer is primarily through the infiltration of precipitation (Filipovic, 2004 and 2011). Kolm and Case (1983) estimated a range of recharge rates for the High Plains aquifer using a two-dimensional, finite-difference model. Hedges and Burch (1985) used both base-flow recession and observation well data analysis to develop their recharge rate estimates to the Ogallala aquifer specifically. Cederberg (2021) cited a combination of sources to estimate the areal extent of the main body of the Ogallala aquifer to be approximately 1,005,360 acres in South Dakota. Table 1 lists the average annual recharge rate in acre-feet per year based on the source of the recharge rate and Cederberg's (2021) estimated areal extent of the main body of the Ogallala aquifer. Therefore, the average annual recharge rate to the Ogallala aquifer within the main body of the Ogallala Group in South Dakota ranges between approximately 108,914 to 284,852 acre-feet per year.

Table 1. Estimated average annual recharge rate to the main body of the Ogallala aquifer (Kolm and Case, 1983; Hedges and Burch 1985; Cederberg, 2021)

Estimated Avg. Annual Recharge Rate (inches/year)	Method	Source	Estimated Avg. Annual Recharge Rate (acre-feet/year)
1.3	Computer Model	Kolm and Case (1983)	108,914
1.8	Computer Model	Kolm and Case (1983)	150,804
1.88	Base-Flow Recession	Hedges and Burch (1985)	157,506
3.4	Observation Well Data	Hedges and Burch (1985)	284,852

Discharge

Discharge from the Ogallala aquifer is primarily through direct evapotranspiration, outflow to streams and rivers, outflow to adjacent and hydrologically connected aquifers, and well withdrawals (Filipovic, 2004 and 2011; Water Rights, 2023c and 2023d).

Currently, there are 178 state-issued water rights/permits authorized to withdraw water (including Water Right No. 1260-2), and five state-issued future use permits reserving 6,651 acre-feet per year from the entirety of the Ogallala aquifer (Water Rights, 2023c).

Water Right Nos. 475-2 and 1114-2 and Water Permit Nos. 2678-2 and 2679-2 no longer report annual water use because the land authorized for irrigation has been sold to a nearby tribe (Water Rights, 2023c). The status of irrigation water withdrawals by the tribe from the Ogallala aquifer is unknown. Thus, this discharge analysis addresses only 174 state-issued water rights/permits (including Water Right No. 1260-2) (144 irrigation and 30 non-irrigation), plus one pending application, and the five future use permits that are reserving water from the entirety of the Ogallala aquifer (Water Rights, 2023c). Within the main body of the Ogallala aquifer, of which the aquifers for Water Permit Nos. 2833-2 and 2834-2 are hydrologic extensions of, there are 153 water rights/permits (139 irrigation including Water Right No. 1260-2 and 14 non-irrigation) along with three future use permits reserving 5,986 acre-feet per year that are authorized to withdraw or reserve water from the main body of the Ogallala aquifer (Water Rights, 2023c). For the purpose of estimating average annual withdrawals, the future use permits are assumed to be fully developable for a total of 5,986 acre-feet per year.

Table 2 summarizes the 14 non-irrigation water rights/permits authorized to appropriate water from the main body of the Ogallala aquifer, plus the three future use permits reserving water from the main body of the Ogallala aquifer, with the estimated annual use for each water right/permit as determined by their limiting diversion rate or annual volume. Historically, average water use by non-irrigation appropriations limited by an instantaneous diversion rate have been assumed to be pumping 60% of full time at the respective permitted diversion rate. Water rights/permits limited by an annual volume are assumed to withdraw their entire respective annual volume limitation. This is a standard method used by the DANR-Water Rights Program for estimating annual withdrawals by non-irrigation appropriations from an aquifer and is likely an overestimation of average annual withdrawals (Water Rights, 2023c). Overall, the estimated average annual withdrawal rate for the non-irrigation water rights/permits (including future use reservations) within the main body of the Ogallala aquifer is approximately 12,257 acre-feet per year (Table 2) (Water Rights, 2023c).

Table 2. Estimated annual use for the non-irrigation water rights/permits authorized to divert water from the main body of the Ogallala aquifer, and the future use permits reserving water (Water Rights, 2023c)

Permit No.	Name	County	Status	Use	Authorized Diversion Rate (cfs)	Authorized Annual Volume (acre-feet/year)	Estimated Use (acre-feet/year)
521-2	City of Winner	Tripp	LC	MUN	4.11		1785.4
551-2	City of Winner	Tripp	FU	MUN	2.44	1,568	1,568
632-2	City of Colome	Tripp	LC	MUN	0.22		95.6
882-2	City of Winner	Tripp	FU	MUN	n/a		0
976-2	City of Colome	Tripp	LC	MUN	0.33		143.4
1038-2	City of Winner	Tripp	LC	MUN	0.87		377.9
1285-2	City of Winner	Tripp	LC	MUN	0.67		291.0
1286-2	City of Winner	Tripp	LC	MUN	0.72		312.8
1416-2	City of Winner	Tripp	LC	MUN	0.69		299.7
1942-2	Littau & Massa Et Al	Tripp	LC	DOM	0.09		39.1
2293-2	Tripp County Water User District	Tripp	LC	RWS	3.88		1685.5
2455-2	Martin J Vanderploeg	Bennett	LC	FWP	0.045		19.5
2505-2	Lakeview Christian Reform	Todd	LC	INS	0.033		14.3
2515-2	Tripp County Water User District	Tripp	LC	RWS	2.68	1,200	1,200
2621-2	Tuthill Community Presbyterian Church	Bennett	LC	INS	0.02		8.7
2804-2	Dougherty Cattle Company Inc	Tripp	PE	COM	0.13	16.12	16.12
2849-2	Tripp County Water User District	Tripp	FU	RWS	n/a	4,400	4,400
LC: Licensed Water Right; PE: Water Permit; FU: Future Use Reservation; COM: Commercial						TOTAL:	12,257
DOM: Domestic; FWP: Fish and Wildlife Propagation; INS: Institutional; MUN: Municipal; RWS: Rural Water System							

Currently, there are 144 irrigation water rights/permits authorized to appropriate water from the Ogallala aquifer, with 139 (including Water Right No. 1260-2) irrigation water rights/permits authorized to appropriate water from the main body of the Ogallala aquifer (Water Rights, 2023c). Irrigation water rights/permits have been typically required to report their annual usage on an irrigation questionnaire since 1979. The estimated average annual withdrawal rate for the irrigation water rights/permits within the main body of the Ogallala aquifer that have reported over the period of record (1982 to 2021) is approximately 19,212 acre-feet per year (Table 3) (Water Rights, 2023a). To reflect the current development of irrigation water rights/permits more accurately, the average annual withdrawal rate for irrigation appropriations from 2012 to 2021 is approximately 23,726 acre-feet per year (Table 3) (Water Rights, 2023a).

Table 3 only lists 131 water rights/permits as reporting as Water Permit Nos. 2718A-2, 2822-2, 2833-2, 2834-2, 2836-2, 2847-2, 2866-2, and 2868-2 (approved in 2021, 2022, or 2023) collectively authorize the irrigation of 1,094 acres and have not submitted an irrigation questionnaire at this time (still within their construction periods, except for Water Permit No. 2718A-2, which authorizes a change of acres) (Water Rights, 2023a and 2023c). Generally, irrigators in South Dakota apply less than one foot of water per acre per year. However, to account for the fluctuation in wet and dry cycles from year to year, the one foot of water per acre per year application rate will be used to somewhat overestimate the annual withdrawal rate for these irrigation water permits. Therefore, the estimated average annual withdrawal rate for the irrigation water permits approved in 2021 to 2023 (and not included as listed as reporting on Table 3) is approximately 1,094 acre-feet per year (Water Rights, 2023c). The collective

estimated average annual withdrawal rate for the irrigation appropriations from 2012 to 2021 (23,726 acre-feet/year), plus the estimated average annual withdrawal rate for the irrigation water rights/permits approved in 2021 to 2023 (1,094 acre-feet/year), is approximately 24,820 acre-feet/year (Water Rights, 2023a and 2023c).

There are domestic wells completed into the Ogallala aquifer that do not require a water right/permit, so the withdrawal amount from those wells is unknown (Water Rights, 2023d). Since the introduction of rural water systems, some domestic wells are likely no longer in use or are not being used as primary water sources. Due to their relatively low diversion rates, withdrawals from domestic wells are not considered to be a significant portion of the hydrologic budget. Therefore, the quantity of water withdrawn by domestic wells is estimated to be negligible to the hydrologic budget for the Ogallala aquifer.

Data was compiled for selected irrigation and municipal wells operated by the Rosebud Sioux Tribe (Valseth and Driscoll, 2020). However, it is likely not all municipal and irrigation wells that are operated by the tribe or on tribal lands were included. Furthermore, many of the selected wells that were reviewed do not include well depth or aquifer assignment to determine if the wells are completed into the Ogallala aquifer. The data does not include an estimated annual volume pumped by each well. The data available is only estimated mean production (pumping rate). Therefore, there is not sufficient information available to make a reasonably accurate estimate of average annual water use from these wells. Overall, the withdrawal rate from the Ogallala aquifer by tribe members on tribal trust land is not known; however, that use on tribal trust lands, even though unknown, is still expected to be represented in the observation well data (Water Rights, 2023b).

Hydrologic Budget Summary

The estimated average annual recharge rate to the main body of the Ogallala aquifer in South Dakota ranges between approximately 108,914 to 284,852 acre-feet per year. The estimated average annual withdrawal rate from the main body of the Ogallala aquifer from state-issued water rights/permits totals approximately 37,212 acre-feet per year (non-irrigation (including future use): 12,257 acre-feet/year; irrigation (average from 2012 to 2021, plus Nos. 2718A-2, 2822-2, 2833-2, 2834-2, 2836-2, 2847-2, 2866-2, and 2868-2): 24,820 acre-feet/year; Water Permit Application No. 2871-2 (if approved, assuming one-foot per authorized acre): 135 acre-feet/year).

Additionally, an unknown amount of water may be withdrawn from the Ogallala aquifer by tribe members on tribal trust land. The estimated average annual withdrawal rate based on the state-issued water rights/permits currently authorized to appropriate water from the Ogallala aquifer is less than 30% of the lowest estimated average annual recharge rate to the aquifer.

Based on the hydrologic budget, there is a reasonable probability unappropriated water is available from the main body of the Ogallala aquifer for the proposed appropriation.

Table 3. Reported historic irrigation use from the main body of the Ogallala aquifer (Water Rights, 2023a)

Year	No. of Permits Reporting	Reported Pumpage (acre-feet)
1982	91	9,217.4
1983	98	10,172
1984	106	13,298.4
1985	104	18,583.5
1986	100	12,997.6
1987	99	12,397
1988	98	16,199.3
1989	99	27,326.4
1990	103	16,501.6
1991	104	16,074.5
1992	104	11,921
1993	102	11,151.9
1994	105	16,705.3
1995	103	14,252.8
1996	106	21,168
1997	107	18,661
1998	105	13,857.9
1999	106	13,709.5
2000	107	16,119
2001	106	17,989.9
2002	101	24,179.8
2003	103	22,039.1
2004	105	23,868
2005	106	20,054.7
2006	109	25,657.1
2007	111	24,010.9
2008	112	24,483.6
2009	112	22,173.6
2010	111	21,209.1
2011	112	15,235.4
2012	114	33,144.5
2013	124	26,492.3
2014	131	22,126.7
2015	131	23,993.9
2016	134	23,297.6
2017	135	27,319.3
2018	132	19,384.3
2019	131	11,464.1
2020	131	22,058.8
2021	131	27,976.4
Min	91	9,217.4
Max	135	33,144.5
Avg	111	19,212
Avg 2012-2021	129	23,726

OBSERVATION WELL DATA:

Administrative Rule of South Dakota (ARSD) 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 of the aquifer.

Observation wells provide data on how the aquifer reacts to regional climatic conditions and local pumping. The DANR-Water Rights Program monitors 76 observation wells completed into the Ogallala aquifer, with 69 observation wells being completed into the main body of the Ogallala aquifer (Water Rights, 2023b). The four closest observation wells to the proposed diversion points are TD-76E (approximately 1.3 miles northeast), TD-76C (approximately 3.8 miles northeast), TD-90A (approximately 4.2 miles east), and TD-#08 (approximately 4.3 miles southeast) (as shown in Figure 5) (Water Rights, 2023b). The hydrographs for these observation wells are displayed in Figures 1 to 4 (Water Rights, 2023b). The data points utilized to construct the hydrographs are measurements of the static water level in the observation wells from the top of the well casing.

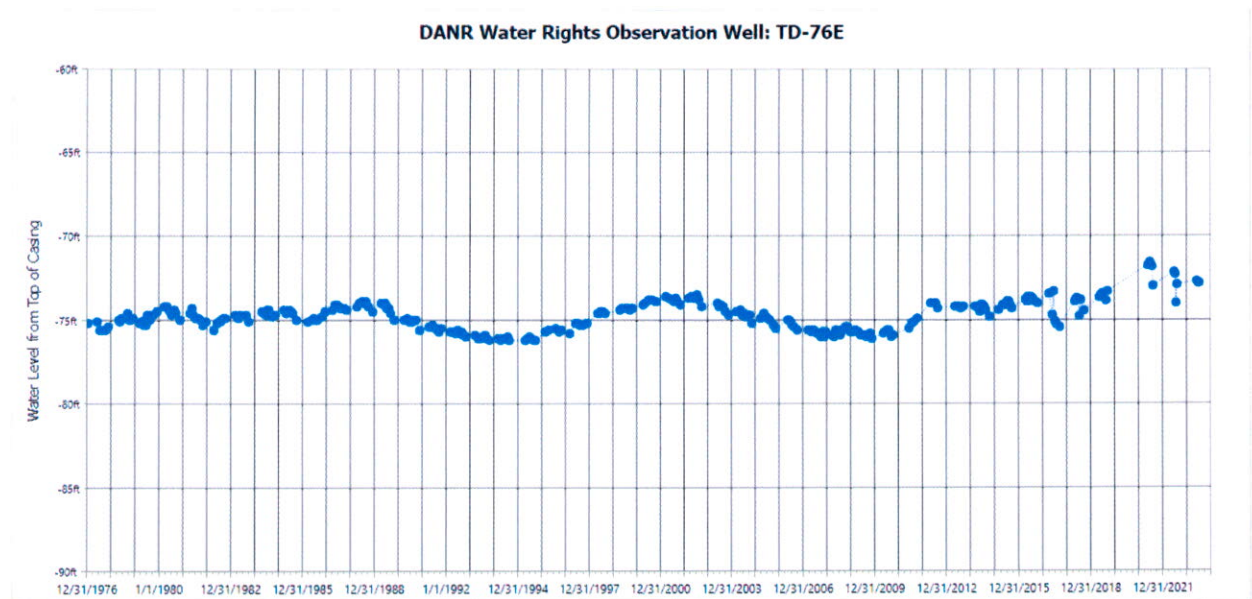


Figure 1. Hydrograph for observation well TD-76E (Water Rights, 2023b)

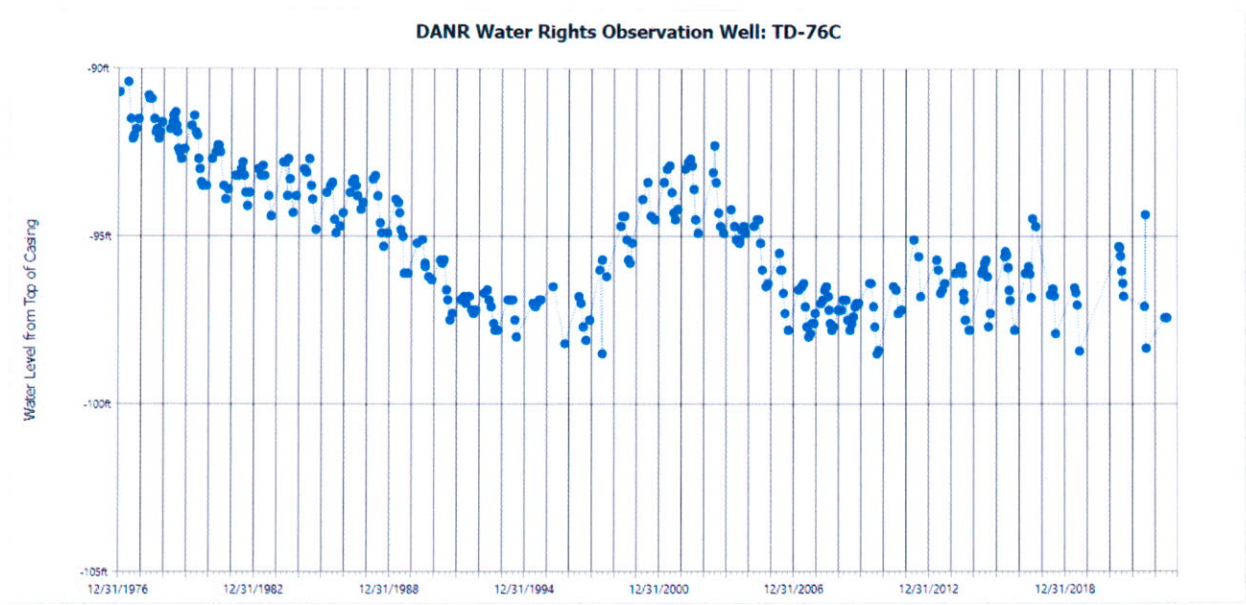


Figure 2. Hydrograph for observation well TD-76C (Water Rights, 2023b)

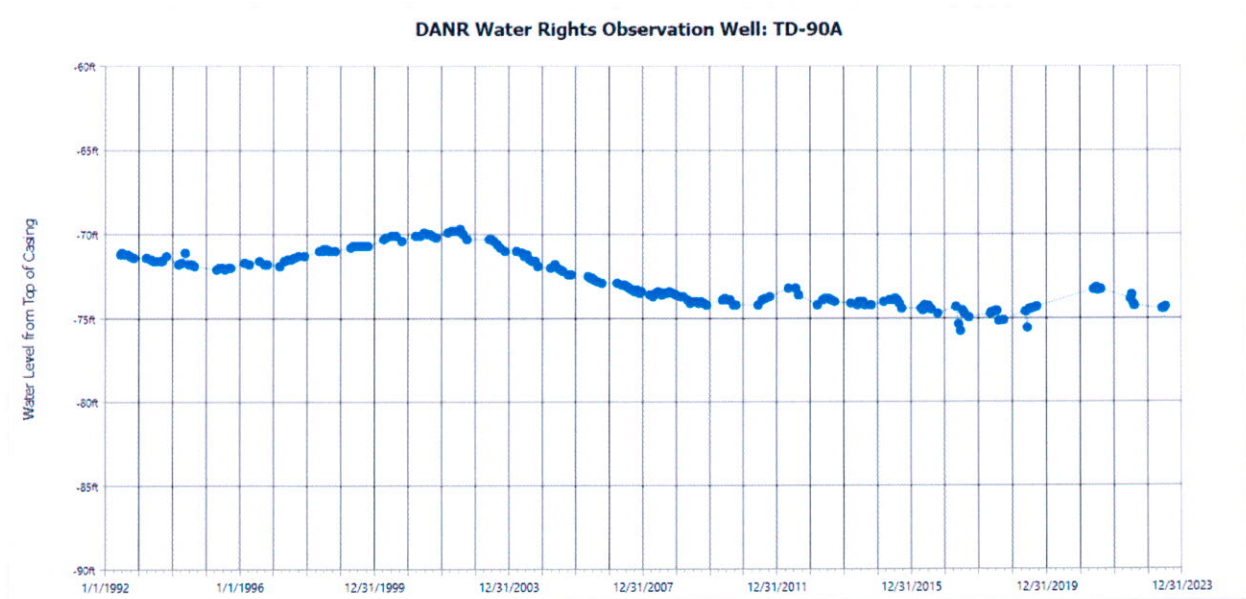


Figure 3. Hydrograph for observation well TD-90A (Water Rights, 2023b)

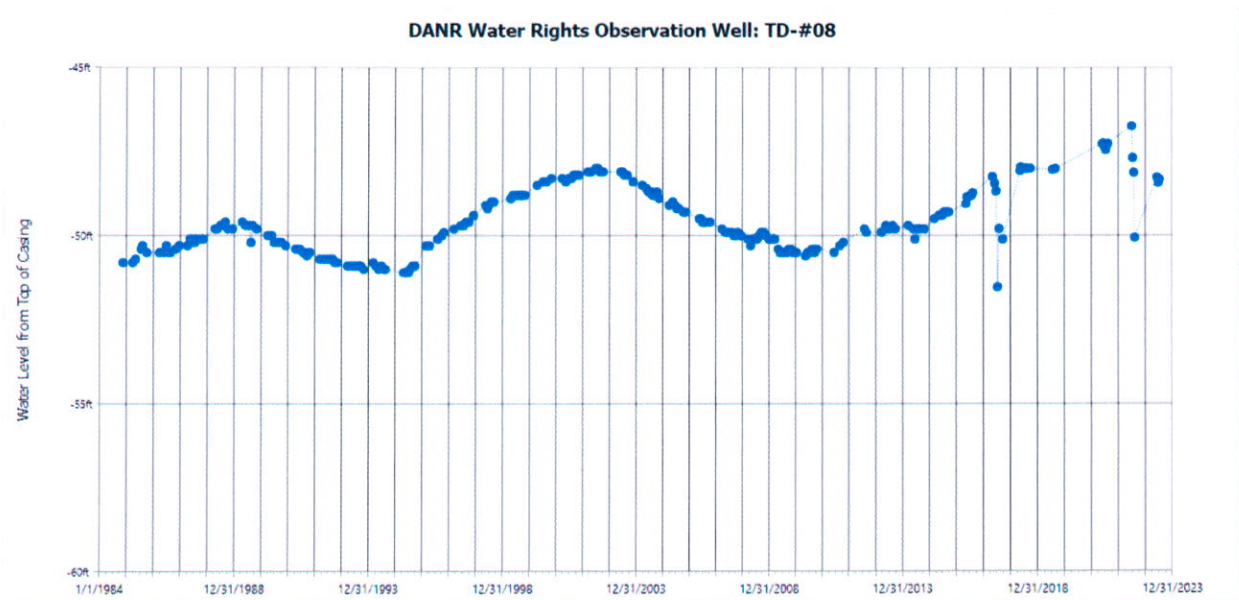


Figure 4. Hydrograph for observation well TD-#08 (Water Rights, 2023b)

The hydrographs for these observation wells were compared to the hydrographs for the other observations wells completed into the Ogallala aquifer and each displayed a generally similar trend as shown on the hydrographs displayed in Figures 1 to 4 (Water Rights, 2023b). The hydrographs for the observation wells completed into the main body of the Ogallala aquifer display stable to slightly increasing water levels over their respective periods of record, except in areas of significant recent development such as Bennett County (Water Rights, 2023b). In the areas of significant recent development, some hydrographs show a slight recent decline in water levels (Water Rights, 2023b). This is likely representative of the potentiometric surface of the aquifer equilibrating to new and increased pumping and not indicative of over appropriation.

The hydrographs for observation wells completed into the main body of the Ogallala aquifer indicate that the aquifer responds well to climatic conditions because water levels are rising during wetter periods and declining to a stable water level during drier periods. Additionally, the water levels in the observation wells display that the amount of recharge to and natural discharge from the aquifer greatly exceeds pumping with the aquifer returning to pre-pumping conditions between irrigation seasons. Aquifer recovery indicates that climatic conditions and therefore, the effects of recharge to and natural discharges from the aquifer govern the long-term fluctuations of waters levels in the aquifer rather than the impacts of pumping from the main body of the Ogallala aquifer. By recognizing that both recharge to and natural discharge from an aquifer can be captured for pumping, the observation well hydrographs demonstrate unappropriated water is available for the proposed appropriation.

POTENTIAL FOR UNLAWFUL IMPAIRMENT OF EXISTING WATER RIGHTS:

Currently, there are 174 water rights/permits (not including Right and Permit Nos. 475-2, 1114-2, 2678-2 and 2679-2) that are authorized to withdraw water from the entirety of the Ogallala aquifer and five future use permits reserving water (Water Rights, 2023c). Within the main body of the Ogallala aquifer, there are currently 153 water rights/permits authorized to withdraw water, and three future use permits reserving water (Water Rights, 2023c). The closest water rights/permits to the proposed diversion point are Water Right No. 2700-2 and Water Permit No. 2783-2, both held by Vernon & Marlys Walking (Water Rights, 2023c). The diversion point for Water Right No. 2700-2 and Water Permit No. 2783-2 is located approximately 0.8 miles northeast of the proposed diversion points for this application (Table 4) (Figure 5) (Water Rights, 2023c).

There are domestic wells on file with the DANR-Water Rights Program that are completed into the Ogallala aquifer, with the closest domestic well on file (not held by the applicant) located approximately one mile northwest of the proposed diversion points (Water Rights, 2023d). There could potentially be other domestic wells completed into the Ogallala aquifer near the proposed diversion points that are not on file with the DANR-Water Rights Program. The location of the domestic wells in the well completion report database maintained by the Water Rights Program is based on the location on the report listed by the driller at the time of well completion.

The Ogallala aquifer is generally unconfined but can be locally confined (Filipovic, 2004 and 2011; Water Rights, 2023d). The Ogallala aquifer is expected to be unconfined in the area of the proposed diversion points based on the water well completion reports on file, and the lithologic logs on file for nearby observation wells (SDGS, 2023; Water Rights, 2023b, 2023c and 2023d). Drawdown created by pumping a well generally does not extend far from the pumped well in an unconfined aquifer; however, in a confined aquifer, drawdown from pumping could extend a distance from the diversion point. The exact drawdown behavior of a well cannot be known without an aquifer performance test.

Near the proposed diversion points, the Ogallala aquifer has a saturated thickness ranging from approximately 40 to 150 feet (Water Rights, 2023d). This would generally allow for enough thickness for a pump inlet to be placed 20 feet below the top of the aquifer, which is required for the well to be considered adequate. An adequate well is defined by 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.” Any drawdown as a result of the proposed diversion is not expected to unlawfully impair nearby adequate wells. In Bennett County, there have been no substantiated complaints submitted to the DANR-Water Rights Program regarding well interference for adequate wells completed into the Ogallala aquifer (Water Rights, 2023d).

Table 4. Water rights/permits authorized to withdraw water from the main body of the Ogallala aquifer within approximately five miles of the proposed diversion points, as shown in Figure 5 (Water Rights, 2023c)

Permit No.	Name	Status	Use	Authorized Acres if IRR	Authorized Diversion Rate (cfs)
1036-2	Ronald McCoy	LC	IRR	110.6	1.5
1039-2	Ronald McCoy	LC	IRR	130.4	1.86
1044-2	Conrad Schelhaas	LC	IRR	135	1.93
1186-2	Dan Tinant	LC	IRR	140.7	1.45
1272A-2	Danielski Harvesting & Farming	LC	IRR	125	1.8
1315-2	John L Markus	LC	IRR	131	1.6
1513-2	Jerry Jacobson	LC	IRR	259.9	3
1548-2	John L Markus	LC	IRR	129.2	1.85
1860-2	Gunnink Farm Inc	LC	IRR	228	3.1
1884-2	Clyde E Brewer	LC	IRR	290	2.71
1949-2	John L Markus	LC	IRR	132.7	1.9
2096-2	Mission Farms Inc	LC	IRR	132	1.78
2407-2	Danielski Harvesting & Farming LLC	LC	IRR	130	1.67
2434-2	John I Markus	LC	IRR	130	1.67
2471-2	John I Markus	LC	IRR	130	1.78
2533-2	Edward Hill	LC	IRR	132	1.57
2660-2	Mission Farms Inc	LC	IRR	135	1.78
2661-2	MLT Investments	LC	IRR	140	1.78
2662-2	MLT Investments	LC	IRR	140	1.78
2700-2	Vernon & Marlys Walking	LC	IRR	136	1.56
2783-2	Vernon & Marlys Walking	PE	IRR	40	0.0
LC: Licensed Water Right; PE: Water Permit; IRR: Irrigation					

When considering the generally unconfined nature of the aquifer, the saturated thickness of the Ogallala aquifer near the proposed diversion points, and the lack of well interference complaints from the Ogallala aquifer in the area, any drawdown created from the proposed diversion is not expected to cause an unlawful impairment on existing water right/permit holders or domestic users with adequate wells. Therefore, there is a reasonable probability that any interference from the proposed diversion by Water Permit Application No. 2871-2 will not impose unlawful impairments on existing users with adequate wells.

CONCLUSIONS:

1. Water Permit Application No. 2871-2 proposes to divert water at a maximum instantaneous diversion rate of 1.78 cfs from two wells to be completed into the Ogallala aquifer (approximately 260 feet deep) for the irrigation of 135 acres. The site of interest is located in Todd County approximately 9 miles south of Rosebud, SD.
2. Based on observation well data and the hydrologic budget, there is a reasonable probability that unappropriated water is available from the main body of the Ogallala aquifer to supply the proposed appropriation.
3. There is a reasonable probability that the proposed diversion by Water Permit Application No. 2871-2 will not unlawfully impair adequate wells for existing water rights/permits and domestic users.

Nakaila Steen

Nakaila Steen
Natural Resources Engineer II
SD DANR - Water Rights Program

Reviewed by:

Adam Mathiowetz

Adam Mathiowetz, PE
Natural Resources Engineer IV
SD DANR - Water Rights Program

References

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SD.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

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

August 30, 2023

Kara Walkling
26601 299th Avenue
Crookston NE 69212

Dear Ms. Walkling:

Water Permit Application No. 2871-2 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 County Line printed in Mission SD (Ph # 605 856-4469) and the Rapid City Journal printed in Rapid City SD (see attachment for contact number). You will need to contact the newspapers and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application 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 newspapers to authorize publication of your Notice and to arrange for payment. Early contact with the papers can eliminate delays. Upon receiving authorization from you, the publishers have been instructed to publish your notice. The newspapers have 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,

Rachel Rodriguez

Rachel Rodriguez
Water Rights Program
(605) 773-3352

Enclosures

cc: Kimberly & Deborah Marcus

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

Instruction to Newspaper - Publish the Notice on September 13 or 14, 2023. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 2871-2 to Appropriate Water

Notice is given that Kimberly and Deborah Marcus, 102 N. Ridge Road, Valentine NE 69212 has filed an application for a water permit to appropriate 1.78 cubic feet of water per second from up to two wells to be completed into the Ogallala Aquifer (approximately 260 feet deep) located in the approximate center of the NE 1/4 Section 15 for irrigation of 135 acres located in the NE 1/4 Section 15; all in T36N-30W. This site is located approximately 9 miles south of Rosebud SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2871-2 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by September 25, 2023.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by September 25, 2023.

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

Published once at the total approximate cost of__



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

August 28, 2023

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

Dear Mr. Huq:

Please find enclosed the staff report, recommendation and publication notice for water permit applications filed by Kimberly and Deborah Marcus in Todd County. Public notice is to be published in the Todd County Tribune and Rapid City Journal.

This information is being sent as DANR's ongoing 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

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Monday, August 28, 2023 1:55 PM
To: tribnews@gwtc.net
Subject: 2871-2 Kimberly & Deborah Marcus - Public Notice
Attachments: 2871-2 public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on September 13, 2023, in the Todd County Tribune.

The Marcus', c/o Kara Walkling, 26601 299th Avenue, Crookston NE 69212, (605 454-0389) 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 Ave, Pierre SD 57501.

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

Thank you,

Rachel Rodriguez
DANR | Program Assistant
Rachel.Rodriguez@state.sd.us



Rodriguez, Rachel

From: RCY Legals <legals@rapidcityjournal.com>
Sent: Wednesday, August 30, 2023 8:43 AM
To: Rodriguez, Rachel
Subject: RE: [EXT] 2871-2 Kimberly & Deborah Marcus - Public Notice

Thank you Rachel I will call for payment

Shawn Killinger
Legal Advertising
Bismarck Tribune and Mandan News, Casper Star Tribune, Rapid City Journal and Chadron Record
307-266-0554
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cas-legals@trib.com Casper Star Tribune
legals@rapidcityjournal.com Rapid City Journal
legals.chadron@lee.net Chadron Record



From: Rodriguez, Rachel [mailto:Rachel.Rodriguez@state.sd.us]
Sent: Wednesday, August 30, 2023 7:23 AM
To: RCY Legals <legals@rapidcityjournal.com>
Subject: RE: 2871-2 Kimberly & Deborah Marcus - Public Notice

This Message Is From an External Sender

This message came from outside your organization.

Good morning Shawn,

Reviewed and confirmed.

Thank you,

Rachel Rodriguez
DANR | Program Assistant
Rachel.Rodriguez@state.sd.us



From: RCY Legals <legals@rapidcityjournal.com>
Sent: Tuesday, August 29, 2023 6:19 PM

Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Monday, August 28, 2023 1:57 PM
To: RCY Legals
Subject: 2871-2 Kimberly & Deborah Marcus - Public Notice
Attachments: 2871-2 public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on September 14, 2023.

The Marcus', c/o Kara Walkling, 26601 299th Avenue, Crookston NE 69212, (605 454-0389) 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 Ave, Pierre SD 57501.

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

Thank you,

Rachel Rodriguez
DANR | Program Assistant
Rachel.Rodriguez@state.sd.us



*** Proof of Publication ***

STATE OF INDIANA)

County of Lake)

SS:

RECEIVED

SEP 25 2023

OFFICE OF
WATER

S.D. DANR - GROUND WATER

523 E CAPITOL AVE

PIERRE SD 57501

ORDER NUMBER 59672

I, Lanette Brazil, being
duly sworn, upon his/her oath says: That he/she is now and was at all
time hereinafter mentioned, a clerk of the RAPID CITY JOURNAL, a
corporation of Rapid City, South Dakota, a legal and daily newspaper
printed and published in Rapid City, in said County of Pennington, and
has full and personal knowledge of all the facts herein stated as
follows: that said newspaper is and at all of the times herein
mentioned has been a legal and daily newspaper with a bonafide paid
circulation of at least Two Hundred copies daily, and has been printed
and published for at least one year prior to the first date of the
published notice.

This affidavit is a true and corrected copy of notice which appeared in
said newspaper on the following dates:

9-14-23

Lanette Brazil

Section: Legal

Category: 0072 Public Notices

PUBLISHED ON: 09/14/2023

TOTAL AD COST: 89.69

FILED ON: 9/14/2023

Subscribed and sworn to before me this 14 day of

September, 2023.

Dawn Renee Heili Notary Public

My commission expires

_____, 20____



DAWN RENEE HEILI
Commission Number: 696125
My Commission Expires
01/31/25

**NOTICE OF APPLICATION NO.
2871-2 to Appropriate Water**

Notice is given that Kimberly and Deborah Marcus, 102 N. Ridge Road, Valentine NE 69212 has filed an application for a water permit to appropriate 1.78 cubic feet of water per second from up to two wells to be completed into the Ogallala Aquifer (approximately 260 feet deep) located in the approximate center of the NE 1/4 Section 15 for irrigation of 135 acres located in the NE 1/4 Section 15; all in T36N-30W. This site is located approximately 9 miles south of Rosebud SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends AP-PROVAL of Application No. 2871-2 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duval for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by September 25, 2023.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by September 25, 2023.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the rec-

*** Proof of Publication ***

ommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

(Published September 14, 2023 for a total approximate cost of \$89.69 and may be viewed for free at www.sdpublishnotices.com)
Legal No: 59672

DENR

RECEIVED

SEP 18 2023

Affidavit of Publication

State of South Dakota

County of Todd

OFFICE OF
WATER

Taylor Risse, being, first duly sworn, on oath, says: That he/she is an employee of Scherer Publishing, LLC, 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:

September 13, 2023

That the full amount of the fee charged for the publication of the attached public notice, **\$48.91** 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 13 day of September, 2023.

Mandy K. Scherer
Notary Public

My Commission Expires
December 9, 2027



Legal Notices

Notice of Adjudicatory Hearing

State of South Dakota) In Circuit Court
County of Brown) JSS Fifth Judicial Circuit

The People of the State of South Dakota) A&N 23-085
Dakota in the Interest of)
T.A. and A.A., Minor Children,) Notice of
and Concerning,) Adjudicatory Hearing
Morgan Archambault and Thomas)
Antoine, Respondents) (As to Respondent Father)

To: Thomas Antoine
Please take notice and be advised that the above-entitled matter has been scheduled for an ADJUDICATORY HEARING on the 16th day of October, 2023, at the hour of 9:00 a.m. - 10:00 a.m. of said day, before the Honorable Circuit Court Judge Tony Porra presiding, at the Brown County Courthouse, Aberdeen, South Dakota.
Dated this 5 day of September, 2023.

/s/ Karla Nelson
Karla Nelson,
Deputy Brown County States Attorney
Published once at the total approximate cost of \$25.19
and can be viewed free of charge at www.adpublicnotices.com.
Published: September 13, 2023

Request for Bids

The Sicangu Lakota Oyate Head Start/Early Head Start Program is accepting sealed bids beginning September 4, 2023 at 8:00 a.m. and ending September 15, 2023 at 5:00 p.m. CST. Bids will be opened on September 18, 2023 at 10:00 a.m. CST at the RST TECRO Office in Rosebud, S.D.

RST# 23-73 Removal and reinstall small playground structure from the Billy Mills Head Start Center 401 S. 1st St. to the New Parmelee Head Start Center 403 S. First St. All labor and material cost to be included.

TECRO Ordinance No. 86-03 for Indian Preference in the selection process will be adhered to. Bids must be submitted by 5:00 p.m. CST. Contractors who do not possess a valid business license must contact the RST Revenue Department at 747-5045.

Rosebud Sioux Tribe has the right to reject any or all bids. Sealed bids should be submitted in a sealed envelope clearly marked (RST Bid#) on the front of envelope. Fail to mark envelope will result in a no bid and will be mailed back to sender. Rosebud Sioux Tribe will not accept email, fax or telephone bids.

For further information contact Paulette Iyotte, Finance Manager at Sicangu Lakota Oyate Head Start/Early Head Start Program, (605)747-2391 ext. 207 Monday thru Friday from 8 a.m. to 5 p.m. Sealed bids can be mailed to Rosebud Sioux Tribe Treasurer's Office, Attn: Stephen Denoyer III, RST Treasurer, 11 Legion Avenue, Rosebud, South Dakota 57570
Published twice at the total approximate cost of \$40.61
and can be viewed free of charge at www.adpublicnotices.com.
Published: September 6, 13, 2023

Request for Bids

Rosebud Sioux Tribe
RFP 2023-23-70
Request for Proposal for Engineering Services for the BIA 1 and BIA 9 Intersection Improvement Study
Project: BIA 1 and BIA 9 Intersection Improvement Study
Less than 1 mile
Owner: Rosebud Sioux Tribe
P.O. Box 430
Rosebud, SD 57570
Director: Ma. Lynda Douville
Rosebud Sioux Tribe Transportation Program
(605) 856-2944

PROJECT OVERVIEW
The Rosebud Sioux Tribe is seeking a highly qualified professional engineering team with appropriate expertise, innovative approaches and multi-disciplinary team of engineers to develop an extensive report that would include traffic data collection and analysis, motorized and non-motorized facilities needs analysis, traffic signal and turn lane analysis, safety analysis, and traffic operations analysis and recommendations that will help determine the best solution to address the identified safety concerns present at the BIA 1 and BIA 9 intersection.

PROJECT
This project is located on the Rosebud Sioux Tribe (RST) Reservation and located in Rosebud. The project limit is the intersection of BIA 1 and BIA 9, including 1200 feet on all intersection approaches. This intersection poses safety risks for motorists and non-motorist. The intersection has sight distance issues due to the shared use path and its separation from BIA 1, this causes vehicles on BIA 9 to stop 15 to 20 feet back from the intersection to allow pedestrian and non-motorized traffic to cross then creep forward into the crosswalk to see if there is oncoming traffic. This is documented in the Tribal Transportation Safety Plan and the Road Safety Audit. The RST Police Department has an established Indian Highway Safety Program with a data clerk in which to acquire incident/accident data from.

The recommended intersection improvement study is expected to determine an efficient, safe and sustainable approach to provide multimodal movement through this intersection for Tribal residents and visitors for the next 30 years.

TECRO FEE
Include 4.5 percent TECRO fee in proposal.

PROPOSALS
Submit 10 bound proposals marked RFP No.23-70 "BIA 1 and BIA 9 Intersection Improvement Study". Please include a company narrative, completed projects and identified Engineer(s) with years of experience and state certification. Proposals will be received and accepted until 5:00 p.m. (CST) - September 28, 2023. Proposals received after this time will not be accepted. This public open of the RFP's will be at 2:00 p.m. on Friday, September 29, 2023 at the TECRO Office.

Proposals may be delivered or mail to: Stephen DeNoyer III, RST Treasurer
11 Legion Avenue
P.O. Box 430
ATTN: Stephen DeNoyer III, Treasurer
Rosebud, SD 57570
605-747-2381

INDIAN PREFERENCE AND TECRO
Per the TECRO ordinance No. 86-03, the Rosebud Sioux Tribe recognizes Indian preference. Indian enterprises or Indian organizations must pre-qualify for Indian preference by submitting evidence of Indian ownership to the TECRO office. Muriel Fast Horse, Director, TECRO, 605-747-2322.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
All potential bidders shall attach the document Debarment, Suspension, Ineligibility and Voluntary Exclusion. This form verifies if their business has/had not been debarred, suspended, ineligible, or voluntarily excluded from conducting services.

Tribal Business License
Interested parties may obtain a business license pursuant to tribal law & Order Code of Title 11 - Tribal Tax Code. Contact the Revenue Office for Whitney Meek, Director, at (605) 747-5045.

CONTACT INFORMATION
Please direct all questions to Lynda Douville, Director, RST Transportation Program, 605-856-2944, ext. 100.
Published five times at the total approximate cost of \$253.15
and can be viewed free of charge at www.adpublicnotices.com.
Published: August 30, September 6, 13, 20, 27, 2023

Summons

Rosebud Sioux Tribal Court) In Children's Court
Rosebud Indian Reservation) JSS
Rosebud, South Dakota)

The People of the Rosebud Sioux) Docket #CC 23-43/44
Tribe in the Interest of:)
S.S. and D.S.,) Summons
CHILDREN)
Minor child(ren) and concerning,)

TO: UNKNOWN FATHER,
PLEASE TAKE NOTICE that the Hearing on the Petition for a ADJUDICATORY HEARING concerning the above named minor(s) has been set for the 14TH Day of SEPTEMBER, 2023 at 10:00 A.M. in the Rosebud Sioux Children's Court House at the Wanbli Wiconi Tipi Wellness and Renewal Center (JDC) at Ring Thunder, South Dakota. This is your official notice of said hearing.
Dated This 27th Day Of July, 2023

By The Court:
Janet Routzen
Children's Court Judge

Attest:
Lynn Means
Clerk Of Courts
Published three times at the total approximate cost of \$69.93
and can be viewed free of charge at www.adpublicnotices.com.
Published: August 30, September 6, 13, 2023

Request for Bids

Rosebud Sioux Tribe
RIDA 2023-71
The Rosebud Sioux Tribe Forestry Program will be extending accepting sealed bids for a period of five (5) days for two (2) overhead doors.

Bids will be advertised September 13, 2023 at 8:00 a.m. and ending September 19, 2023 at 5:00 p.m.

Bids will be opened on September 22, 2023 at 2:00 p.m. at the TECRO office in Rosebud, S.D.

Sealed bids should be submitted clearly marked with the bid number on the front of the envelope. Failure to mark envelope will result in a no bid and will be mailed back to sender.

Sealed bids will be mailed to the following address: Rosebud Sioux Tribe, Treasurers Office, ATTN: Stephen Denoyer III, RST Treasurer, PO Box 430, 11 Legion Avenue, Rosebud, SD 57570

(Contract Person: Ken Haukaas, RST Forestry Program, Office number 605-747-2375, M-F 8 to 5 Cell Number 605-319-1427)
Title VI of the Civil Rights Act of 1964 shall be adhered to in the selection process. TECRO FEE must be included. For more information, contact the TECRO Office at (605) 747-2322, M-F, 8:00 a.m. to 5:00 p.m. CST.

The Rosebud Sioux Tribe has the right to reject any or all bids, waive informalities, or accept any bids or combination thereof which appears to serve the best interest of the tribe. Award of the project will be subject to the Rosebud Sioux Tribe Business regulatory requirements. Bidders must provide proof of suspension and debarment certification. Bidders must possess a Rosebud Sioux Tribe Business License.

Published once at the total approximate cost of \$24.82
and can be viewed free of charge at www.adpublicnotices.com.
Published: September 13, 2023

Notice Of Application No. 2871-2 to Appropriate Water

Notice is given that Kimberly and Deborah Marcus, 102 N. Ridge Road, Valentine, NE 69212 has filed an application for a water permit to appropriate 1.78 cubic feet of water per second from up to two wells to be completed into the Ogallala Aquifer (approximately 260 feet deep) located in the approximate center of the NE 1/4 Section 15 for irrigation of 135 acres located in the NE 1/4 Section 15, all in T36N-30W. This site is located approximately 9 miles south of Rosebud SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2871-2 with qualifications because: 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://dandr.sd.gov/public> or contact Ron Duval for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://dandr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall file a petition. A petition filed by either an interested person or the applicant must be filed by September 25, 2023.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://dandr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by September 25, 2023.

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

Published once at the total approximate cost of \$48.91
and can be viewed free of charge at www.adpublicnotices.com.
Published: September 13, 2023

Notice of Entry

State of South Dakota) In Circuit Court
County of Brown) JSS Fifth Judicial Circuit

The People of the State of South) A&N 23-085
Dakota in the Interest of)
T.A. and A.A., Minor Children,) Notice of Entry of
and Concerning,) Adjudicatory Order and
Morgan Archambault and Thomas) Findings and Conclusions
Antoine, Respondents) (As to Respondent Mother)

To: Thomas Antoine
YOU ARE HEREBY NOTIFIED that an Adjudicatory Order and Adjudicatory Findings of Fact and Conclusions of Law as to Respondent Mother and affecting your parental rights dated the 30th day of August, 2023, and filed the 1st day of September, 2023, has been entered in this matter. (This is an intermediate order which is subject to intermediate appeal with the permission of the Court according to the rules of procedure governing civil appeals.)
Dated this 5 day of September, 2023.

/s/ Karla Nelson
Karla Nelson,
Deputy Brown County States Attorney

Published once at the total approximate cost of \$27.01
and can be viewed free of charge at www.adpublicnotices.com.
Published: September 13, 2023

Summons

Rosebud Sioux Tribal Court) In Children's Court
Rosebud Indian Reservation) JSS
Rosebud, South Dakota)

The People of the Rosebud Sioux) Docket #CC 23-46/47/48/49/50
Tribe in the Interest of:)
B.G., A.L., A.L., R.L., & A.G.) Summons
Minor child(ren) and concerning,)

TO: KELLE GREGG,
PLEASE TAKE NOTICE that the Hearing on the Petition for ADJUDICATORY HEARING and concerning the above named minor(s) has been set for the Day of 5th of SEPTEMBER, 2023 at 1:00 P.M. in the Rosebud Sioux Children's Court House at the Wanbli Wiconi Tipi Wellness and Renewal Center (JDC) at Ring Thunder, South Dakota. This is your official notice of said hearing.
Dated This 7th Day Of August, 2023

By The Court:
Janet Routzen
Tribal Court Judge

Attest:
Lynn Means
Clerk Of Courts
Published three times at the total approximate cost of \$69.93
and can be viewed free of charge at www.adpublicnotices.com.
Published: August 30, September 6, 13, 2023

Summons

Rosebud Sioux Tribal Court) In Children's Court
Rosebud Indian Reservation) JSS
Rosebud, South Dakota)

The People of the Rosebud Sioux) Docket #CC 23-31
Tribe in the Interest of:)
J.M.,) Summons
Minor child(ren) and concerning,)

TO: MANDY RUNNING,
PLEASE TAKE NOTICE that the Hearing on the Petition for A PRELIMINARY HEARING and concerning the above named minor(s) has been set for the Day of the 21ST day of SEPTEMBER, 2023 at 11:00 a.m. in the Rosebud Sioux Children's Court House at the Wanbli Wiconi Tipi Wellness and Renewal Center (JDC) at Ring Thunder, South Dakota. This is your official notice of said hearing.
Dated This 4th Day Of August, 2023

By The Court:
Janet Routzen
Tribal Court Judge

Attest:
Lynn Means
Clerk Of Courts
Published three times at the total approximate cost of \$69.93
and can be viewed free of charge at www.adpublicnotices.com.
Published: August 30, September 6, 13, 2023

Summons

Rosebud Sioux Tribal Court) In Children's Court
Rosebud Indian Reservation) JSS
Rosebud, South Dakota)

The People of the Rosebud Sioux) Docket #CC 23-46
Tribe in the Interest of:)
B.G.,) Summons
Minor child(ren) and concerning,)

TO: TRISTAN SAUPITTY SR.,
PLEASE TAKE NOTICE that the Hearing on the Petition for PRELIMINARY HEARING and concerning the above named minor(s) has been set for the Day of 31ST of AUGUST, 2023 at 3:00 P.M. in the Rosebud Sioux Children's Court House at the Wanbli Wiconi Tipi Wellness and Renewal Center (JDC) at Ring Thunder, South Dakota. This is your official notice of said hearing.
Dated This 7th Day Of August, 2023

By The Court:
Janet Routzen
Tribal Court Judge

Attest:
Lynn Means
Clerk Of Courts
Published three times at the total approximate cost of \$69.93
and can be viewed free of charge at www.adpublicnotices.com.
Published: August 30, September 6, 13, 2023

St. Francis Indian School

Please contact Troy Lunderman,
Human Resource Director,
for any questions you may have.

605-747-2299 | 605-319-6319

www.sfisk12.org
troy@sfisk12.org

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Rodriguez, Rachel

From: Rodriguez, Rachel
Sent: Wednesday, August 30, 2023 1:10 PM
To: walkling@gpcom.net
Subject: 2871-2 Kimberly & Deborah Marcus - Public Notice
Attachments: 2871-2_rec.pdf; 2871-2_Ltr.pdf; 2871-2_PubNotice.pdf; 2871-2_RapidCityJournal.pdf

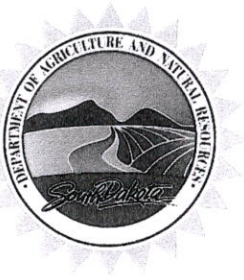
Good afternoon,

Attached is a copy of the chief engineer's recommendation and report, and information regarding the public notice for your water permit application. As stated in the letter, **please contact the paper(s) as soon as possible to authorize publication and arrange for payment.** This information is also being mailed to you today.

Thank you,

Rachel Rodriguez
DANR | Program Assistant
Rachel.Rodriguez@state.sd.us





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

OCT 10 2023

Kimberly and Deborah Marcus
102 N Ridge Road
Valentine NE 69212

Dear Ladies:

Enclosed is Water Permit No. 2871-2 authorizing construction of the water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

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

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

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

**Affidavit of Public Notice
Posting on DANR Website**

Pursuant to SDCL § 46-2A-4, public notice of the following application was posted on the DANR web site at <https://danr.sd.gov/public>. The posted public notice is the same notice as published in the pertinent newspaper(s) and a copy of the public notice is maintained in the application file. If the application is contested, the posting is moved to the DANR contested case website at <https://danr.sd.gov/public/ContestedCase.aspx> until final action is taken on the application pursuant to SDCL § 46-2A-4.

Application No.: 2871-2

Name of Applicant: Kimberly & Deborah Marcus

Date of Posting: 9/11/2023

Date of Removal: 10/10/2023



Ron Duvall, Engineer III

10/10/2023

Date

Subscribed and sworn to before me, a notary public, this 10 day of October, 2023.



Notary Public - South Dakota
My commission expires:

**Rachel Rodriguez
My Commission Expires
May 16, 2029**

(SEAL)





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**
JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

January 14, 2025

NOTICE

TO: KIMBERLY AND DEBORAH MARCUS, 102 N RIDGE RD, VALENTINE, NE 69212

FROM: Ron Duvall, Engineer III
for Eric Gronlund, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2024 Irrigation Questionnaire(s)

Our records indicate your 2024 Irrigation Questionnaire(s) has not been submitted for Permit No(s) 2871-2. The request for the Questionnaire was dated October 23, 2024. The Water Management Board has directed owners of water permits who have not submitted the 2024 Irrigation Questionnaire(s) be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine what action is to be taken for violation of Water Permit No(s) 2871-2 qualification:

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

The hearing will be held on **Wednesday, March 5, 2025, at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2871-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Postpone any action; or
3. Take no action.

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

If the questionnaire(s) is (are) received in this office before the **March 5, 2025**, hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Amanda Dewell at (605) 773-3352 or email at amanda.dewell@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://danr.sd.gov/iq> using this password: LIEECD**

NOTE: Please contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) to assure access to the meeting room for the handicapped or to obtain an interpreter for the hearing impaired.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

February 21, 2025

2871-2

Kimberly & Deborah Marcus
102 N Ridge Rd
Valentine NE 69212

Dear Mr. & Ms. Marcus:

I am writing to acknowledge the receipt of your 2024 irrigation questionnaire(s).

You may disregard the January 14, 2025, "Notice" concerning the reporting requirements for Water Permit No(s). 2871-2 The information was received prior to the March 5, 2025, Water Management Board meeting and the above listed permit number(s) have been removed from the agenda.

If you have any questions or concerns, please contact me.

Sincerely,

Amanda Dewell
Permitting Administrator
Water Rights Program
605 773-3352
Amanda.Dewell@state.sd.us