

STANDING ROCK SIOUX TRIBE

CODE OF JUSTICE

TITLE 34

TRIBAL WATER CODE

Adopted February 1983



**Department of Water Resources
Water Resources Control Board
Fort Yates, ND**

**Standing Rock
Tribal Water Code
Title XXXIV
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(4) The drilling, constructing and alteration of wells within the Standing Rock Reservation are activities that affect the quantity and quality of the ground waters of the Standing Rock Sioux Tribe, and are of vital interest to the Tribal membership. In order to protect the public health, welfare, and safety it is necessary that provision be made for the regulation and licensing of well contractors and operators and for the regulation of well design and construction.

34-102. OWNERSHIP OF RIGHTS TO USE OF WATERS OF THE STANDING ROCK INDIAN RESERVATION

(a) The Standing Rock Sioux Tribe is the owner in perpetuity of the full equitable title to the rights to the use of all of the waters of the Standing Rock Indian Reservation, as defined in this Code, and that title resides undiminished in the Standing Rock Sioux Tribe. The United States hold only the naked legal title to those waters solely as trustee for the Standing Rock Sioux Tribe.

(b) The Standing Rock Sioux Tribe holds it's prior, exclusive and supreme rights in, ownership of, and jurisdiction over all waters of the Standing Rock Indian Reservation, defined herein, for all purposes. No right of privilege of any kind, from whatever source, shall be recognized or granted unless the same shall be subject to the overriding, prior and supreme right and interest of the Standing Rock Sioux Tribe, and the provisions contained in this Code, amendments hereto, and administrative regulations and determinations hereunder.

34-103. LEGAL EFFECT OF WATER PERMIT

(a) A water permit issued under this Code constitutes nothing more than a revocable permission to use of the waters of the Standing Rock Indian Reservation, subject to the terms and conditions of the permit, this Code, and actions taken pursuant to this Code. No water permit issued hereunder shall ripen into any interest other than such limited permission. Nothing in this Code shall authorize any permanent, vested right to the use of waters of the Standing Rock Indian Reservation, the power authorizing such use being expressly reserved by the Tribal Council subject, to approval by the Secretary of the Interior as provided by federal law.

(b) Water permits issued under this Code are revocable and subject to modification in accordance with the policies, purposes, guidelines and procedures now or hereafter established in this Code.

34-104. USE OF WATER PROHIBITED EXCEPT AS AUTHORIZED UNDER THIS CODE

(a) One hundred and eighty (180) days after the enactment 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 Standing Rock Indian Reservation unless authorized to do so pursuant to the provision of this Code.

(b) No water rights, from whatever source, shall be recognized as valid except obtained under and subject to this Code. No right granted under this Code may be reduced or otherwise affected by any procedure, determination or adjudication except as provided in this Code.

(c) No right to use or otherwise affect the quantity, level, flow, pressure, quality, or temperature of waters of the Standing Rock Sioux Reservation may be acquired by adverse possession, prescription, estoppels or acquiescence.

34-105. REQUIREMENTS FOR CONSTRUCTION, ALTERATION OR DECOMMISSIONING OF WELL

For any well within the exterior boundaries of the Standing Rock Indian Reservation, it is unlawful:

- (1) For any person to construct, alter, or decommission a well, or to supervise the same, without complying with the provisions of this Code;
- (2) For any person to cause a well to be constructed, altered or decommissioned in violation of the standards for well construction established by this Code;
- (3) For a prospective water well owner to have a water well constructed without first obtaining a water right permit pursuant to Chapter 4 of this Code;
- (4) For any person to construct, alter, or decommission a well unless the fees required under this Code have been paid;
- (5) For any person to tamper with or remove a well identification tag except during well alteration; and
- (6) For any person to contract to engage in the construction of a well or to act as a well operator without first obtaining a license pursuant to section 34-1205 of this Code.

34-106. POLICIES OF THIS CODE

In taking actions under this Code, The Water Resources Control Board shall be guided by the following basic policy guidelines:

(a) *Priority of Uses.* The Water Resources Control Board, created pursuant to section 301 of this Code, shall afford preference to the use of water based upon (1) seniority of use based upon the date of issuance of water permit pursuant to Chapter 6 of this Code; and (2) the following uses shall, when in conflict, be given preference in the order in which they are listed –

1. Domestic;
2. Municipal, Rural and Industrial;
3. Agriculture;
4. Livestock watering;
5. Fish and Wildlife;
6. Recreation;
7. Power; and
8. Other uses.

(b) In issuing water permits for Domestic, Municipal, Rural, Agricultural, Livestock and Industrial uses, the Water Resources Control Board shall give consideration to base flows necessary to provide for preservation of wildlife, scenic, aesthetic and other environmental values on the Standing Rock Indian Reservation.

(c) Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given to means and methods for protections of fishery resources on the planning for and constructions of water impoundment structures and other artificial obstructions.

(d) 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 Standing Rock Indian Reservation.

(e) All persons similarly situated shall be given an equal opportunity to make permission use of water by the Water Resources Control Board.

(f) Water shall be used only for beneficial purposes and shall not be wasted.

(g) All activities involving construction, alteration, maintenance and abandonment of wells shall be designed and carried out in a manner which fully utilizes every natural protection of the ground water supply, and the standards and requirements of this Code.

34-107. DEFINITIONS

- (a) "Abandoned well" means a well that is unused, unmaintained, or is in such disrepair as to be unusable.
- (b) "Annular space" means the space between the drill hole wall and the outer well casing of a water well.
- (c) "Aquifer," means a geologic formation, group of formations, or part of a formation that contains saturated or permeable material capable of transmitting water of sufficient quantity to supply wells or springs and that contains water that is similar throughout in characteristics such as potentiometric head, chemistry and temperature.
- (d) "Artesian aquifer" means a confined aquifer in which ground water is under sufficient head to rise above the level at which it was first encountered, whether or not the water flows at land surface.
- (e) "Beneficial use" means any use of water, consumptive or otherwise, for agricultural, domestic, municipal, commercial, industrial, aesthetic, religious, or recreation purposes, or for the maintenance of adequate stream flows for fishery, environmental, or other beneficial purposes.
- (f) "Board" shall mean the Water Resources Control Board.
- (g) "Casing" means the outer tubing, pipe or conduit, welded or threaded coupled, and installed in the bore hole during or after drilling of a water well, to support the sides of the well and to prevent caving.
- (h) "Constructing a well" or "construct a well" means:
 - (1) Boring, digging, drilling, or excavating a well;
 - (2) Installing casing, sheeting, lining, or well screens, in a well;
 - (3) Drilling a geotechnical soil boring; or
 - (4) Installing an environmental investigation well.
- (i) "Decommission" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifers.
- (j) "Domestic Use" means any use of water for individual personal needs or for household purposes such as drinking, bathing, heating, cooking, or sanitation.

(k) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert ground water for the purpose of facilitating construction, stabilizing a landslide, or protecting an aquifer.

(l) "Environmental investigation well" means a cased hole intended or used to extract a sample or samples of ground water, vapor, or soil from an underground formation and which is decommissioned immediately after the sample or samples are obtained. An environmental investigation well is typically installed using direct push technology or auger boring and uses the probe, stem, auger, or rod as casing. An environmental investigation well is not a geotechnical soil boring.

(m) "Geotechnical soil boring" or "boring" means a well drilled for the purpose of obtaining soil samples or information to ascertain structural properties of the subsurface.

(n) "Ground water" means all water that exist beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves. There is a recognized distinction between natural ground water and artificially stored ground water.

(o) "Instrumentation well" means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement. Instrumentation well includes borehole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

(p) "Monitoring well" means a well designed to obtain a representative ground water sample or designed to measure the water level elevation in either clean or contaminated water or soil.

(q) "Municipal uses" means all reasonable water uses necessary in carrying out the functions of municipal government.

(r) "Observation well" means a well designed to measure the depth to the water level elevation in either clean or contaminated water or soil.

(s) "Operator" means a person who –

(1) is employed by a well contractor;

(2) is licensed under this chapter; or

(3) who controls, supervises, or oversees the construction of a well or who operates well construction equipment.

(t) "Owner" or "well owner" means the person, firm, partnership, co-partnership, corporation, association, or other entity who owns the property on which the well is or will be constructed. A homeowner holding a fractionated interest to the title of the land on which such home sits shall be deemed an owner or well owner under this section.

(u) "Pollution" and "contamination" means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the Standing Rock Reservation, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the Standing Rock Reservation as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

(v) "Remediation well" means a well intended or used to withdraw ground water or inject water, air (for air sparging), or other solutions into the subsurface for the purpose of remediating, cleaning up, or controlling potential or actual ground water contamination.

(w) "Resource protection well" means a cased boring intended or used to collect subsurface information or to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, remediation wells, environmental investigation wells, vapor extraction wells, and instrumentation wells.

(x) "Resource protection well contractor" means any person, firm, partnership, co-partnership, corporation, association, or other entity, licensed and bonded, engaged in the business of constructing resource protection wells or geotechnical soil borings.

(y) "Standing Rock Reservation" or "Reservation" means all territory within the boundaries of the Standing Rock Reservation as defined by the Act of March 2, 1889 (25 Stat, 888) and such other lands thereafter added thereto under any law of the United States.

(z) "Tribal Council" means the governing body of the Standing Rock Sioux Tribe, which is known as the Standing Rock Sioux Tribal Council.

(aa) "Tribe" means the Standing Rock Sioux Tribe.

(bb) "Water well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering, or withdrawal of ground water.

(cc) "Water well contractor" means any person, firm, partnership, co-partnership, corporation, association, or other entity, licensed and bonded, engaged in the business of constructing water wells.

(dd) "Waters of Standing Rock Indian Reservation" means –

(1) all waters located upon or bordering the Standing 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 Standing Rock Sioux Tribe and the Standing Rock Indian Reservation by the United States and/or the Standing Rock Sioux Tribe; and

(3) all water which, in the course of nature or as the result of artificial works, flows into or otherwise enhances such waters.

(ee) "Well" means water wells, resource protection wells, dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil, natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

(ff) "Well contractor" means a resource protection well contractor and a water well contractor.

34-108. APPLICABILITY

(a) This Code applies to all water use by any person within the exterior boundaries of the Standing Rock Reservation.

(b) This Code applies to all wells that are constructed, altered, abandoned or decommissioned within the exterior boundaries of the Standing Rock Indian Reservation.

Chapter 2: Notice Of Enactment of this Code

34-201. NOTICE REQUIRED

To insure that all persons and entities affected by this Code are given adequate notice of the enactment and effect of this Code, public notice shall be provided of this Code within fifteen (15) days of its enactment in accordance with the provisions of this Chapter.

34-202. CONTENTS OF NOTICE

(a) 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 Standing Rock Indian Reservation, as defined in the Standing Rock Water Code, unless such use is authorized by a permit as provided for by the Standing Rock Water Code. No other water rights of any kind, from whatever source, shall be recognized. Applicable portions of the Standing Rock Water Code are quoted below. The necessary forms for permit applications have been included with this notice whenever possible. Such forms may also be procured from The Standing Rock Sioux Tribe at Fort Yates, North Dakota, (701) 854-7231. Complete copies of The Standing Rock Water Code are also available for sale at the above address.

(b) Whenever possible, in addition to the above-quoted statement, such public notice shall contain the provision of this Code declaring the prior and supreme rights of the Standing Rock Sioux Tribe and defining waters of the Standing Rock Indian Reservation in Chapter 1 of this Code and describing the procedures to be followed in obtaining a permit contained in Chapter 4 and 5 of this Code, and sample forms for "Description of Use and Application for Permits."

34-203. PROCEDURE FOR GIVING NOTICE

(a) The notice provided above shall be placed on at least one regularly published newspaper in both Sioux and Corson Countries at least once every other week over a twelve (12) week period.

(b) The notice provided above shall be placed in a prominent and conspicuous location in the County Courthouse of Sioux County and in the County Courthouse of Corson County, the Agency Office of the Bureau of Indian Affairs at Fort Yates, and at the Tribal Office. The Committee may post notices in other locations as it deems necessary.

Chapter 3: Water Resources Control Board

34-301. ESTABLISHMENT OF STANDING ROCK SIOUX TRIBE WATER RESOURCES CONTROL BOARD; DUTIES AND FUNCTIONS

There is hereby established the Standing Rock Sioux Tribe Water Resources Control Board. The Water Resources Control Board is authorized and directed to –

- (a) Issue water use permits for the withdrawal and use of water, and for other activities substantially affecting the flow of the waters of the Reservation, pursuant to the requirements of Chapter 6 of this Code;
- (b) Issue water well operators' licenses to qualified applicants, and to enforce the standards for the construction, alteration and decommissioning of wells, pursuant to the requirements of Section 34-1210 of this Code;
- (c) Collect fees for the construction of wells pursuant to section 34-1203 of this Code.
- (d) Conduct public hearings for the issuance, modification, suspension or revocation of water use permits, as required in Chapter 5 of this Code;
- (e) Oversee the use of water by water use permit holders, and monitor compliance with the terms of water use permits that have been issued by the Water Resources Control Board;
- (f) Institute and conduct proceedings for the revocation of water use permits, pursuant to the requirements of Chapter 7 of this Code;

- (g) Institute and conduct proceedings to determine the availability and need for water in each such basin, pursuant to the requirements of Chapter 8 of this Code;
- (h) Institute and conduct such proceedings as may be necessary to determine the priority and preference to be afforded to water use permit holders, to the waters of a hydrologic basin, during times of water shortage when there are insufficient supplies of water to fulfill the privileges of water use that have been granted by the Water Resources Control Board
- (i) Consult with and direct the Water Administrator in the compilation of technical information concerning the waters of the Reservation, and apply such information in proceedings for the issuance or revocation of water use permits;
- (j) Consult with and provide information to the Standing Rock Sioux Tribal Council concerning the waters of the Reservation; and
- (k) Implement and enforce the provisions of this Code;
- (l) Supervise the Water Administrator in carrying out his or her duties, pursuant to section 1005 of this Code; and
- (m) Such other and further duties deemed necessary by the Water Resources Control Board in order to comply with this section, consistent with the laws of the Standing Rock Sioux Tribe.

34-302. COMPOSITION OF BOARD; APPOINTMENT AND TERM

- (a) The Water Resources Control Board shall consist of nine members, and consist of one member representing and residing in each district of the Reservation, plus an *ex officio* Board member representing the Economics Committee of the Standing Rock Sioux Tribal Council, appointed by a two-thirds majority at a Tribal Council meeting in which a quorum is present.
- (b) The terms of the Board members shall be four years. The terms of the Board members representing the Long Soldier, Cannon Ball, Porcupine and Kenel districts shall coincide with the terms of the Tribal Council officers and district representatives. The terms of the Board members representing the Wakpala, Bear Soldier, Running Antelope and Rock Creek districts, and the *ex officio* Board member, shall coincide with the terms of the at large Tribal Council members
- (c) A vacancy on the Board, howsoever caused, shall be filled by an appointment by the Tribal Council by a two-thirds majority at a Tribal Council meeting in which a quorum is present. The Board member appointed to fill such vacancy shall serve the remainder of that term.

34-303. QUALIFICATIONS OF BOARD MEMBERS

(a) To be eligible to hold office of Board member, a person must –

- (1) be at least 25 years of age;
- (2) have a high school diploma or equivalency degree;
- (3) be of high moral character and integrity;
- (4) have the knowledge and expertise that is required to carry out the functions and duties that are required under this Code.

(b) The Tribal Council shall by majority vote designate which Board member shall serve as Chairperson and Vice Chairperson of the Board. The terms of the officer shall be two years.

34-304. OATH OF OFFICE

On taking office, each member of the Board shall take an oath as follows:

“I, _____, do solemnly swear that I will do equal right without respect to persons and faithfully and impartially discharge and perform all the duties incumbent upon me as (Chairman) (member) of the Water Resources Control Board according to the best of my abilities and understanding so help me god.”

34-305. COMPENSATION AND BOND OF BOARD MEMBERS

The compensation of Board members shall be fixed by the Tribal Council. The rates of compensation so established may not be decreased during a member’s term of office. Board members shall be bonded by a surety bond satisfactory to the Tribal Council. Board members shall receive compensation only for those days that they sit as members of the Board.

34-306. SUSPENSION AND REMOVAL OF BOARD MEMBERS

(a) Upon written charges of specific misconduct on office or permanent physical or medical disability to carry out the duties of office, adopted by a two-thirds vote of those voting at a meeting of the Tribal Council at which a quorum is present, the Council may initiate proceedings to remove the Chairman or any other member of the Board from office. The term “Misconduct”, as used in this section, shall mean:

1. Conviction of a crime other than traffic offense;
2. Abusive or incompetent performance of duties in office, or repeated failure to perform the duties of office;

(b) All charges shall be in writing and served on the Board member personally, or by certified or registered mail, return receipt requested, not less than ten days prior to the date of hearing before the Tribal Council on the charges. A member proposed to be removed shall be given an opportunity to answer by written and oral presentation before the Council, to have the charges proven only by sworn testimony of witnesses and documentary evidence, to have the right to cross-examine witnesses and to present his own witnesses, and to have the right to be represented by counsel at his own expense at the hearing. After hearing, or default, a member may be removed for specific misconduct in office by a vote of two-thirds of those voting at a meeting of the Tribal Council at which a quorum is present.

34-307. DISQUALIFICATION OF BOARD MEMBER IN PARTICULAR CASES

A member of the Board shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned, in which he has any personal bias or prejudice concerning any party, in which he or a member of his immediate family might be a witness or has any personal knowledge of disputed evidentiary facts concerning the proceeding, in which he or any member of his immediate family or a party or has any financial or other interest in the proceeding, or in which he might otherwise appear to be biased or prejudiced.

34-308. RULES AND REGULATIONS

The Water Resources Control Board is authorized to adopt such rules and regulations as it deems necessary to implement the objectives and purposes of this Water Code. Such rules and regulations shall be submitted to the Standing Rock Sioux Tribal Council and may be modified by the Council.

34-309. EXTENSION OF TIME LIMITS BY BOARD

The time limits provided in this Code may be extended, for good cause shown, by the Water Resources Control Board when the ends of justice so require.

Chapter 4: Applications For Permits To Use Water

34-401. DESCRIPTION OF USE AND APPLICATIONS FOR PERMIT REQUIRED

(a) Within one hundred and eighty (180) days after the enactment of this Code, all persons desiring to continue existing uses or initiate new uses of or to store water or take any other actions substantially affecting the waters of the Standing Rock Indian Reservation must file a Description of Use and Application for Permit with the Water Resources Control Board and Tribal Water Administrators as required by this Chapter. After such date, it shall be unlawful to make any use or take any other actions substantially affecting the waters of the Standing Rock Indian Reservation except as authorized by this Chapter.

(b) Any existing permittee may at any time file an application to modify an existing water permit, including an application to modify an existing water permit, including an application to change the time, place, nature or quantity of water used, and such application for a new permit.

**34-402. CONTENTS OF DESCRIPTIONS OF USE
AND APPLICATION FOR PERMIT**

Descriptions of Use and Applications for Permits shall be sworn to by the applicant under oath on forms provided by the Water Resources Control Board and shall include the following information, in addition to any other information deemed necessary by the Water Resources Control Board:

- (a) The name and mailing address of the claimant;
- (b) The name of, if available, or description of, the source or sources from which water is or will be diverted or withdrawn;
- (c) The quantity of water which is or will be used during each month of the year;
- (d) A legal description, of such is readily available and other description reasonably describing the point or points of diversion or withdrawal;
- (e) A description of the method or methods of diversion or withdrawal;
- (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 and the kind and number of stock if water is for stock watering;
- (h) The best estimate reasonably possible of how much water will be returned to the source or sources, how, when, at what point, or points, and with what changes in quality and temperatures;
- (i) The estimate 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, of known, and including a description of their uses of water;
- (k) If any pre-existing right is claimed, a description of any documents, statutes or legal doctrine upon which it 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 water levels and supply or problems of declining quality have been encountered in the past;
- (m) The water user's plan for future development of his water use or uses and related activities.

34-403. FEES

Each Description and Use and Application shall be accompanied by a filing fee. The Water Resources Control Board is authorized to establish a sliding fee scale. The Board may waive payment of such fees in cases of financial hardship

34-404. SCHEDULING OR HEARING

As soon as practicable after receiving a Description of Use and Application for Permit the Water Resources Control Board shall schedule an individual hearing on that application, and notify the applicant of the hearing date at least forty-five (45) days in advance of the date scheduled for the hearing.

34-405. PUBLIC NOTICE OF HEARING

The applicant shall then cause to be published a copy of his Description of Use and Application for Permit in one regularly published newspaper in the County where the existing or proposed use of the water will take place, at least once each week for three (3) successive weeks, and shall submit satisfactory proof of publication to the Board. The Board shall also post a public notice of all scheduled hearings at the Tribal Office in Fort Yates and such other public places on the Reservation as it shall deem appropriate.

34-406. OBJECTIONS TO DESCRIPTIONS OF USE AND APPLICATION FOR PERMITS

- (a) Any person or entity whose interests are or may be affected by a water use described and applied for may, any time prior or five (5) days of the date scheduled for hearing, file a formal objection to the issuance of the permit applied for.
- (b) Objections may be on forms prepared and made available by the Water Resources Control Board 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 issue in a form that applied for, and any suggested conditions or other provisions which should be included in any permit granted.
- (c) Oral objections may be made to the Water Resources Control Board prior to or at the public hearing conducted pursuant to Section 501 when it determines, in its discretion, that the circumstances permit an oral objection. Such oral objection shall thereafter be reduced to writing on the proper forms.
- (d) Any objection shall be served personally or by mail upon the applicant, and proof of such service shall be made in a manner satisfactory to the Water Resources Control Board.

34-407. PUBLIC COMMENT

In addition of objections, any persons or entity may comment orally or in writing upon any application for a permit under this Code.

34-408. INTERIM AUTHORIZATION TO USE WATER

Prior to the scheduling date for hearing, the Board may grant a temporary, revocable authorization to use water while the application is pending for a period not to exceed one hundred and eighty (180) days.

Chapter 5: Hearing On Application For Permits

34-501. PUBLIC HEARINGS

A public hearing shall be held on each application, unless there has been no objection made to the application by the Water Administrator or any other person, and the Board determined to grant the application at a meeting duly-called, with conditions accepted by the applicant. The public hearing shall be held in accordance with Chapter 13 of this Code.

34-502. CONSOLIDATION OF HEARINGS

Hearings concerning proposed or existing actions in a particular basin or area may be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication unless the parties file timely objection.

34-503. DECISION

The member or members of the Water Resources Control Board present at the hearing shall issue a written decision setting forth pertinent findings of fact and an ultimate determination as to whether the application shall be granted with specified conditions, or denied. This decision shall be delivered to all parties by registered mail, return receipt requested.

34-504. PETITIONS FOR RECONSIDERATION

(a) Within fourteen (14) days after a decision, any party may request the Board to reconsider the decision. A petition for rehearing shall state in concise fashion the errors in the decision the petitioner claims should be reconsidered.

(b) A petition for reconsideration shall be served on all other parties to the proceeding by registered mail, return receipt requested, and any party may respond within fourteen (14) days.

(c) The Board will not grant any petition for reconsideration without scheduling an additional hearing with proper notice to all parties. After this hearing, the Board may affirm its earlier decision or revise the same. Any revised decision shall comply with Section 503 and shall be final for the Board.

34-505. FINALITY OF DECISIONS

The decision of the Board shall become final and take effect unless stayed on appeal when (i) the time for filing a petition for reconsideration has passed and no such petition has been, or (ii) the Board has passed on a petition for reconsideration.

34-506. APPEALS: SCOPE OF REVIEW

The decision of the Board pursuant to this Chapter and Chapter 7 shall be appealable as provided in Chapter 9 of this Code. The Court of Appeals shall not set aside any fact found by the Water Resources Control Board in a decision on an individual water permit pursuant to Chapter 5 so long as the fact found is supported by substantial evidence of the whole record, including matters required or permitted to be considered by the Board pursuant to Section 501(c).

Chapter 6: Water Permits

34-601. FORM

Water permits issued in accordance with this Code shall be on a form standardized by the Water Resources Control Board.

34-602. INFORMATION CONTAINED

Each Permit shall include:

- (a) The name and mailing address of the permittee;
- (b) The name of, if available, or a description of, the source or sources from which may water is or will be diverted or withdrawn;
- (c) The quantity of water which may be used during each month of the year;

- (d) The legal description, if such is readily available or other description reasonably describing the point or points of diversion or withdrawal;
- (e) A description of the method or methods of diversion or withdrawn;
- (f) The purpose or purposes for which water is or will be used;
- (g) 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;
- (h) The approximate date upon which the use or uses permitted has been or will be commenced; and
- (i) In addition, the water permit may contain such other information as is deemed necessary and appropriate.

34-603. CONDITIONS

Each water permit issued pursuant to this Code shall contain whatever conditions are necessary to insure adequate quality and quantities of water, to otherwise further the purposes, policies and guidelines contained within this Code, and to assist in the effective administration of this Code. These may include, among other things, conditions concerning:

- (a) The source from which water may be withdrawn;
- (b) The quantity of water which may be withdrawn during any particular time;
- (c) The point or points of diversion or withdrawal;
- (d) The method or methods of diversion or withdrawal;
- (e) The purposes for which water may be used;
- (f) The method of application;
- (g) The location and purpose of application, including acreage for crops and number of stock watering;
- (h) The quantity, quality and temperature of return flow;
- (i) The time period in which water may be used;
- (j) Schedule for withdrawal of diversion, including optional rotation schedules;

- (k) Provisions for surface or ground water storage or surplus flow;
- (l) Provisions for increasing the efficiency of diversion or withdrawal and application;
- (m) Provisions for maintaining minimal levels for fish, wildlife, recreational and aesthetic values;
- (n) Provisions for insuring minimum pumping and diversion levels with respect both to surface and underground water;
- (o) Provisions designed to maintain head and pressure in surface and underground water;
- (p) Provisions designed to prevent or reduce obstruction of surface and underground water;
- (q) Provisions designed to prevent or reduce obstruction of fish runs;
- (r) Provisions designed to minimize pollution and thermal degradation;
- (s) Provisions designed to insure optimum recharge or aquifers;
- (t) Provisions designed to prevent or reduce loss from streams and aquifers;
- (u) Provisions designed to define and limit interbasin transfers from shifting aquifer boundaries;
- (v) Provisions for some degree of overdraft from aquifers when short-term recharge is not available or appropriate;
- (w) Provisions designed to prevent or reduce interference between competing users or water sources whether above or below ground;
- (x) Provisions to insure long term development and prevent untimely quantification;
- (y) Provisions to prevent interference with tribal administration of water, and all permits shall require the permittee's consent to reasonable entry upon the permittee's land by tribal officers engaged in the administration of this Code;
- (z) Other provisions necessary to insure conformity with this Code and actions taken hereunder, including limitations on the length of the permit;
- (aa) A provision prohibiting the waste of water by any permittee shall be included in all permits. The withdrawal of 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 as waste if reasonable diligence is shown by the permittee in effecting necessary repair.

- (bb) Payment of reasonable annual charge for the permit, provided however that Indians of the Reservation shall be permitted to use their reasonable share (as determined by the Board) of waters owned by the Tribe without charge.
- (cc) Annual report to the Board of the amount of water used, diverted, or withdrawn, and of other activities affecting the waters of the Reservation, by the water use permit holder.

34-604. MATERIALS OPEN TO PUBLIC INSPECTION

All permits issued by the Board, all decisions of the Board, and all applications made for a water permit shall be maintained by the Water Resources Control Board in files that shall be open for public inspection.

34-605. WATER CONSERVATION REQUIREMENTS

(a) All water permits for domestic water use shall require that all plumbing work be performed in a good workmanlike manner according to accepted standards and practices in the trade, and that the average amount of water used by new or replacement fixtures under the applicable test procedures not exceed:

- (1) 1.6 gallons per flush for toilets;
- (2) 1.0 gallons per flush for urinals;
- (3) 2.5 gallons per minute for shower heads; and
- (4) 2.5 gallons per minute for interior faucets.

(b) The Water Resources Control Board may exempt a water permit holder from these requirements if the fixtures and fittings to be installed are necessary to perform specialized functions, such as a hospital, nursing home, or health care facility.

Chapter 7: Revocation Of Water Use Permit

34-701. REASONS FOR REVOCATION

A permit may be totally or partially revoked for the following causes:

- (a) Failure to comply with any terms and conditions of the permit;
- (b) Nonuse of water;
- (c) In the case of a permit issued for a specified period, the ending of that period;
- (d) Any misrepresentation of a material fact in a Description of Use and Application for Permit;
- (e) Voluntary relinquishment by any affirmative action manifesting an intention to relinquish a permit or claim of right.

34-702. NONUSE DEFINED AND DESCRIBED

Any right to use or otherwise affect in any way the waters of the Standing Rock Indian Reservation, regardless of its origin, shall become void and lapse if the holder of such right voluntarily fails, without sufficient cause, to put water to actual use within two (2) years after a permit is granted or the use all or a portion of the water available under such right for a period of five (5) consecutive years. This section shall be retroactive.

“Sufficient Cause” shall include:

- (a) Drought or other unavailability of water;
- (b) Active service in the armed forces of the United States;
- (c) The operation of legal proceedings restraining water use;
- (d) The application of any laws restricting water use;
- (e) Incarceration in penal institution;
- (f) Confinement in a mental institution, whether voluntary or not;
- (g) Incompetence by reason of age or mental incapacity;
- (h) Other causes of nonuse beyond the control of the holder or holders of right claimed.

34-703. PROCEDURE FOR REVOCATION HEARING

(a) The Water Resources Control Board, on its own motion or upon request of the Tribal Water Administrator, may commence revocation proceedings against any permittee by serving upon such permittee, by registered mail return receipt requested at his last known address, a notice scheduling a revocation hearing at least forty-five (45) days from the date of the notice. Such notice shall be published by the Board as required by Section 405, and any affected person may participate in the revocation hearing.

(b) A public hearing shall be held on the proposed revocation in accordance with Chapter 13 of this Code.

**Chapter 8: Administrative Procedures Of Water Resources Control Board
Other Than Applications For Water Use Permits**

**34-801. DIVISION OF STANDING ROCK RESERVATION INTO HYDROLOGIC
BASINS**

(a) The Water Resources Control Board shall divide the Standing Rock Indian Reservation into hydrological basins for the purposes of water management under this Code. The hydrological basins shall coincide with the map entitled Standing Rock Sioux Reservation, Location of Monitoring Sites with Sub watersheds (December 2004), to be kept on file by the Water Administrator, which identifies and delineates the following hydrological basins:

- (1) Missouri River Basin;
- (2) Cannon Ball River Basin;
- (3) Cedar Creek Basin; and
- (4) Grand River Basin.

The Water Administrator shall utilize the 31 sub-basins as identified on such map for water management purposes.

(b) The Water Administrator shall maintain a listing of each basin, to include each existing water use permit, and each use described and permit applied for, which listing shall include names and address of applicants, descriptions of water sources, quantities applied for, points of diversion or withdrawal, and a description of the uses to be made, and each water well in the basin.

34-802.

DETERMINATION OF AVAILABILITY AND NEED FOR WATER IN PARTICULAR HYDROLOGIC BASIN OR AREA

The Water Resources Control Board may, in its discretion, initiate a proceeding to determine availability of and need for water in any particular hydrologic basin or area where it believes water may be in short supply. In this proceeding, the Board may: (1) evaluate existing and future needs dependent upon a particular supply; (2) compute with reasonable certainty the characteristics, at particular locations and times; (3) explore various methods for increasing supply such as storage, increased sufficiency, alternatives to present uses, alternatives to activities presently requiring the consumption of water; (4) make available to various tribal and other agencies and to members of the public information concerning the waters in question; or (5) reserve or set aside supplies of available water for future uses.

34-803.

WATER ADMINISTRATOR-INFORMATION GATHERING

The Board shall give notice of such proceeding to the Tribal Water Administrator. Upon receipt of such notice, the Water Administrator shall initiate an investigation to: (a) gather and evaluate all available and pertinent data from whatever sources concerning the water supply and needs for water in question and, (b) formulate proposals concerning the use of the water in question and to provide other information, alternatives, and recommendations for the assistance of the Water Resources Control Board. The Tribal Water Administrator shall transmit to the Board his report concerning the availability of and need for water in the particular area to which the proceeding applies. The report may include, in addition to other pertinent information and recommendations, the following:

- (a) A geographic and geologic description of the area studied, setting out as precisely as possible the boundaries of the area;
- (b) A general description of the water supply in that area, from all sources;
- (c) A description of the various characteristics of the supply which are relevant to present and proposed uses and other actions available to the Board;
- (d) A computation of the supply available at particular times and places;
- (e) A description of present and proposed uses of, and other actions affecting, the water in question;
- (f) A description and evaluation of the need for each such present or proposed use or other action;
- (g) A description of possible methods for increasing available supply;
- (h) A description of economic and technical methods which may be implemented to increase the efficiency of use.

34-804. NOTICE OF HEARING

Upon receiving the Water Administrator's report, which shall be available to the public, the Water Resources Control Board shall give public notice in the manner provided in Section 405 of a public hearing at which interested persons may comment concerning the Determination of Availability and Need. The notice shall state that a hearing shall be held at a particular time and place not less than thirty (30) nor more than sixty (60) days after the date notice is completed.

34-805. HEARING

A public hearing shall be had with respect to every proposed Determination of Availability and Need. Whenever practicable, such hearings shall be had in the affected area, at an hour which is reasonably convenient. At such hearings, the member of the Water Resources Control Board presiding shall provide a brief oral statement of the purpose of the hearing. The Tribal Administrator shall participate in the hearing and explain his report, answering any questions about it. After the presentation is made by the Water Resources Control Board and the Tribal Water Administrator, public comment shall be allowed. Public comment shall be limited by reasonable rules adopted by the Board to insure an opportunity for full comment but shall allow any person to present a reasonable number of witnesses who shall testify under oath and to offer pertinent documentary material for the Board's consideration. Hearings may be continued to such times and places as are deemed appropriate upon proper notices.

34-806. DETERMINATION OF AVAILABILITY AND NEED

After the public hearing provided for in Section 805, the Water Resources Control Board shall prepare a final Determination of Availability and Need. Notice of this Final Determination shall be published by the Board in the manner provided in Section 405 and copies of the Determination shall be available for copying and use.

34-807. PETITION FOR RECONSIDERATION

Any person who participated in the public hearing conducted pursuant to Section 805 may petition the Board to reconsider some or all of its Determination of Availability and Need by filing a petition setting forth any claim errors in the Determination, within thirty (30) days of the date of the Determination. The Board may either deny petition and affirm its prior Determination or modify some or all of the Determination. If the Board decides that modification may be appropriate, it shall publish a notice of the respects in which it is considering modification in the manner provided in Section 405 and give all persons an opportunity to file written comments within thirty (30) days of such notice. In its discretion, the Board may also schedule an additional public hearing as provided in Section 805.

34-808. FINALITY OF DETERMINATION

The determination of the Board shall become final and effective unless stayed in appeal whenever (a) the period for filing a petition for reconsideration has passed and no petition has been filed, or (b) the Board disposes of all petitions for reconsideration.

34-809. APPEALS: SCOPE OF REVIEW

A determination of the Board Pursuant to this Chapter shall be appealable as provided in Chapter 9 of this Code, but the Court of Appeals shall not set aside, modify or remand any such determination of the Board unless it finds that the determination is arbitrary and capricious and with no rational basis in fact.

Chapter 9: ENFORCEMENT; APPEALS

34-901. ENFORCEMENT

(a) The Water Resources Control Board is authorized and directed to enforce the provisions of this Code. The Board is authorized to commence a civil action in the Standing Rock Tribal Court, as it deems necessary, for injunctive or declaratory relief against any person, including -

- (1) for the enforcement of the terms of a water use permit;
- (2) to enjoin unauthorized use, diversion or withdrawal of the waters of the Reservation;
- (3) for the enforcement of priority rights of senior water users;
- (4) for emergency equitable relief during times of drought or shortage;
- (5) to enjoin the unauthorized construction or operation of a water well;
- (6) for the enforcement of any provision of this Code.

The Standing Rock Tribal Court shall have exclusive jurisdiction to entertain an enforcement action instituted by the Water Resources Control Board.

34-902. APPEALS

The Tribal Court shall have exclusive jurisdiction to review a hearing decision of the Water Resources Control Board. Such review may be obtained only upon the filing by the aggrieved party, of a petition for judicial review within thirty (30) days of receipt of the hearing decision. The Tribal Court may reverse the hearing decision only if it violates this Code or is otherwise contrary to law, lacks substantial evidence, or constitutes an arbitrary or capricious exercise of authority.

Chapter 10: Water Administrator

34-1001. WATER ADMINISTRATOR: APPOINTMENT

A Water Administrator shall be appointed in the same manner as any other Tribal Employee of the Tribe.

34-1002. QUALIFICATIONS

To be eligible to serve as Water Administrator, a person must -

- (1) be at least 21 years of age;
- (2) be of high moral character and integrity;
- (3) have a bachelor's degree in hydrology or equivalent training;
- (4) must have never been convicted of a felony;
- (5) must be physically able to carry out the duties of the office.

34-1003. COMPENSATION

The Tribal Council shall establish rates of compensation for the Tribal Water Administrator.

34-1004. OATH OF OFFICE

Before entering upon the duties of office, the Tribal Water Administrator shall take the following oath or affirmation:

“I, _____ do solemnly swear (or affirm) that I will truly, faithfully and impartially discharge all duties of my office as Tribal Water Administrator to the best of my abilities and understanding, so help me God.”

34-1005. DUTIES

The Tribal Water Administrator shall be responsible for the enforcement and administration of the policies and water permits issued under this Code. He shall insure compliance with this Code, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken by the Water Resources Control Board under this Code. To this end the Water Administrator may:

- (a) 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 adversely affecting water quality;
- (b) To implement the provisions of Chapter 12 of this code pertaining to the construction, alteration or decommissioning of wells, including, but not limited to:
 - (1) Issuing, denying, suspending or revoking licenses pursuant to the provisions of this Code;
 - (2) At all reasonable times, to enter upon lands for the purpose of inspecting, taking measurements from, or tagging any well, constructed or being constructed;
 - (3) Requiring the operator in the construction of a well and the property owner in the maintenance of a well to guard against waste and contamination of the ground water resources;
 - (4) Requiring the operator to place a well identification tag on a new well and on an existing well on which work is performed after the effective date of rules requiring well identification tags and to place or require the owner to place a well identification tag on an existing well;
 - (5) Requiring the well owner to repair or decommission any well;
 - (A) That is abandoned, unusable, or not intended for future use; or
 - (B) That is an environmental, safety, or public health hazard.

- (c) Enter upon land, inspect methods of diversion and withdrawal, inspect other activities affecting water quality and quantity and the construction, alteration or decommissioning of wells, install and monitor measuring and recording devices when necessary, and elicit testimony and data concerning actions affecting the quality or quantity of the water administered under this Code.
- (d) Participate in proceedings before the Water Resources Control Board as provided in this Code.
- (e) Collect, organize and catalog existing information and studies available from all sources, both public and private, pertaining to the waters of the Standing Rock Indian Reservation.
- (f) Develop such additional data and studies pertaining to water and water resources as are necessary to accomplish the objectives of this Code.
- (g) Solicit public comment and obtain expert advice when appropriate.
- (h) Investigate water uses and other activities affecting the Waters of the Standing Rock Indian Reservation to determine whether they are in compliance with this Code and applicable regulations, orders, determinations, permits, water quality standards, etc. issued under this Code.
- (i) Investigate water quality whenever appropriate.
- (j) Provide for distribution of water in times of shortage according to the policies of this Code and the priorities established in water permits issued by the Board.

34-1006. STAFF

The Water Administrator may, from time to time, propose to the Standing Rock Sioux Tribal Council the employment of additional persons to serve as members of his staff. The appointment, salaries and the terms of employment of any assistants to the Water Administrator shall be set by the Tribal Council.

34-1007. TERM OF OFFICE AND REMOVAL

The Tribal Water Administrator shall report to the Economics Committee of the Tribal Council and to the Water Resources Control Board. The Water Administrator shall be appointed in the same manner as any other employee of the Tribe. The Water Administrator shall serve in accordance with the Personnel Policies and Procedures of the Tribe. The resignation or termination of the Water Administrator shall be in accordance with the Personnel Policies and Procedures of the Tribe.

Chapter 11: **Transfer Of Rights**

34-1101. **TRANSFER, ASSIGNMENT, AND
CREATION OF SECURITY INTEREST**

No water use permits or well contractor licenses issued under this Code shall be subject to transfer, assignment, or creation of any security interest, without the express written permission of the Water Resources Control Board. Applications for transfer, assignment, or creation of a security interest shall be made on forms prepared and made available by the Water Resources Control Board. 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.

Chapter 12: **Requirements for Construction, Modification or
Decommissioning of Wells**

34-1201. **PRIOR NOTICE OF WELL CONSTRUCTION, RECONSTRUCTION
OR DECOMMISSIONING.**

A property owner or the owner's agent shall notify the Water Resources Control Board of his or her intent to begin well construction, reconstruction, or decommissioning procedures at least seventy-two hours in advance of commencing work. The notice shall be submitted on forms provided by the Board and shall be accompanied by the fees required by this chapter. The notice shall contain the name of the owner of the well, location of the well, proposed use, approximate start date, well contractor's or operator's name and license number, company name, and other pertinent information as deemed necessary by the Board. The Board shall issue a receipt indicating that the notice required by this section has been filed and the fees required have been paid not later than three business days after the Board has received the notice and fees.

34-1202. **REPORTS OF WELL CONSTRUCTION OR ALTERATION**

(a) A well contractor shall furnish a well report to the Administrator within thirty days after the completion of the construction or alteration of a well by the contractor. The Administrator shall prescribe the form of the report and the information to be contained therein.

(b) In the case of a dewatering well project:

(1) A single well construction report may be submitted for all similar dewatering wells constructed with no significant change in geologic formation; and

(2) A single well decommissioning report may be submitted for all similar dewatering wells decommissioned that have no significant change in geologic formation.

34-1203. FEES

(a) A fee is hereby imposed on each well constructed within the exterior boundaries of the Standing Rock Reservation. The Water Resources Control Board shall establish reasonable fees, pursuant to this section. The Water Administrator shall provide a receipt for all fees paid.

(b) The fees imposed by this section shall be paid at the time the notice of well construction, required pursuant to section 34-1201 of this Code, is submitted to the Water Resources Control Board. Upon the request of the person submitting the notice, the Board shall refund the amount of any fee collected for wells, borings, probes, or excavations as long as construction has not started and the Board has received the refund request within one hundred eighty days from the time the Board received the fee. The refund request shall be made on a form provided by the Board.

34-1204. WATER WELL CONSTRUCTION STANDARDS

(a) No water well shall be constructed, maintained, or abandoned in such a manner as to constitute a health threat or health hazard, or threat to public safety.

(b) No water well shall be used as a disposal pit for sewage, industrial waste, or other materials that could contaminate the ground water.

(c) All water used in the construction, alteration, repair or abandonment of water wells shall be potable.

(d) Organic materials which foster or promote undesired organic growth or have the potential to degrade water quality shall not be employed in the construction of water wells. This includes, but is not limited to, brans, hulls, grains, starches and proteins.

(e) A water well shall not be constructed in a manner that allows commingling or leakage of ground water by gravity flow or artesian pressure from one aquifer to another. Wells drawing water from perched zones must be constructed to prevent the waste of this type of ground water.

(f) All wells shall be covered to protect public health and safety, when unattended during construction.

(g) No person shall construct a water well within --

(1) 50 feet of any septic tank,

(2) 100 feet of a septic drain line or sewage disposal structure or facility;

(3) 50 feet of a closed sewage or storm drainage system, unless the drainage system is underneath a building;

- (4) 100 feet of any sewage sludge disposal area;
- (5) 50 feet of any animal waste holding area, such as a pond or lagoon; or
- (6) 500 feet of a hazardous waste storage, disposal or treatment unit.

(h) Water wells drilled into unconsolidated, water-bearing strata overlain by unconsolidated water-bearing strata such as sand, silt or gravel, shall have a watertight imperforated well casing extending to a minimum of eighteen (18) feet below land surface. An upper oversized drill hole, four inches greater in diameter than the nominal diameter of the casing, shall be constructed to a minimum of eighteen (18) feet in length. To prevent caving, a temporary surface casing, at least eighteen (18) feet in length, shall be used throughout the construction of the annular seal space.

(i) Water wells drilled into unconsolidated, water-bearing strata overlain by unconsolidated deposits of clay, or sand and gravel in which significant interbeds of clay are present, shall have a watertight, nonperforated, permanent well casing extending at least five (5) feet into clay or other impermeable stratum overlying the water-bearing zone. An upper oversized drill hole, at least four (4) inches greater in diameter than the nominal diameter of the permanent well casing shall be constructed to the same depth. In the event that the subsurface materials tend to cave, an outer, temporary surface casing shall be used to remove caving materials. If the clay or other impermeable stratum is thirteen (13) feet or less below the land surface, the watertight, nonperforated well casing and the upper, oversize drill hole shall extend to a minimum depth of eighteen (18) feet below surface. If necessary, the single, permanent well casing may be extended below the required sealing depth prior to sealing the well with grout. A smaller diameter casing, liner or well screen may be installed. The annular space between the permanent well casing and the upper, oversized drill hole shall be completely full of grout after the permanent well casing is set into final position. The temporary surface casing shall be removed from the well as the annular space is filled.

(j) Water wells drilled into a water-bearing rock formation overlain by clay, silt, sand, gravel or similar materials shall be constructed in accordance with one of the following methods:

(1) *Continuous Seal* An upper drill hole, four (4) inches greater in diameter than the nominal diameter of the permanent well, casing to be installed, shall extend from land surface to at least five (5) feet into solid, creviced, consolidated rock overlying the water-bearing rock formation below a depth of thirteen (13) feet. Unperforated, permanent well casing shall extend to this same depth. The annular space between the casing and the drill hole wall within the rock formation shall be filled with grout. The upper annular space between the casing and drill hole wall shall be filled from land surface to at least five (5) feet into an impermeable clay stratum below a depth of thirteen (13) feet. The annular space between the upper and lower sealing intervals shall be filled with an impermeable sealing material. If necessary, a smaller diameter well casing, liner pipe or well screen may be installed. If cement grout is placed from the bottom of the well casing to the land surface, the upper drill hole shall be at least two (2) inches larger than the nominal diameter of the casing.

(2) *Step-down Casing* An upper drill hole, four (4) inches greater in diameter than the permanent well casing to be installed, shall extend to from land surface to at least five (5) feet into an impermeable clay stratum below a depth of thirteen (13) feet. Unperforated, permanent well casing shall extend to, and be driven into, solid, uncreviced, consolidated rock overlying the water-bearing rock formation. A lower drill hole, equal in diameter to the inside diameter of the upper, permanent well casing, shall be constructed at least five (5) feet into solid, uncreviced, consolidated rock overlying the water-bearing rock formation. A smaller diameter casing, at least two (2) inches smaller in diameter than the diameter of the upper permanent well casing, shall extend at least five (5) feet into the lower drill hole and at least eight (8) feet into the upper permanent well casing. The annular space between the upper oversized drill hole and the permanent well casing, and the annular space between the smaller diameter lower casing and the lower drill hole, shall be completely filled with grout, after the permanent well casing and the lower casing are set into final position.

(3) *Under-Reaming* An upper drill hole, four (4) inches greater in diameter than the permanent well casing to be installed, shall extend to from land surface to at least five (5) feet into an impermeable clay stratum below a depth of thirteen (13) feet. A lower drill hole, at least two (2) inches greater in diameter than the diameter of the permanent well casing, shall be constructed at least five (5) feet into solid, uncreviced, consolidated rock by under-reaming methods. Unperforated, permanent well casing shall extend to, and be driven into, solid, uncreviced, consolidated rock at the bottom of the under-reamed section following placement of the sealing material. The annular space between the lower under-reamed drill hole and the upper permanent well casing shall be filled with cement grout. The annular space between the lower under-reamed drill hole wall and the permanent well casing shall be completely filled with grout applied under pressure.

In all cases under any method utilized pursuant to this subsection, if materials penetrated by the upper oversized drill hole cave, an outer temporary surface casing shall be used to remove caving material. The temporary surface casing shall be withdrawn as the annular space is filled with grout.

(k) Water supply wells penetrating into an artesian aquifer shall have an upper oversized drill hole, four (4) inches greater in diameter than the nominal diameter of the permanent well casing. Watertight unperforated casing shall extend and be sealed at least five feet into the confining formation immediately overlying the artesian water-bearing zone. In all cases a minimum of eighteen (18) feet of casing and casing seal shall be required.

(l) There shall be no openings in the casing of a water well, between the top of the casing and the bottom of the required casing seal, except for pitless adaptors, measuring access ports, or grout installed. In no case shall holes be cut in the casing for the purpose of lifting or lowering casing into the well bore, unless such holes are properly welded closed and watertight prior to placement into the bore.

(m) Plastic casing used for a water well shall not be driven, and may only be installed in an oversized drill hole. Plastic casing may be installed only after drilling has been completed. Plastic casing shall be of polymerized vinyl chloride (PVC) type 1120 or 1220, SDR 21 (Class 200) or SDR 26 (Class 160) or greater wall thickness, and meet all applicable industry standards of the National Sanitation Foundation. The well casing must be clearly marked by the manufacturer, showing:

- (1) size;
- (2) type of plastic material;
- (3) Standard Dimension Ratio;
- (4) American Society for Testing Materials (ASTM) designation; and
- (5) Seal of Approval by the National Sanitation Foundation.

(n) Steel casing used for a water well shall be in new or like condition, being free of pits or breaks, and shall meet or exceed the minimum ASTM specifications for the applicable size.

(o) In no event shall drill cuttings or chips be allowed to fill or partially fill, or fall into the required sealing interval of a water well during construction or completion of the well.

(p) When using cement grout as the sealing material in a water well, it must be of high early strength type of cement or high alumina cement, uniformly mixed in appropriate proportions.

(q) Concrete for use in the construction of a dug well, or for filling the annular space or well bore of a well, shall consist of clean, hard and durable aggregate, and not less than five sacks of cement per cubic yard of concrete. Concrete may be used only when the oversize drill hole is at least eight (8) inches larger in diameter than the well casing. The maximum diameter of aggregate particles shall not exceed one and one-half inches, and in any event shall not exceed one fifth (1/5) or twenty (20) percent of the width of the space to be filled. The ratio of coarse aggregate to fine aggregate shall be approximately one and one half to one (1.5 /1), but in no event shall it be less than one to two (1/2).

(r) Unhydrated bentonite used in construction of casing seals for water wells shall be specifically designed for sealing wells and be within industry tolerances for dry western sodium bentonite. Bentonite shall be free of polymers that promote bacteria growth. The placement of bentonite shall conform to the manufacturer's specifications and result in a seal that is free of voids or bridges. Powdered bentonite and bentonite grout or slurry shall not be used as an annular seal material.

34-1205. WELL TESTING

Upon completion, every well shall be tested for yield and drawdown either by bailing, pumping or air testing for a period of not less than one hour. The testing method used must provide for drawdown measurements. The results of all tests shall be provided to the Water Administrator.

34-1206. DISINFECTION REQUIREMENTS

Prior to or after being placed in the well, pumping equipment, sand, gravel and well casing shall be thoroughly hosed or sluiced with water and shall be disinfected with a solution containing at least fifty (50) parts per million chlorine. All water introduced into a well during construction shall be clean and potable. Upon completion, the well and its equipment, including the interior of the well casing, shall be thoroughly swabbed and cleaned to remove all oil, grease and other foreign substances. The well and its equipment shall be disinfected by thoroughly agitating and mixing in the well a solution containing enough chlorine to leave a residual twenty-five (25) parts per million throughout the well for a period of 24 hours.

34-1207. WATER WELL MAINTENANCE; PREVENTION OF GROUND WATER CONTAMINATION

- (a) The landowner of the property on which the water well is located is ultimately responsible for the maintenance and proper usage of the well, excepting for such wells that are subject to a maintenance agreement with the Standing Rock Housing Authority or other person.
- (b) All water wells shall be maintained in such a condition that
- (1) they are not a health threat or health hazard,
 - (2) they are not a source of contamination of the ground water; and
 - (3) they are not a source of waste.
- (c) If the Water Resources Control Board determines that a water well violates this section, in addition to any other authority it possesses under this Code, the Board may order discontinuance of, or impose conditions upon, the use of such well. An order of the Board issued pursuant to this section is subject to Tribal Court review, as provided in section 34-902 of this Code.

34-1208. ABANDONMENT; DECOMMISSIONING OF WELL

(a) Any water well abandoned for a period of ninety (90) days or less, shall be capped with a watertight seal, welded steel cap or threaded cap. A water well abandoned for a period of more than ninety (90) days shall be decommissioned and shall comply with the requirements of subsection (b) of this section.

(b) A water well that is decommissioned shall be completely filled in such a manner that vertical movement of water within the well bore, including the annular space surrounding the well casing, is effectively and permanently prevented. The decommissioning of a well must be conducted by a contractor holding a water well operator's license, pursuant to section 34-1210 of this Code. The well contractor shall report the decommissioning of a water well to the Water Resources Control Board.

34-1209. VIOLATIONS

(a) Whenever it appears to the Water Resources Control Board, that a person is violating or is about to violate any of the provisions of this section, the Board may cause a written regulatory order to be served upon said person either personally, or by registered or certified mail delivered to the addressee with return receipt requested. The order shall specify the provision of this alleged to be or about to be violated, and the facts upon which the conclusion of violating or potential violation is based, and shall order the act constituting the violation or the potential violation to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific and reasonable time. As order issued under this chapter shall become effective immediately upon receipt by the person to whom the order is directed, and shall become final unless review thereof is requested as provided in this section.

(b) The Water Resources Control Board may order a well contractor or well operator to repair, alter, or decommission a well if the Board demonstrates that the construction of the well did not meet the standards for well construction in effect at the time construction of the well was completed.

(c) The Board may not issue an order pursuant to this section for wells for which construction has been substantially completed before the date of enactment of this Code, as amended.

34-1210. WATER WELL CONTRACTOR'S LICENSE.

(a) No person shall construct, alter or decommission a well without a license issued by the Water Resources Control Board, obtained pursuant to this section.

(b) A person shall be qualified to receive a water well operator's license if the person:

- (1) Has submitted a completed application to the on forms provided by the Board and has paid to the Board the application fee determined by rule adopted pursuant to this section; and
 - (2) Has the field experience and educational training needed to properly construct, alter and decommission wells, as determined by the Water Resources Control Board; and
- (c) The holding of a well contractor license duly issued by a neighboring state shall constitute prima facie evidence of that an applicant meets the criteria contained in subsection (b) (2) of this section.
- (d) *Duration and Renewal of Licenses*
- (1) Licenses issued pursuant to this section shall be renewed every two years. A license shall be renewed upon payment of a renewal fee and completion of any continuing education required by rule by the Board. If a licensee fails to submit an application for renewal, the renewal fee, and proof of completion of the required continuing education, the license shall expire at the end of its effective term.
 - (2) The Board may refuse to renew a license if the licensee has not imposed in accordance with this section, unless the order or penalty is under appeal.
 - (3) The Board may issue a conditional license to enable a former licensee to comply with an order to correct problems with a well.
- (e) *Actions Against Licenses* The Water Resources Control Board may revoke, or suspend, for any period deemed warranted, a license issued pursuant to this section, for any of the following reasons:
- (1) For fraud or deception in obtaining the license;
 - (2) For fraud or deception in reporting;
 - (3) For violating any provisions of this Code or of any administrative order of the Board issued pursuant to this section.

No person whose license is revoked shall be eligible to apply for a license for one year from the effective date of the final order of revocation.

(f) Any person may make a complaint against any well contractor or operator for violating this Code. The complaint shall be in writing, signed by the complainant, and specify the grievances against the licensee. The Water Resources Control Board shall respond to the complaint by issuance of an order it deems appropriate. Review of the order shall be subject to the General Hearings Provisions.

(g) An applicant for a license whose application is denied by the Board, or a license holder whose license is revoked or suspended, may appeal to the Board pursuant to Chapter 14 of this Code.

Chapter 13: **Miscellaneous Provisions**

34-1301. **SEVERABILITY**

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

34-1302. **CONSTRUCTION**

This Code shall be construed to effectuate its policies and purpose.

Chapter 14: **Administrative Procedures of the Water Resources
Control Board**

34-1401. **DUE PROCESS; ADMINISTRATIVE PROCEDURES**

- (a) The Water Resources Control Board shall afford due process of law to all persons appearing before the Board.
- (b) The administrative procedures provided in this chapter shall apply –
 - (1) in public hearings on the Description of Use and Application for Permit, as provided section 501 of this Code;
 - (2) in public hearings on the revocation of a water use permit, as provided in section 703 of this Code.

(3) in proceedings conducted pursuant to the licensure of well contractors pursuant to Chapter 12 of this Code.

(c) For the purposes of this section, the term –

(1) "applicant," means a person that has filed a Description of Use and Application for Permit, with the Water Resources Control Board, or a person that has applied for a license to be a well contractor with the Board.

(2) "permit holder," means a person that holds a water use permit issued by the Water Resources Control Board.

(3) "license holder," means a person that holds a well contractors license issued by the Water Resources Control Board.

34-1402. NOTICE REQUIREMENTS

The Water Resources Control Board shall notify the aggrieved person of a hearing in writing at least forty-five (45) days in advance of the date scheduled for the hearing. The Water Resources Control Board shall post conspicuously such notice in each local district and other communities of the Reservation, and cause such notice to be published in a newspaper of general circulation in Corson County (S.D.) and Sioux County (N.D.), at least once each week for three successive weeks. The notice shall include:

- (1) A statement of the time, place and nature of the proceedings;
- (2) A statement of the legal authority and jurisdiction under which the hearing is to be held, to include a reference to the particular sections of Tribal law involved;
- (3) A short and plain statement of the issues and matters asserted;
- (4) A statement that any resident of the Reservation may appear and present oral or written evidence; and
- (5) A statement that the decision of the Water Resources Control Board may be appealed to the Tribal Court.

34-1403. CONDUCT OF HEARINGS

(a) A hearing shall be held within sixty (60) days of the date of the action under consideration. Upon request of the applicant, or permit holder, or license holder and for good cause, the date set for the hearing may be continued. A request to have the date of the hearing changed must be made at least five (5) days before the date set. In all cases, such request may be granted or denied by the Water Resources Control Board, as it deems appropriate.

(b) The proceedings shall be recorded. The record in a hearing shall include all pleadings, motions and intermediate rulings, the transcript from the hearing and the written decision by the Water Resources Control Board. In the event of an appeal, the cost of transcribing the hearing shall be borne by the appellant.

(c) All persons appearing before the Water Resources Control Board may be represented by legal counsel or any other representative;

(d) The Chairperson of the Water Resources Control Board shall preside over a hearing and regulate its conduct. The Chairperson shall open the hearing by making a statement of the matter to be heard and administer oaths to witnesses that shall testify. The applicant, or permit holder, or license holder shall present their case first. Technical rules of evidence shall not apply, however, if a party at a hearing pursues a line of questioning of a witness that is clearly irrelevant, incompetent or immaterial, the Chairperson may stop such interrogation. The members of the Water Resources Control Board may cross examine or otherwise question witnesses. The Water Administrator may cross examine witnesses or the applicant or permit holder. The Water Administrator shall present the evidence of the Water Resources Control Board, including making an oral statement, calling witnesses and presenting documentary evidence. The applicant or permit holder may cross examine all witnesses and submit rebuttal evidence.

34-1404. DECISIONS

The decision by the Water Resources Control Board shall be made by a majority vote. It shall be based upon the entire record. The Chairperson or his or her designee on the Board shall provide the decision in writing. The written decision shall include findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of each fact found upon each contested issue of fact. The Board shall issue its written decision no later than thirty (30) days from the date of the hearing. The aggrieved party and other interested persons who appeared at the hearing shall be notified of the decision by the board.

34-1405. EX PARTE CONTACTS

Except upon notice and opportunity for all parties to be present, no member of the Water Resources Control Board presiding at a hearing may consult with any person or party on any issue of fact or law in the proceedings, including the Water Resources Control Board, excepting other Board members.

34-1406. REQUEST FOR REHEARING

The aggrieved person may request that the Water Resources Control Board reconsider a hearing decision by filing a written petition within fourteen (14) days of receiving such decision. A petition for rehearing shall state in concise fashion the errors in such decision.

Chapter 15: Application of Water Code to Geothermal Wells and the Development of Geothermal Resources

34-1501 DECLARATION OF PURPOSES

The Tribal Council declares that the purposes of this Chapter are,

- (a) to encourage the exploration and development of the geothermal resources of the Standing Rock Sioux Indian Reservation;
- (b) to protect the public health and welfare, by ensuring the safe and environmental-sound development of geothermal resources on the Standing Rock Indian Reservation; and
- (c) to exercise the sovereignty of the Standing Rock Sioux Tribe, by establishing the legal authority and administrative system with the Water Resources Control Board, for the regulation of geothermal development within the exterior boundaries of the Standing Rock Sioux Indian Reservation.

34-1502 DEFINITIONS

For the purposes of this chapter, the term,

- (a) “geothermal resources”, means
 - (i) all products of geothermal processes, embracing indigenous steam, hot water and hot brines;
 - (ii) steam and other gases, hot water and hot brines into geothermal formations;
 - (iii) heat or other associated energy found in geothermal formations; and
 - (iv) any byproducts derived from them.
- (b) “geothermal well,” means a well drilled or constructed for the purpose of developing geothermal resources.

- (c) “geothermal injection well”, means a well drilled or constructed for the purpose of re-injecting geothermal fluids or byproducts that are obtained in the development of geothermal resources.
- (d) “person”, includes the person, firm, corporation, association, or other entity who owns the geothermal well or other facilities used in the development of geothermal resources.

34-1503 OWNERSHIP OF GEOTHERMAL RESOURCES

All geothermal fluids subsurface of the Standing Rock Indian Reservation, as defined in the Act of March 2, 1889, are part of the groundwater resources of the Standing Rock Sioux Tribe. Within the exterior boundaries of the Standing Rock Indian Reservation, the Tribe, on behalf of its enrolled members, owns the right to the use of the underlying geothermal resources.

34-1504 PROCEDURES FOR APPROPRIATION OF WATER USED IN THE DEVELOPMENT OF GEOTHERMAL RESOURCES

- (a) A consumptive use of water brought to the surface outside of a geothermal well is subject to the appropriation procedures of Chapter 4, 5, and 5 of this Code.
- (b) This section shall not apply to,
 - (1) Water that is removed from an aquifer or geothermal reservoir to develop and obtain geothermal resources if the water is returned or re-injected into the same aquifer or reservoir; or
 - (2) The reasonable loss of water;
 - (i) During a test of a geothermal well; or
 - (ii) From the temporary failure of all or part of a system that removes water from an aquifer or geothermal reservoir, transfers the heat from that water and re-injects that water into the same aquifer or reservoir.

34-1505 **PERMITS REQUIRED FOR GEOTHERMAL WELLS**

- (a) No person may drill or operate any geothermal well, or exploratory well, without first obtaining a permit issued by the Water Resources Control Board.
- (b) A permit issued under this section constitutes revocable permission by the Standing Rock Sioux Tribe to develop and use the geothermal resources of the Standing Rock Indian Reservation, subject to the terms and conditions of the permit, and the requirements of this Chapter.
- (c) Compliance by a permittee with the terms and conditions of the permit, and the provisions of this Chapter, shall be required in order to drill or operate any geothermal well on the Standing Rock Indian Reservation.

34-1506 **CONTENTS OF APPLICATION FOR PERMIT TO DRILL OR OPERATE GEOTHERMAL WELL**

- (a) An application for a permit shall contain:
 - (1) The location and elevation of the floor of the proposed well.
 - (2) The applicant's estimate of the depths to be drilled.
 - (3) The nature and character of the geothermal resource sought.
 - (4) Such other information as the Board deems necessary.
- (b) The Board shall establish forms to carry out this section.

34-1507 **FEES FOR PERMIT**

Each application for a permit shall be accompanied by a filing fee, to be established by the Water Resources Control Board. The Board is authorized to establish a sliding fee scale. The Board may waive payment of such fees in cases of financial hardship.

All fees collected under this section shall be deposited with the Board and are continuously appropriated to the Board and the Water Administrator for the administration of this Code.

34-1508**HEARINGS**

- (a) The Board shall post a copy of an application for a permit under this Chapter in the Tribal Office in Fort Yates, and at such other places deemed appropriate, and shall cause to be published a copy of an application in one or more newspapers of general circulation on the Reservation. The notice required under this section shall invite public comment to the Board, and shall inform the public of its right to request a hearing on the application.
- (b) Upon the request of any person, the Board may hold a public hearing prior to approving an application for a permit under this Chapter.
- (c) Upon the written request of any person who contends that approval of a permit may impact an existing geothermal well or water permit held by such person, the Board shall hold a public hearing.
- (d) The Board shall post notice of a hearing under this section, in the Tribal Office in Fort Yates, and such other public places on the Reservation deemed to be appropriate, and shall cause to be published a notice of the scheduling of a hearing in one or more newspapers of general circulation on the Reservation.
- (e) The applicant shall receive forty-five (45) day advance written notice of a hearing scheduled under this section. The applicant may waive the right to forty-five (45) day advance notice, in order to expedite the application process, by making a written request to the Board for an expedited hearing. Upon receiving such request, the Board shall promptly schedule a public hearing pursuant to this section.
- (f) Oral and written testimony shall be accepted by the Board at a hearing held pursuant to this section.

34-1509**STANDARDS FOR GEOTHERMAL WELLS**

- (a) If utilization of the well causes heating or cooling of the well casing resulting in thermal expansion or contraction of the casing to the point that adherence to minimum well construction standards will not prevent or eliminate groundwater contamination, groundwater waste, or loss of artesian pressure, or substantial thermal alteration, then the licensed well constructor shall submit a written report to the Board to use alternate construction methods or materials to prevent groundwater contamination, groundwater waste, loss of artesian pressure, and substantial thermal alteration.
- (b) Adequate well-head protection equipment to ensure public safety and the protection of the groundwater resources shall be immediately installed on any geothermal well or geothermal injection well.

- (c) There shall be adequate pump testing of any geothermal well or geothermal injection well. The methods of pump testing shall be identified in the prior notice of well construction submitted to the Water Resources Control Board. The Board may require the well owner to provide a more detailed test, separate from the water well report that could include, but is not limited to, increased frequency of water level measurements, increased test duration and increased monitoring of observation wells. Such modifications will be required when possible impacts resulting from development include, but are not limited to, thermal or hydrologic interference with existing water rights, water quality degradation or physical or mechanical failure of the well structure.

34-1510 AUTHORITY OF WATER RESOURCES CONTROL BOARD

The Water Resources Control Board is authorized and directed to implement and enforce the provisions of this Chapter. The Board may require:

- (a) Identification of ownership of all facilities, installations and equipment used in the extraction of geothermal energy.
- (b) The drilling, boring, casting, excavating, plugging, and construction of facilities in a manner to prevent contamination and pollution of surface and groundwater sources and unnecessary environmental degradation.
- (c) The furnishing of a reasonable bond with good and sufficient surety conditioned upon the full compliance with this Chapter.
- (d) Metering or measuring all products extracted from the or by means of a facility regulated by this chapter.
- (e) That every person who operates a geothermal energy extraction facility within the exterior boundaries of the Reservation shall keep and maintain complete and accurate records of the quantities and nature of products extracted from or by means of any facility, and the ultimate disposition of such products, which records must be available to the Board and the Water Administrator at all times, and that every such person file with the Board such reports as it may prescribe.
- (f) The making and filing of all logs and reports on facility location, drilling, boring, excavating, and construction and the filing, free of charge, of samples, core chips, and complete cores, when requested, with the Board.
- (g) That upon termination of the operation of any facility or activity regulated by this Chapter, the operator of this facility shall restore the surface as nearly as possible to its original condition and productivity.

- (h) The holding of public hearings on an application for a permit under this Chapter.
- (i) Authorize the Water Administrator to carry out such functions and tasks that are reasonably necessary to assist the Board in fulfilling its duties under this Chapter.

34-1511 AUTHORITY OF WATER ADMINISTRATOR

The Water Administrator is authorized to enter into any land or facilities within the exterior boundaries of the Reservation, upon reasonable notice or upon such terms as are reasonable under the circumstances, for the sole purposes of carrying out inspections or other investigations, as deemed necessary to assist the Board in fulfilling its duties under this Chapter.

34-1512 RIGHT OF ADMINISTRATIVE APPEAL

A party aggrieved by a decision of the Water Resources Control Board under this Chapter shall be entitled to an administrative appeal, pursuant to the procedures delineated in Chapter 14 of this Code.

34-1513 ENFORCEMENT; APPEALS

- (a) The Water Resources Control Board is authorized to commence a civil action in the Standing Rock Tribal Court, as it deems necessary, for injunctive or declaratory relief.
 - (1) To enforce the terms of a permit under this Chapter;
 - (2) For emergency equitable relief to restrain a violation of this Chapter that results or may result in an imminent threat to public safety or the health and welfare of the public;
 - (3) To enjoin the unauthorized drilling or operation of any geothermal well, or exploratory well;
 - (4) For the enforcement of any provisions of this Chapter.
- (b) The Standing Rock Tribal Court shall have exclusive jurisdiction to entertain an enforcement action initiated by the Board.

- (c) The Tribal Court shall have exclusive jurisdiction to review a hearing decision of the Board, upon an administrative appeal by an aggrieved party under this chapter. Such review may be obtained only upon the filing by the aggrieved party, of a petition for judicial review within thirty (30) days of receipt of the hearing decision. The Tribal Court may reverse the hearing decision only if it violates this Code or is otherwise contrary to law, lacks substantial evidence, or constitutes an arbitrary or capricious exercise of authority.

Standing Rock Sioux Tribe
Standing Rock Sioux Indian Reservation
Standing Rock Water Resources Control Board

Application for Permit

To use Waters of the Standing Rock Sioux Indian Reservation

Surface Water Ground Water Treated Water

\$5.00 PER THOUSAND GALLONS

\$7.00 per thousand gallons

For Office Use Only

Application No	District	Date	Time	Accepted
----------------	----------	------	------	----------

Applicant's Name: _____

Telephone No: _____

Address: _____

Fax No: _____

City: _____ State: _____

Zip Code: _____

1. Source of Supply: Surface Ground Water Treated other

(Name of stream, lake, spring, etc. If unnamed, so state well, tunnel, infiltration, trench, etc.)

Tributary of: _____ Size & Depth: _____

2. Use to which water is to be applied:

Domestic supply – number of homes or units: _____

Irrigation – number of acres _____

Mining

Manufacturing

Municipal – Estimated population 20 years from this date: _____

Recreation

other (explain): _____

Application for Water Permit

Cubic Feet per Second or Gallons: _____ Acre Feet per Year: _____

Per Minute () CFS () GPM

Times during year water will be required: _____

Date Project will be started: _____ Date Project will be completed: _____

3. Location of Point of Diversion/Withdrawal: _____

On accompanying plats or maps, accurately mark or identify each point of diversion.
Give measured distance and bearing, or North-South and East-West distances from nearest
section corner: _____

Located within (smallest legal section, township, N. Range (E or W), District, and Subdivision:

Allotment Number: _____

Do you own the land on which this source is located? () Yes () No

In No, Insert Name and Address of Owner: _____

4. If this is within the limits of a recorded platted property, complete this section:

Lot: _____ Block: _____ of _____
(Give name of plat of addition or allotment number)

5. Legal description of property on which water is to be used: _____

(Copy legal description from Deed or attach copy of Deed)

(Tax statement descriptions are not acceptable)

Also outline this property on the maps or plats submitted with this application.

What is your interest in the property on which the water is to be used?

- () Property Owner;
- () Lessee;
- () Contract Purchaser;
- () Other: Explain: _____

Are there any existing water uses appurtenant to the land on which the water is to be used?

() Yes - What source: _____

Under what authority: _____

() No

6. The Applicant consents to and agrees to the jurisdiction of the Standing Rock Sioux Tribe, the Standing Rock Sioux Tribal Court, and the Standing Rock Sioux Water Resources Control Board for any proceedings or disputes concerning the issuance, use, or any other administrative enforcement or dispute resolution regarding the application, use and other issues regarding the regulation of water permits granted by the Standing Rock Water Resources Control Board.

7. Signatures:

Applicant's Signature: _____ Date: _____

Legal Landowner's Signature: _____ Date: _____

Legal Landowner's Address: _____

Application for Water Permit

For Office Use Only
Water Administrator and/o:
Water Resources Control Board

Standing Rock Sioux Tribe

} ss

Standing Rock Water Resources Control Board

This is to certify that I have examined the foregoing application together with any accompanying maps and data, and return the same for correction or completion as follows:

In order to retain its priority, this application must be returned to the Standing Rock Water Resources Control Board with Corrections on or before:

Date: _____

Witness my hand this _____ day of _____, 2010.

Standing Rock Water Resources Control Board

P.O. Box D

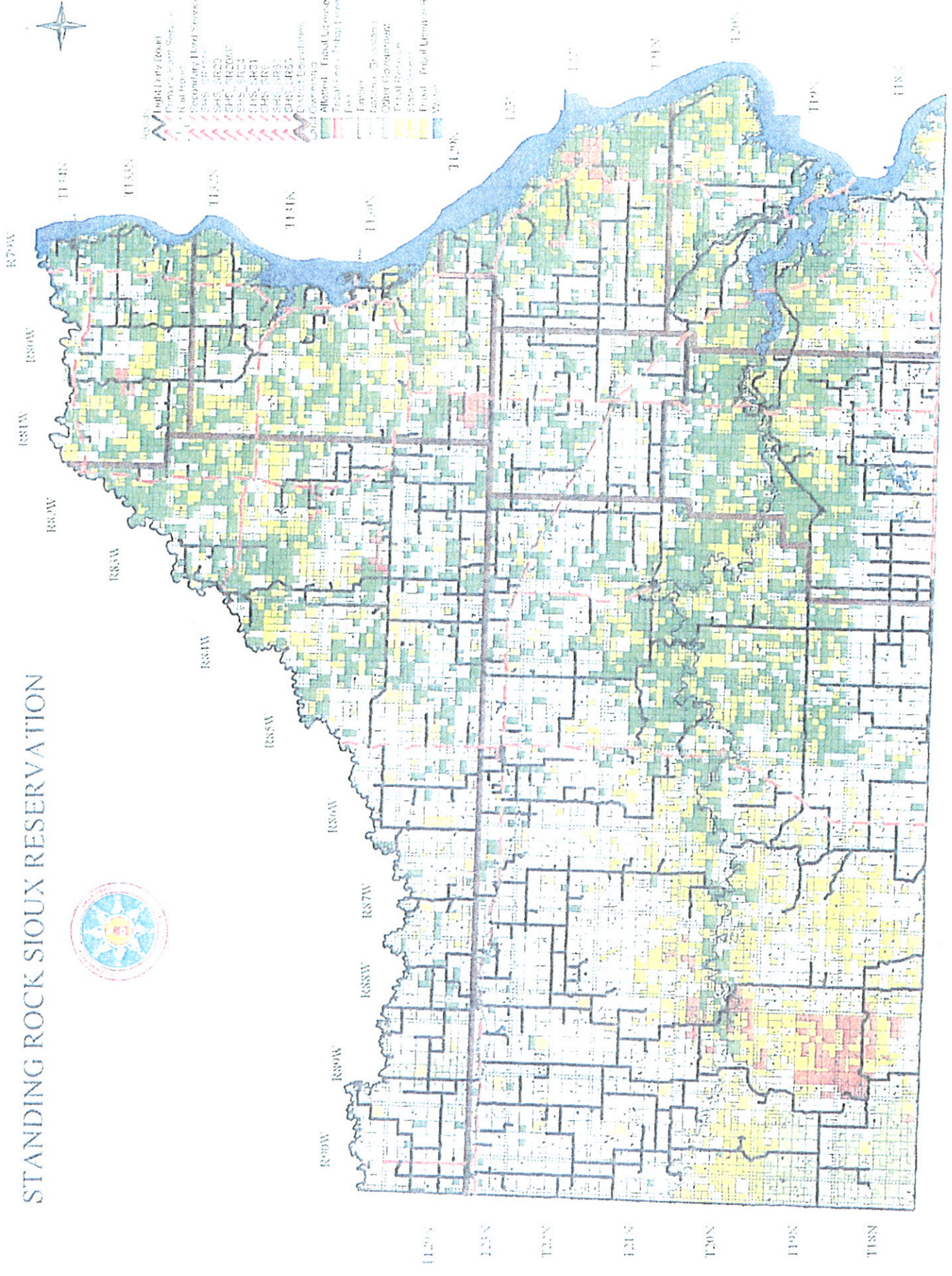
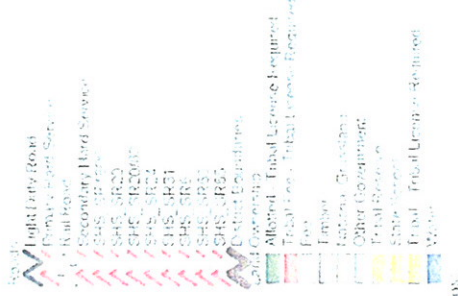
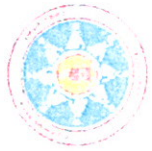
Dept of Water Resources

Fort Yates, ND 58538

(701) 854-7214 Office

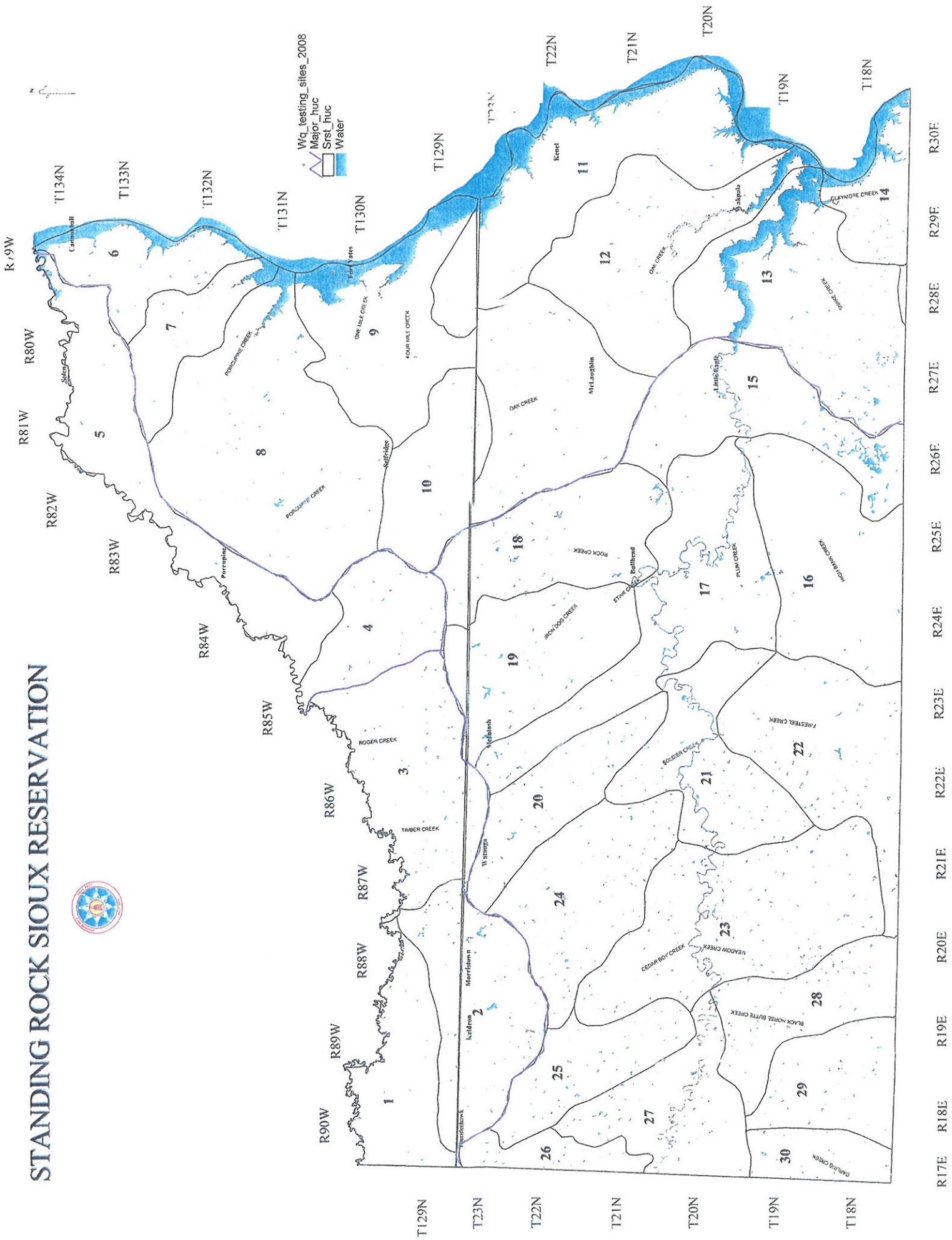
(701) 854-3077 Fax

STANDING ROCK SIOUX RESERVATION



R17E R18E R19E R20E R21E R22E R23E R24E R25E R26E R27E R28E R29E R30E R31E R32E R33E R34E R35E R36E R37E R38E R39E

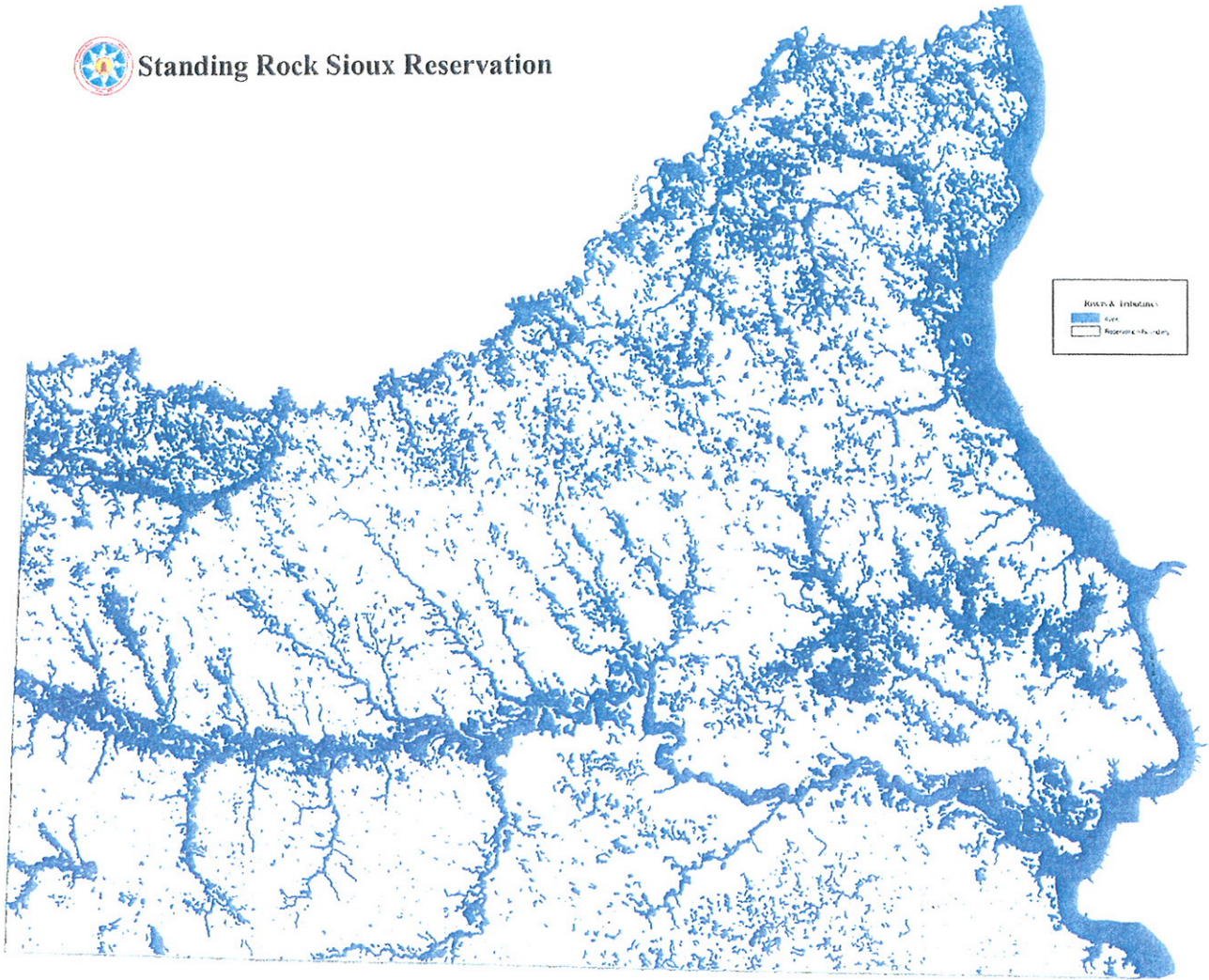
STANDING ROCK SIOUX RESERVATION



T129N T23N T22N T21N T20N T19N T18N
 R90W R89W R88W R87W R86W R85W R84W R83W R82W R81W R80W K 9W
 T134N T133N T132N T131N T130N T129N T128N
 T22N T21N T20N T19N T18N
 R17E R18E R19E R20E R21E R22E R23E R24E R25E R26E R27E R28E R29E R30E



Standing Rock Sioux Reservation



USGS
1:50,000
7.5-MINUTE
TOPOGRAPHIC MAP



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JEK HUSS BUILDING
133 EAST CAPITOL

PIERRE SOUTH DAKOTA 57501-3181

April 13, 1992

Harry Swank, Contract Administrator
Fisher Sand & Gravel Company
PO Box 1034
Dickinson, ND 58602-1034

Dear Mr. Swank:

Enclosed are your temporary permit requests submitted to our office on April 6, 1992. The requests involved use of water from Pudwell Dam, Stink Creek and the Grand River for highway construction purposes.

After further review, it appears that all three temporary permit requests are for areas within the Standing Rock Indian Reservation. The State lacks jurisdiction with regard to issuance of temporary permits or appropriative water permits within the boundaries of the Indian Reservations.

In order to obtain water for highway construction purposes, you will need to contact the tribal office. Their address is as follows:

Charles Murphy, Tribal Chairman
Standing Rock Sioux Tribe
Ft Yates, ND 58538

If you have any questions, please contact us.

Very truly yours,

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

enclosures

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Article 16, and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council, and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the Amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1 (a), 1 (c), 1 (j), and 1(q), is empowered to advise and consult with the representatives of the Department of the Interior on all activities of the Department which may affect the Standing Rock Sioux Tribe, to promote and protect the health, education and general welfare of the members of the Tribe, to manage, protect and preserve the property of the Tribe and the wild-life and natural resources of the Standing Rock Reservation, and is further empowered to employ consultants for the protection and advancement of the rights and property of the Tribe and its members, and

WHEREAS, the Standing Rock Sioux Tribe composing of the Hunkpapa, Blackfeet, Yanktonai, and Cuthead Bands of the Lakota and Dakota Nations in its 1868 Treaty of Fort Laramie, reserved Indian water rights to the use of water, both surface and ground water, to meet all of its water requirements for the Standing Rock Sioux Indian Reservation for any and all purposes, and

WHEREAS, the Standing Rock Sioux Tribal Council did on December 1979 direct the General Counsel to draft a water code for the Tribe, and on March 12, 1980, the General Counsel did submit to the Tribal Council a proposed water code which had been reviewed by the Standing Rock Sioux Tribal Council but had been tabled due to BIA proposed Tribal Water Code Regulations which had been rejected by the Standing Rock Sioux Tribal Council per Resolution No. 8-81 as damaging to the Tribe, and

WHEREAS, it is very pertinent for the Tribe to have a Water Code in tact and in operation subject to amendments by the Tribal Council, as the Tribe is a member of the Indian Water Rights Coalition whom are actively involved against the "negotiated settlement" concept for the Indian Water Rights , and

NOW THEREFORE BE IT RESOLVED that the Standing Rock Sioux Tribal Council do hereby adopt the STANDING ROCK SIOUX WATER CODE to be put into effect immediately and that the Winters Doctrine rights of the Standing Rock Sioux are prior and paramount to any possible right that a citizen of any state might claim.

BE IT FURTHER RESOLVED that Standing Rock Sioux Tribe rejects any proposals from the Department of Interior for negotiations, bargaining, or conferring for the Indian water rights of the members of the Standing Rock Sioux Tribe and does not allow for any employee or contracted firm of the Tribe to discuss negotiations on behalf of the Tribe; if any employee or firm does attempt to negotiate the Indian water rights under the Winters Doctrine then that employee(s) or firm shall be immediately terminated from the Tribe per contract or as an employee.

BE IT FURTHER RESOLVED that the Chairman and the Secretary of the Tribe be authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe and that no Inter-tribal organization is authorized by this resolution to represent the Tribe in any meeting or national organization except the Standing Rock Sioux Tribal Council or its Tribal Chairman or his designated representative.

CERTIFICATION

We, the undersigned Chairman and Secretary of the Tribal Council of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of 15 members, of whom, 15, constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened and was duly adopted by the affirmative vote of 14 members, with 0 opposing, and with 1 not voting. the Chairman's vote is not required except in case of a tie.

Dated this third day of February, 1983.



Pat McLaughlin, Chairman
Standing Rock Sioux Tribal Council

ATTEST:



Elaine Brave Bull, Secretary
Standing Rock Sioux Tribal Council

(OFFICIAL SEAL)

RESOLUTION NO. 106-01

FORMALLY ESTABLISHES THE STANDING ROCK SIOUX TRIBE'S
POLICY ON ITS ABORIGINAL TREATY AND WINTERS RIGHTS TO THE USE
OF WATER IN THE MISSOURI RIVER TO MEET ALL
PRESENT AND FUTURE USES; AMONG OTHER THINGS

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Article 16, and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the Constitution of the Standing Rock Sioux Tribe, Article IV, Section(s) 1(a,b,c,h and j), is authorized to negotiate with Federal, State and local governments and others on behalf of the tribe, is further authorized to promote and protect the health, education and general welfare of the members of the Tribe and to administer such services that may contribute to the social and economic advancement of the Tribe and its members; and is further empowered to authorize and direct subordinate boards, committees or Tribal Officials to administer the affairs of the Tribe and to carry out the directives of the Tribal Council; and is empowered to manage, protect, and preserve the property of the Tribe and natural resources of the Standing Rock Sioux Reservation; and

Master Manual EIS Specifically Excludes Consideration of Indian Water Rights

WHEREAS, the United States Army Corp of Engineers makes the following statement describing how the Corps fails to recognize or consider Indian water rights in its Master Water Control Manual for the future operation of the Missouri River, thereby committing Missouri River water to operational priorities and creating an insurmountable burden for the future exercise of the rights to the use of water by the Standing Rock Sioux Tribe as reserved from time immemorial;

The Missouri River basin Indian tribes are currently in various stages of qualifying their potential future uses of the Mainstem System water. It is recognized that these Indian tribes may be entitled to certain reserve or aboriginal Indian water rights in streams running through and along reservations. Currently, such reserved or aboriginal rights of tribal reservations have not been quantified in an appropriate legal forum or by compact with three exceptions....The study consideration only existing consumptive uses and depletions; therefore, no potential tribal water rights were considered. Future modifications to system operation, in accordance with pertinent legal requirements, will be considered as tribal water rights are quantified in accordance with applicable law and actually put to use. Thus, while existing depletions are being considered, the Study process does not prejudice any reserved or aboriginal Indian water rights of the Missouri River basin Tribes. (PDEIS 3-64); and

WHEREAS, the failure of the United States, acting through the Corps, to recognize and properly consider the superior rights of the Standing Rock Sioux Tribe must be rejected by the Tribe for the reason that the Master Manual revision and update is making irretrievable commitments to (1) navigation in the lower basin, (2) maintenance of reservoir levels in the upper basin and (3) fish, wildlife and endangered species throughout the upper and lower basins. These commitments are violations of the constitutional, civil, human and property rights of the Tribe; and

Endangered Species Guidance Specifically Excludes Consideration of Indian Water Rights in Missouri River Basin

WHEREAS, the Working Group on the Endangered Species Act and Indian Water Rights, Department of Interior, published recommendations for consideration of Indian water rights in Section 7 Consultation, in national guidance for undertakings such as the Master Manual, as follows:

The environmental baseline used in ESA Section 7 consultations on agency actions affecting riparian ecosystems should include for those consultations the full quantum of: (a) adjudicated (decreed) Indian water rights; (b) Indian water rights settlement act; and (c) Indian water rights otherwise partially or fully quantified by an act of Congress... Biological opinions on proposed or existing water projects that may affect the future exercise of senior water rights, including unadjudicated Indian water rights, should include a statement that project proponents assume the risk that the future development of senior water rights may result in a physical or legal shortage of water. Such shortage may be due to the operation of the priority system or the ESA. This statement should also clarify that the FWS can request reinitiation of consultation on junior water projects when an agency requests consultation on federal actions that may affect senior Indian water rights.

The Working Group recommendations further the failure to address unadjudicated Indian water rights. It is unthinkable that the United States would proceed with water resource activities, whether related to endangered species, water project implementation or Missouri River operation in the absence of properly considering Indian water rights that are not part of an existing decree – presuming, in effect, that the eventual quantification of Indian water rights will be so small as to have a minimal impact on the operation of facilities in a major river, such as the Missouri River, or so small as to be minimally impacted by assignment of significant flow to endangered species. The flows required to fulfill or satisfy Indian water rights are, in fact, not small nor minimal but are significant; and

Final Indian Water Right Agreements and Claims of the United States on Behalf of Tribes Are Denigrated by Master Manual and Other Regional Water Allocation Processes

WHEREAS, failures of federal policy to properly address Indian water rights in planning

documents such as the Master Manual is underscored by example. Tribes in Montana have water right compacts with the State that are complete and final but have not been incorporated into a decree. Incorporation is certain, however, and will be forthcoming. It is not a matter of "if", it is a matter of "when". The water rights agreed upon by compact are substantial, but neither the Corps of Engineers' Master Manual nor the Secretary of Interior's ESA guidance, as currently constituted, will consider these rights -- they presume the rights do not exist -- until they become part of a decree. At such time as the decree in Montana is complete, the Master Manual conclusions will be obsolete and any assignment of Missouri River flows to upstream reservoirs, downstream navigation or endangered species, relied upon by the various special interest groups, will be in conflict with the decree; and

WHEREAS, in Arizona, as another example, these same flawed federal policies to ignore Indian water rights in the allocation of regional water supplies are manifest. The United States is in the process of reallocating part of approximately 1.4 million acre-feet of water diverted from the Colorado River and carried by aqueduct system in the Central Arizona Project for the Phoenix area. The reallocation is purportedly for the purpose, in part, of resolving Indian water right claims in Arizona, but careful review of the reallocation demonstrates that only two Indian tribes are involved. The Bureau of Reclamation, agent for the trustee in the reallocation process, has given short shrift to other Indian concerns that the EIS should address the impacts of the reallocation on all affected tribes and on all non-Indian claimants that will be impacted by ongoing adjudication of Indian water rights. In response Reclamation describes claims filed by the Department of Justice on behalf of the tribes as *speculative*. Thus, Arizona tribes are in the same dilemma as Missouri River basin tribes, but the process to determine the magnitude of Indian claims in Arizona is much further advanced. The United States is, on the one hand, pursuing a claim for adjudication of Indian water rights; and the United States, on the other hand, is reallocating water necessary to supply non-Indian interests impacted by Indian water rights-- but is refusing to recognize any potential for Indian water rights success in ongoing adjudications. This denigrates the claims of the United States on behalf of the tribes and draws into question the intent and commitment of the Department of Justice in the proper advancement of Indian claims, claims which at least some tribes consider deficient and poorly prosecuted by the Department of Justice; and

WHEREAS, the Standing Rock Sioux Tribe cannot tolerate these policies: cannot permit reliance by wide and diverse interest groups in the Missouri River -- states, environmental, federal agencies and economic sectors-- on conclusions associated with the preferred alternative in the Master Manual when the conclusions are based on the presumption of no Indian water rights and insignificant future Indian water use throughout the Basin; cannot expect future courts to undo investments, undertakings, mortgages and economies that build on the basis of the Master Manual conclusions; cannot expect future Congresses to act more favorably than future courts; and

Importance of Master Manual Process is Underscored by Congressional and Other Activity

WHEREAS, the Master Manual of the Corps of Engineers is the name presently given to the operating procedures for the mainstream dams and reservoirs. The Corps of Engineers has responsibility for those operations as directed by the 1944 Flood Control Act, the controlling legislation for the Pick-Sloan Project. Since 1944, all dams (except Fort Peck Dam) were constructed and have been operated by the Corps of Engineers or the Bureau of Reclamation. The current Master Manual revision is the first public process update of Corps of Engineers operating procedures, and its importance to future exercise of the Tribe's water rights cannot be ignored by the Tribe; and

WHEREAS, the Master Manual is intended by the federal courts and Congress to resolve issues between the upper and lower basin states, irrespective of tribal issues. The federal courts have dismissed cases brought by the states over the last decade and a half, cases designed to settle issues of maintenance of water levels in the reservoirs in North and South Dakota and the conflicting release of water for downstream navigation; and

WHEREAS, most recently, the Energy and Water Resource Development appropriations for FY 2001 were vetoed by the President because upstream senators supported by the President opposed language by downstream senators in the appropriations bill, which contained controversial language as follows:

Sec. 103. None of the funds made available in this Act may be used to revise the Missouri River Master Water Control Manual when it is made known to the Federal entity or official to which the funds are made available that such revision provides for an increase in the springtime water release program during the spring heavy rainfall and snow melt period in States that have rivers draining into the Missouri River below the Gavins Point Dam.

The provisions cited above require the Corps of Engineers or any other official to refrain from using any funds to revise the Master Manual if it is determined that the revision would cause any increase in water releases below Gavin's Point Dam in springtime. There is apparently concern by downstream members of Congress that the Master Manual will recommend an increase in releases to the detriment of downstream navigation, environmental values or flood control. Upstream members of Congress stopped the approval of appropriations over this controversy until the above-cited language was omitted from the bill; and

WHEREAS, given the importance of the Master Manual revision and update to the States, the Congress and Courts, the Standing Rock Sioux Tribe cannot tolerate the exclusion of proper consideration of their water rights, nor can the Tribe tolerate the inadequate representation of the Trustee on this matter; and

Brief Historical Review of Indian Water Rights

WHEREAS, the right of the Crown of Great Britain to the territory of North America was derived from the discovery of that continent by Sebastian Cabot, who in 1498 explored a greater part of the Atlantic Coast under a Commission from King Henry VII and took formal possession of the continent as he sailed along the coast. But those commissioned by the Crown to settle in North America were cognizant of the rights, titles and interests of the original possessors. In the proprietary of Maryland, granted to George Calvert, Lord Baltimore, in 1632, for example, it was recognized by English law evolving from invasions against the Celtic tribes and their successors by the Romans, Anglo-Saxons and Normans, among others, over a period of 1,500 years prior to the discovery of America that the rights of the ancient possessors were specific and could not be ignored by a just occupier. The following was the rationale:

The roving of the erratic tribes over wide extended deserts does not formed a possession which excludes the subsequent occupancy of Immigrants from countries overstocked with inhabitants. The paucity of their numbers in their mode of life, render them unable to fulfill the great purposes of the grant (by the King to the Proprietary of Maryland). Consistent, therefore, with the great Charter to mankind, they (Tribes) may be confined within certain limits. Their rights to the privileges of man nevertheless continue the same: and the Colonists who conciliated the affections of the aborigines, and gave a consideration for their territory, have acquired the praise due to humanity and justice. Nations, with respect to the several communities of the earth, possessing all the rights of man, since they are aggregates of man, are governed by similar rules of action. Upon those principles was founded the right of emigration of old: upon those principles the Phenicians and Greeks and Carthagenians settled Colonies in the wilds of the earth.... In a work treating expressly of original titles to Land it has been thought not amiss to explain... the manner in which an individual obtaining from his Sovereign an exclusive licence, with his own means, to lead out and plant a Colony in a region of which that Sovereign had no possession, proceeded to avail himself of the privilege or grant, and to reconcile or subject to his views the people occupying and claiming by natural right that Country so bestowed... In particular, an history, already referred to, of the Americans settlements, written in 1671, after speaking of the acquisition of St. Marys continues 'and it hath been the general practice of his Lordship and those who were employed by him in the planting of the said province, rather to purchase the natives' interest... than to take from them by force that which they seem to call their right and inheritance, to the end all disputes might be removed touching the forcible encroachment upon others, against the Law of nature or nations... When the earth was the general property of mankind, mere occupancy conferred on the possessor such an interest as it would have been unjust, because contrary to the Law of Nature, to take from him without his consent: and this state has been happily compared to a theatre, common to all; but the individual, having appropriated a place, acquires a privilege of which he cannot be dispossessed without injustice'. ... the Grant (to Lord Baltimore) comprehended 'all Islands and Islets within the limits aforesaid, and all Islands and etc. within ten marine leagues of the Eastern Shore, with all Ports, Harbors, Bays, Rivers, and Straits, belonging to the region or Islands aforesaid, and all the soil, plains, woods, mountains, marshes, Lakes, Rivers, Days, and Straits, with the fishing of every kind, within the said limits; all mines of whatsoever kind, and patronage and advowson of all Churches. Lord Baltimore ... was invested with all the Rights, Jurisdictions, Privileges, Prerogatives, Royalties, Liberties, Immunities, and Royal Rights and Temporal Franchises whatsoever, as well by sea as by land, within the Region,

Baltimore: G. Dobbin & Murphy, 1808. MSA SC 5165-1-1).; and

WHEREAS, 130 years later the Proclamation of 1763 by King George III recognized title to the land and resources reserved by the American Indians of no lesser character or extent than the Charter to Lord Baltimore:

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds -- We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no... Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them. And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, ... all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid. And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that Purpose first obtained. And We do further strictly enjoin and require all Persons whatever who have either wilfully or Inadvertently seated themselves upon any Lands within the Countries above described. or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements. And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests. and to the great Dissatisfaction of the said Indians: In order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where We have thought proper to allow Settlement: but that, if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie: and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose....

Given at our Court at St. James's the 7th Day of October 1763, in the Third Year of our Reign.

GOD SAVE THE KING; and

WHEREAS, after the American Revolution and consistent with the foregoing, the United States Supreme Court by 1832 relied upon the ancient concepts of its predecessor Great Britain and recognized the property rights of Indians in the classical case of *Worcester v. the State of Georgia*:

America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own and governing themselves by their own laws. It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that the discovery of either by the other should give the discoverer rights in the country discovered, which annulled the pre-existing rights of its ancient possessors. (6 P 515, p. 543)

... This principle, acknowledged by all Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and making settlements on it. It was an exclusive principle which shut out the right of competition among those who had agreed to it; not one which could annul the previous rights of those who had not agreed to it. It regulated the right given by discovery among the European discoverers; but could not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by virtue of a discovery made before the memory of man.....

... This soil was occupied by numerous and warlike nations, equally willing and able to defend their possessions. The extravagant and absurd idea, that the feeble settlements made on the sea-coast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man. They were well understood to convey the title which, according to the common law of European sovereigns respecting America, they might rightfully convey, and no more. This was the exclusive right of purchasing such lands as the natives were willing to sell. The Crown could not be understood to grant what the Crown did not effect to claim; nor was it so understood.

(6 P 515, p. 544-545) (Emphasis supplied); and

WHEREAS, the principles in the case of *Worcester v. Georgia* are ancient as shown above and are the foundation of the principles announced by the U. S. Supreme Court three quarters of a century later relating to the Yakima Indian Nation in the case of *United States v. Winans* (198 U.S. 371). Title of the Indians in their property rights was fully acknowledged, and the Treaty was interpreted as a grant of property to the United States in the area not reserved by the Tribe to itself.

The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not less necessary to the existence of the Indians than the atmosphere they breathed. New conditions came into existence, to which those rights had to be accommodated. Only a limitation of them, however, was necessary and intended, not a taking away. In other words the Treaty was not a grant of rights to the

Indians, but a grant of rights from them - a reservation of those not granted. (Emphasis supplied); and

WHEREAS, the Supreme Court case of *Henry Winters v. United States* (207 US 564) found that reservation of water for the purposes of civilization was implied in the establishment of the Reservations:

The Reservation was a part of a very much larger tract which the Indians had the right to occupy and use and which was adequate for the habits and wants of a nomadic and uncivilized people. It was the policy of the Government, it was the desire of the Indians, to change those habits and to become a pastoral and civilized people. If they should become such the original tract was too extensive, but a smaller tract would be adequate with a change of conditions. The lands were arid and, without irrigation, were practically valueless.

... That the Government did reserve them we have decided, and for a use which would be necessarily continued through years. This was done May 1, 1888, [at Fort Belknap] and it would be extreme to believe that within a year later [when the state of Montana was created] Congress destroyed the Reservation and took from the Indians the consideration of their grant, leaving them a barren waste - took from them the means of continuing their old habits, yet did not leave them the power to change to new ones. (207 U S 574, p. 576 577); and

WHEREAS, the case of *United States v. Ahtanum Irrigation District* (236 Fed 2nd 321, 1956) applied the *Worcester-Winans-Winters* concepts on Ahtanum Creek, tributary to the Yakima River and northern boundary of the Yakima Indian Reservation:

*The record here shows that an award of sufficient water to irrigate the lands served by the Ahtanum Indian Irrigation project system as contemplated in the year 1915 would take substantially all of the waters of Ahtanum Creek. It does not appear that the waters decreed to the Indians in the Winters case operated to exhaust the entire flow of the Milk River, but, if so, that is merely the consequence of it being a larger stream. As the Winters case, both here and in the Supreme Court, shows, the Indians were awarded the paramount right regardless of the quantity remaining for the use of white settlers. Our *Conrad Inv. Co. Case*, supra, held that what the non-Indian appropriators may have is only the excess over and above the amounts reserved for the Indians. It is plain that if the amount awarded the United States for the benefit of the Indians in the Winters Case equaled the entire flow of the Milk River, the decree would have been no different. (236 F. 2nd 321, p. 327) (Emphasis supplied); and*

WHEREAS, these concepts were further advanced in *Arizona v California*, 373 U.S. 546, 596-601 (1963):

The Master found as a matter of fact and law that when the United States created these reservations or added to them, it reserved not only land but also the use of enough water from the Colorado (River) to irrigate the irrigable portions of the reserved lands. The aggregate quantity of water which the Master held was reserved for all the reservations is about 1,000,000 acre-feet to be used on around 135,000 irrigable acres

of land....

It is impossible to believe that when Congress created the Great Colorado River Indian reservation and when the Executive Department of this Nation created the other reservations they were unaware that most of the lands were of desert kind -- hot scorching sands -- and the water from the River would be essential to the life of the Indian people and to the animals they hunted and crops they raised. We follow it [Winters] now and agree that the United States did reserve the water rights for the Indians effective as of the time Indian Reservations were created. This means, as the Master held, that these water rights, having vested before the Act [Boulder Canyon Project Act] became effective on June 25, 1929, are present perfected rights and as such are entitled to priority under the Act. We also agree with the Master's conclusion as to the quantity intended to be reserved. He found that water was intended to satisfy the future as well as present needs of the Indian reservations.... We have concluded, as did the Master, that the only feasible and fair way by which reserved water for the reservations can be measured is irrigable acreage. The various acreage of irrigable land which the Master found to be on the different reservations we find to be reasonable; and

General Nature of Attacks on Winters Doctrine

WHEREAS, notwithstanding the injunctions of Lord Baltimore, King George III and favorable decisions of the United States Supreme Court, in practice, Congress, the executive branch and the Judiciary have (1) limited Indian reserved water rights, (2) suppressed development of Indian reserved water rights, and (3) permitted reliance by state, federal, environmental and private interests on Indian water, contrary to trust obligations. The federal policy has clearly been .. *how best to transfer Indian lands and resources to non-Indians..* rather than to preserve, protect, develop and utilize those resources for the benefits of the Indians.

With an opportunity to study the history of the Winters rule as it has stood now for nearly 50 years, we can readily perceive that the Secretary of the Interior, in acting as he did, improvidently bargained away extremely valuable rights belonging to the Indians.... viewing this contract as an improvident disposal of three quarters of that which justly belonged to the Indians, it cannot be said to be out of character with the sort of thing which Congress and the Department of the Interior has been doing throughout the sad history of the Government's dealings with the Indians and Indian tribes. That history largely supports the statement: From the very beginnings of this nation, the chief issue around which federal Indian policy has revolved has been, not how to assimilate the Indian nations whose lands we usurped, but how best to transfer Indian lands and resources to non-Indians. (United States v Ahtanum Irrigation District, 236 F. 2nd 321, 337); and

WHEREAS, the McCarran Amendment Interpretation by the United States Supreme Court, if not in error, is a further example of the contemporary attack on Indian water rights. The discussion of the McCarran Amendment here is intended to show why tribes are (1) opposed to state court adjudications and (2) negotiated settlements

under the threat of state court adjudication. In 1952 the McCarran Amendment, 43 U.S.C. 666 (a), was enacted as follows:

Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a River system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner or in the process of acquiring water rights by appropriation under State law, by purchase, by exchange or otherwise, and the United States is a necessary party to such suit; and

WHEREAS, the McCarran Amendment has been interpreted by the U.S. Supreme Court to require the adjudication of Indian water rights in state courts. *Arizona v San Carlos Apache Tribe*, 463 U.S. 545,564,573 (1981) held:

We are convinced that, whatever limitation the Enabling Acts or federal policy may have originally placed on State Court jurisdiction over Indian water rights, those limitations were removed by the McCarran Amendment.

In dissent, however, Justice Stevens stated:

To justify virtual abandonment of Indian water right claims to the State courts, the majority relies heavily on Colorado River Water Conservancy District, which in turn discovered an affirmative policy of federal judicial application in the McCarran Amendment. I continue to believe that Colorado River read more into that amendment than Congress intended... Today, however, on the tenuous foundation of a perceived Congressional intent that has never been articulated in statutory language or legislative history, the Court carves out a further exception to the virtually unflagging obligation of Federal courts to exercise their jurisdiction. The Court does not -- and cannot -- claim that it is faithfully following general principles of law... That Amendment is a waiver, not a command. It permits the United States to be joined as a defendant in state water rights adjudications; it does not purport to diminish the United States right to litigate in a federal forum and it is totally silent on the subject of Indian tribes rights to litigate anywhere. Yet today the majority somehow concludes that it commands the Federal Courts to defer to State Court water right proceedings, even when Indian water rights are involved; and

WHEREAS, in Arizona, Montana and other states, general water right adjudications to quantify *Winters* Doctrine rights are ongoing. For example in the state of Montana:

- (1) the state of Montana sued all tribes in a McCarran Amendment proceeding.
- (2) the State of Montana established a Reserved Water Rights Compact Commission. The purpose of the Commission was to negotiate the *Winters* Doctrine rights of the Montana tribes.
- (3) the Department of Interior has adopted a negotiation policy for the settlement of Indian water rights. The United States Department of Interior has

a negotiating team which works with the Montana Reserve Water Rights Compact Commission and Indian tribes, some forced by the adjudication in state court, to negotiate, while others are willing to negotiate.

(4) the Department of Interior makes all necessary funding available to any Tribe willing to undertake negotiations. A Tribe refusing to negotiate cannot obtain funding to protect and preserve its *Winters* Doctrine water rights.

(5) upon reaching agreement between the State of Montana and an Indian tribe, congressional staff are assigned to develop legislation in the form of an Indian water rights settlement that may or may not involve authorization of federal appropriations to develop parts of the amount of Indian water agreed upon between the Tribe and the State or for other purposes.

(6) in the absence of the desire of a Tribe to negotiate, the State of Montana will proceed to prosecute its McCarran Amendment case against the Tribe; and

WHEREAS, this process relies on ongoing litigation to accomplish negotiated settlements of *Winters* Doctrine Indian water rights. The process is held out to be a success by the state and federal governments. However, comparison with the taking of the Black Hills from the Great Sioux Nation, the taking of the Little Rocky Mountains from the Fort Belknap Indian Reservation and the taking of Glacier Park from the Blackfeet are valid comparisons. There are elements of force and extortion in the process; and

WHEREAS, in the Wind River adjudication, 753 P. 2nd 76, 94-100 (WY 1988), the State of Wyoming utilized the McCarran Amendment to drastically diminished the Arapaho and Shoshone *Winters* Doctrine water rights in the Big Horn River Basin. The Wyoming Supreme Court found as follows:

The quantity of water reserved is the amount of water sufficient to fulfill the purpose of the lands set aside for the Reservation.

The Court, while recognizing that the tribes were the beneficial owners of the reservations timber and mineral resources... and that it was known to all before the treaty was signed that the Wind River Indian Reservation contained valuable minerals, nonetheless concluded that the purpose of the reservation was agricultural. The fact that the Indians fully intended to continue to hunt and fish does not alter that conclusion.... The evidence is not sufficient to imply a fishery flow right absent a treaty provision.... The fact that the tribes have since used water for mineral and industrial purposes does not establish that water was impliedly reserved in 1868 for such uses. The District Court did not err in denying a reserved water right for mineral and industrial uses... the District Court did not err in holding that the Tribes and the United States did

not introduce sufficient evidence of a tradition of wildlife and aesthetic preservation that would justify finding this to be a purpose for which the Reservation was created or for which water was impliedly reserved... not a single case applying the reserved water right doctrine to groundwater is cited to us.... In Colville Confederated Tribes v. Walton, supra, 547 F 2d 42, there is slight mention of the groundwater aquifer and of pumping wells, id at 52, but the opinion does not indicate that the wells are a source of reserved water or even discuss a reserve groundwater right.... The District Court did not err in deciding there was no reserved groundwater right; and

WHEREAS, the statement by the Wyoming Supreme Court that *Colville* does not discuss a reserved water right to groundwater is in error, for *Colville* did decree reserved groundwater rights; and

WHEREAS, the *Wind River* case must be carefully examined by all tribes, including those of the Missouri River Basin. The single purpose of the Wind River Indian Reservation recognized by the Wyoming Supreme Court was limited to agriculture: severely limited relative to the... *Rights, Jurisdictions, Privileges, Prerogatives, Royalties, Liberties, Immunities, and Royal Rights and Temporal Franchises whatsoever, ... within the Region, ..comprehending... 'all the soil, plains, woods, mountains, marshes, Lakes, Rivers, Daps, and Straits, with the fishing of every kind, within the said limits; all mines of whatsoever kind...received by from the King by Lord Baltimore in the Proprietary of Maryland, which were, nevertheless, subject to purchase from the Native possessors. The Arapaho and Shoshone must have believed that the purpose of the reservation was to provide a permanent home and abiding place for their present and future generations to engage and pursue a viable economy and society. Despite existing oil and gas resources, they were denied reserved water for mineral purposes. Despite the need for industry in a viable economy, they were denied reserved water for industry. Despite a tradition of hunting and fishing, they were denied reserved water for wildlife and aesthetic preservation. Despite the existence of valuable forests, they were denied reserved water for this purpose. Despite the existence of valuable fisheries, established from time Immemorial, they were denied a reserved water right to sustain their fisheries; and*

WHEREAS, the United States Supreme Court reviewed the *Wind River* decision on the following question:

In the absence of any demonstrated necessity for additional water to fulfill reservation purposes and in presence of substantial state water rights long in use on the reservation, may reserved water rights be implied for all practicably irrigable lands within reservation set aside for specific Tribe? 57 LW 3267 (Oct. 11, 1988); and

WHEREAS, acting without a written opinion and deciding by tie vote, the United States Supreme Court affirmed the decision of the Supreme Court of the State of Wyoming and rejected the thought process presented in the question above that the Tribes needed no additional water than the amount they were using and that state created

water rights with long use should not be subjected to future Indian water rights. But a change in vote by a single justice would have reversed the decision and severely constricted the benefits of the *Winters* Doctrine to the Indian people, a subject to be discussed further. The decision is limited to the State of Wyoming on critical issues, namely that Indian reserved rights do not apply to groundwater; the absence of a reserved water right for forest and mineral purposes; the absence of a reserved water right for fish, wildlife and aesthetic preservation; and a reduction of the Tribes claims to irrigation from 490,000 to less than 50,000 acres; and

WHEREAS, the acreage for irrigation finally awarded to the Wind River Tribes for future purposes was 48,097 acres involving approximately 188,000 acre-feet of water annually:

In determining the Tribes claims to practicably irrigable acreage, the United States (trustee for the tribes) began with an arable land-base of approximately 490,000 and relied on its experts to arrive at over 88,000 practicably irrigable acres. The claim was further "trimmed" by the United States to 76,027 acres for final projects. The acreage was further reduced during trial to 53,760 acres by Federal experts with a total annual diversion requirement of about 210,000 acre-feet. (Teno Roncallo, Special Master. In Re: The General Adjudication of All Rights to the Use of Water in the Big Horn River System and All Other Sources, State of Wyoming, Concerning Reserved Water Right Claims by and on Behalf of the Tribes of the Wind River Indian Reservation, Wyoming, Dec. 15, 1982, pp. 154 and 157); and

WHEREAS, the *purposes* of reservation issue addressed by the Wyoming courts evolved from the 1978 United States Supreme Court case, *United States v. New Mexico* (438 U.S. 696), involving the water rights of the Gila National Forest:

The Court has previously concluded that Congress, in giving the President the power to reserve portions of the federal domain for specific federal purposes, impliedly authorized him to reserve "appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation."... The Court has repeatedly emphasized that Congress reserved "only that amount of water necessary to fulfill the purpose of the reservation, no more."... Where water is only valuable for a secondary use of the reservation, however, there arises the contrary inference that Congress intended, consistent with its other views, that the United States would acquire water in the same manner as any other public or private appropriator.... The legislative debates surrounding the Organic Administration Act of 1897 and its predecessor bills demonstrate that Congress intended national forests to be reserved for only two purposes -- "to conserve the water flows, and to furnish a continuous supply of timber for the people."... Not only is the Government's claim that Congress intended to reserve water for recreation and wildlife preservation inconsistent with Congress's failure to recognize these goals as purposes of the national forest, it would defeat the very purpose for which Congress did intend the national forest system.... While Congress intended the national forest to be put to a variety of uses, including stockwatering, not inconsistent with the two principal purposes of the forest, stock watering was not, itself, a direct purpose of reserving the land; and

WHEREAS, there may be debate with respect to the purposes for which a national forest was created and for which purposes water was reserved, but it is a "slender reed" upon which to found a debate that when Indian reservations were established by the Indians or Great Britain or the United States, the purpose of establishment might vary among the Indian reservations; and, depending upon that purpose, the Indians would be limited in the beneficial uses to which water could be applied. Indian neighbors could apply water to any beneficial purpose generally accepted throughout the Western United States, but Indians could not. It is inconceivable that an Indian Reservation was established for any other "purpose" than an "Indian" reservation or that each Reservation was established for some arcane reason other than the pursuits of industry, self-government and all other activities associated with a modern, contemporary and ever-changing society embracing all of the ... *Rights, Jurisdictions, Privileges, Prerogatives, ... and Temporal Franchises whatsoever, ... within the Region, ..comprehending... 'all the soil, plains, woods, mountains, marshes, Lakes, Rivers, Days, and Straits, with the fishing of every kind, within the said limits; all mines of whatsoever kind, and*

WHEREAS, nevertheless, the Wyoming courts relied upon the "purposes" argument to exclude water reserved for the pursuit of many of the arts of civilization.... Industry, mineral development, fish, wildlife, aesthetics... on the basis that the purpose of the Wind River Indian Reservation was limited to an agricultural purpose absent specific Treaty language to the contrary. As crude as this conclusion may be, however, Tribes of the Missouri River basin and throughout the Western United States are faced with the "purposes" limitation originally applied in 1978 to national forests; and

WHEREAS, if there may be a question that the issue ended in Wyoming, it is only necessary to examine the state court general adjudication process in Arizona. A June 2000 pretrial order by the Special Master in the *General Adjudication of All Rights to Use Water in the Gila River System and Source* summarizes the issues as follows:

... Does the "primary-secondary" purposes distinction, as announced by the U.S. Supreme Court in United States v. New Mexico, 438 U.S. 696 (1978), apply to the water rights claimed for the Gila River Indian Reservation?...

.... The State Litigants takes the position that the distinction does apply.

... If the "primary-secondary" purposes distinction does apply to the Gila River Indian Reservation, what were the primary and secondary purposes for each withdrawal or designation of land for the Gila River Indian Reservation? May the Reservation have more than one "primary" purpose?....

.... The State Litigants takes a position that the federal government withdrew or designated land to protect existing agriculture, create a buffer between the community and non-Indians who were settling in the area, provide substitute agricultural lands

when non-Indians encroached on existing Indian agricultural lands, and provide for other specific economic activities such as grazing; and

WHEREAS, the restriction or limitation of Indian water rights in the Missouri River basin is not confined to a federal denial of them in federal actions, such as the Master Manual and endangered species consultation. The limitations are expected to grow and expand from these federal actions. Indian water right opponents will concentrate on the language of *United States v. New Mexico* that "...only that amount of water necessary to fulfill the purpose of the reservation, no more..." has been reserved by the Tribes or the United States on behalf of the tribes. The effort will be to first limit the purposes for which an Indian reservation was established and second limit the amount of water necessary to fulfill that purpose. If, for example, opponents could successfully argue that the purpose of an Indian reservation in the Missouri River Basin was primarily a "permanent homeland" and that agriculture was secondary, they would further argue that the amount of water reserved was limited to domestic uses, and no water was reserved for irrigation; and

WHEREAS, *Cappaert v. United States* (426 U.S. 128, 1976) was the basis, in part, for the decision in *United States v. New Mexico* discussed above. Here again the purposes of a "federal" reservation (as distinguished from a reservation by Indians or a reservation by the United States on behalf of Indians) and the use of water for that purpose is the subject. But the Cappaert decision is helpful in showing the extreme interpretations to which is the State Court in Wyoming went in its *Wind River* decision:

....The District Court then held that, in establishing Devil's Hole as a national monument, the President reserved appurtenant, unappropriated waters necessary to the purpose of the reservation; the purpose included preservation of the pool and pupfish in it.... The Court of Appeals for the Ninth Circuit affirmed... holding that the 'implied reservation of water' doctrine applied to groundwater as well as surface water...and

WHEREAS, the purpose of establishing the national monument was clearly limited -- to preserve the Devil's Hole pupfish, which rely on a pool of water that is a remnant of the prehistoric Death Valley Lake System an object of historic and scientific interest. This is not an Indian reservation which embraces all of the purposes related to civilization, society and economy. Yet, Wyoming seized on the concept of an Indian reservation with purpose limited in the same manner as a national forest or a national monument. Note, however, that the Wyoming case (1988) grasps at the purposes argument to diminish the Indian water right but ignores the damaging aspect of *Cappaert* (1976) that reserved water concepts apply to groundwater as well as surface water. Not only did Wyoming ignore *Colville Confederated Tribes*, it ignored *Cappaert*. Recently, the Arizona Supreme Court, after considering the Wyoming decision, could not countenance a similar decision in Arizona, specifically rejected the Wyoming decision and found as follows:

...the trial court correctly determined that the federal reserved water rights doctrine applies not only to surface water but to groundwater...and...holders of federal reserved rights enjoy greater protection from groundwater pumping than do holders of state law rights...; and

WHEREAS, similarly, Wyoming ignored *Cappaert*, a U.S. Supreme Court decision about federally reserved water rights in a National Monument in Nevada, where *Cappaert* specifically rejected the concept of "sensitivity" or balancing of equities when water is needed for the purpose of a federal or Indian Reservation. In *Cappaert* the Court cited the *Winters* decision as a basis for rejecting the notion of Nevada that competing interests must be balanced between federal (or Indian) reserved water rights and competing non-federal (or non-Indian) water rights. Wyoming returned to the U.S. Supreme Court seeking a more favorable decision respecting "sensitivity" than provided by *Cappaert*:

Nevada argues that the cases establishing the doctrine of federally reserved water rights articulate an equitable doctrine calling for a balancing of competing interests. However, an examination of those cases shows they do not analyze the doctrine in terms of a balancing test. For example, in Winters v. United States, supra, the Court did not mention the use made of the water by the upstream landowners in sustaining an injunction barring their diversions of the water. The "Statement of the Case" in Winters notes that the upstream users were homesteaders who had invested heavily in dams to divert the water to irrigate their land, not an unimportant interest. The Court held that, when the Federal Government reserves land, by implication, it reserves water rights sufficient to accomplish the purposes of the reservation; and

WHEREAS, the United States Supreme Court reviewed the decision of the Wyoming Supreme Court and upheld the decision by a tie vote as discussed above. However, the majority of the court had apparently been swayed by the Wyoming argument:... *in the absence of any demonstrated necessity for additional water to fulfill reservation purposes and in presence of substantial state water rights long in use on the reservation, may reserved water rights be implied for all practicably irrigable lands within reservation set aside for specific Tribe?... and had prepared a draft opinion referred to by the Arizona Supreme Court as the "ghost" opinion. The draft opinion was apparently not issued because Justice Sandra Day O'Connor, author of the "ghost" opinion on behalf of the majority, disqualified herself because she learned that her ranch had been named as a defendant in the Gila River adjudication in Arizona. Despite more than 350 years of understanding of justice and law relating to Indian property, the O'Connor opinion would have destroyed the basic tenets of the Winters Doctrine:*

...The PIA standard is not without defects. It is necessarily tied to the character of land, and not to the current needs of Indians living on reservations....And because it looks to the future, the PIA standard, as it has been applied here, can provide the Tribes with

more water than they need at the time of the quantification, to the detriment of non-Indian appropriators asserting water rights under state law....this Court, however, has never determined the specific attributes of reserve water rights – whether such rights are subject to forfeiture for nonuse or whether they may be sold or leased for use on or off the Reservation....Despite these flaws and uncertainties, we decline Wyoming's invitation to discard the PIA standard... The PIA standard provides some measure of predictability and, as explained hereafter, is based on objective factors which are familiar to courts. Moreover no other standard that has been suggested would prove as workable as the PIA standard for determining reserve water rights for agricultural reservations....we think Master Roncollo and the Wyoming Supreme Court properly identified three factors that must be considered in determining whether lands which have never been irrigated should be included as PIA: the arability of the lands, the engineering feasibility (based on current technology) of necessary future irrigation projects, and the economic feasibility of such projects (based on the profits from cultivation of future lands and the costs of the project... Master Roncollo found...that economic feasibility will turn on whether the land can be irrigated with a benefit-cost ratio of one or better....Wyoming argues that our post-Arizona cases, specifically Cappaert and New Mexico, indicate that quantification of Indian reserved water rights must entail sensitivity to the impact on state and private appropriators of scarce water under state law.... Sensitivity to the impact on prior appropriators necessarily means that "there has to be some degree of pragmatism" in determining PIA....we think this pragmatism involves a "practical" assessment – a determination apart from the theoretical economic and engineering feasibility – of the reasonable likelihood that future irrigation projects, necessary to enable lands which have never been irrigated to obtain water, will actually be built....no court has held that the Government is under a general legal or fiduciary obligation to build or fund irrigation projects on Indian reservations so that irrigable acreage can be effectively used..... massive capital outlays are required to fund irrigation projects...and in today's era of budget deficits and excess agricultural production, government officials have to choose carefully what projects to fund in the West. ... Thus, the trier of fact must examine the evidence, if any, that additional cultivated acreage is needed to supply food or fiber to resident tribal members, or to meet the realistic needs of tribal members to expand their existing farming operations. The trier must also determine whether there will be a sufficient market for, or economically productive use of, any crops that would be grown on the additional acreage....we therefore vacate the judgment insofar as it relates to the award of reserved water rights for future lands and remand the case to the Wyoming Supreme Court for proceedings not inconsistent with this opinion; and

WHEREAS, the United States Supreme Court has virtually unlimited power to arrive at unjust decisions as evidenced by the *Dred Scott* decision, and the opinion of the minority would have had no force and effect in *Wyoming* as given by Justice Brennan:

...in the Court might well have taken as its motto for this case in the words of Matthew 25:29: "but from him that has not shall be taken away even that which he has." When the Indian tribes of this country were placed on reservations, there was, we have held, sufficient water reserved for them to fulfill the purposes of the reservations. In most cases this has meant water to irrigate their arable lands.... The Court now proposes, in effect, to penalize them for the lack of Government investment on their reservations by taking from them those water rights that have remained theirs, until now, on paper. The requirement that the tribes demonstrate a "reasonable likelihood" that irrigation

projects already determined to be economically feasible will actually be built – gratuitously superimposed, in the name out “sensitivity” to the interests of those who compete with the Indians for water, upon a workable method for calculating practicably irrigable acreage that parallels government methods for determining the feasibility of water projects for the benefit of non-Indians – has no basis in law or justice; and

WHEREAS, whether inspired by the “ghost” opinion of Justice O’Connor or not, the Arizona Supreme Court held arguments in February 2001 on the issue of: “what is the appropriate standard to be applied in determining the amount are water reserved for federal lands?”, particularly Indian lands, which were not reserved by the United States for the Standing Rock Sioux Tribe but were, rather, reserved by the Tribe by its ancient ancestors from time immemorial. The outcome by the Arizona Supreme Court is immaterial but provides the question for review by the United States Supreme Court with full knowledge from the “ghost” opinion of the probable outcome. The Salt River Project and Arizona, principal losers in *Arizona v California I*, make the following arguments in *Gila River* against Indian reserved rights to the use of water:

...Under the United States Supreme Court’s decision in United States v New Mexico..., all federal land with a dedicated federal purpose “has reserved to it that minimum amount of water which is necessary to effectuate the primary purpose of the land set aside.” Judge Goodfarb also found, however, that this “purposes” test does not apply to Indian reservations. Instead, he held that, for Indian reservations, “the courts have drawn a clear and distinct line”...that mandates that reserved rights for all Indian reservations must be quantified based on the amount of “water necessary to irrigate all of the practicably irrigable acreage (PIA) on that Reservation” without considering the specific purposes for which the Reservation was created....this Interlocutory proceeding with respect to Issue 3 arose because Judge Goodfarb incorrectly ruled (as a matter of law and without the benefit of any factual record, briefing, or argument) that PIA applies to all Indian reservations...

....as shown below, the Supreme Court in that case (Arizona I) and the courts in all reported decisions since that time, have applied the following analysis: first, review the historical evidence relating to the establishment of the Reservation and, from that evidence, determine the purposes for which the specific land in question was reserved (a question of fact). Second, determine, based upon the evidence, the minimum quantity of water necessary to carry out those purposes (a mixed question of law and fact). ...and in Colville Confederated Tribes V. Walton, for instance, the ninth circuit stated: “to identify the purposes for which the Colville Reservation was created, we consider the document and circumstances surrounding its creation, and the history of the Indians for whom it was created. We also consider their need to maintain themselves under changed circumstances.”

...the Zuni Reservation in northeastern Arizona, for example, was established by Congress expressly “for religious purposes.”...the original 1859 creation of the Gila Reservation and each of the seven subsequent additions had different

rationales and were intended to address different purposes or combinations of purposes (e.g. protecting existing farmlands, adding lands for grazing, including lands irrigated by Indians outside the Reservation as part of the Reservation...

....in addition to varying in size, Indian reservations also vary in location and terrain. Reservations in Arizona, for instance, run the gamut from desert low lands to the high mountains and everything in between. Certain reservations along the Colorado River include fertile but arid river bottom land and were created for the purpose of converting diverse groups of "nomadic" Indians to a "civilized" and agrarian way of life...other reservations, such as the Navajo Reservation in extreme northeastern Arizona, consist largely of "very high plateaus, flat-top mesas, inaccessible buttes and deep canyons. "....there can be little doubt that the PIA standard works to the advantage of tribes inhabiting alluvium plains or other relatively flat lands adjacent to stream courses. In contrast, tribes inhabiting mountainous or other agriculturally marginal terrains are at a severe disadvantage when it comes to demonstrating that their lands are practicably irrigable....

...the special master (Arizona I) conducted a trial, accepted and reviewed substantial evidence regarding the purposes of the five Indian reservations at issue in that case, made factual findings as to purposes, and only then found that the minimum amount of water necessary to carry out those purposes was best determined by the amount of water necessary to irrigate all "practicably irrigable" acres on those reservations.the special master stated: "moreover the 'practicably irrigable' standard is not necessarily a standard to be used in all cases and when it is used it may not have the exact meaning it holds in this case. The amount reserved in each case is the amount required to make each Reservation livable."

...although the United States Supreme Court affirmed the Wyoming court's decision in that case without opinion, events surrounding that review shed considerable light on the Supreme Court's concerns about the continued viability of PIA as a standard, at least in the form it was applied in Arizona I.several Justices challenged the United States's defense of PIA.... "at this point, Chief Justice Rehnquist challenged the precedential validity of Arizona I by noting that the opinion 'contains virtually no reasoning' and the Court merely had accepted the special master's conclusion as to the PIA standard...arguing that Congress must of contemplated the size of the tribe that would live on the Wind River Reservation, ...the Chief Justice stated that he found it difficult to believe that 'in 1868 Congress...should be deemed have said we're giving up water to irrigate every - every inch of arable land. No matter how large the tribe they thought they were settling. Did they expect to make some tribes very rich so that they can have an enormous export business... in agricultural products?' (State Litigant's Opening Brief on Interlocutory Issue 3, Gila River Adjudication); and

Historical Analysis of Thought Processes Embraced by Master Manual

WHEREAS, the means employed by the Corps of Engineers to deny consideration of Indian water rights in the preparation of the Master Manual and those same means employed by the Department of Interior to deny consideration of Indian water rights in baseline environmental studies of endangered species have been presented. Also, presented was the favorable body of law supporting the proper consideration of Indian water rights followed by the denigration of that law in state court adjudications, namely in Wyoming and, more recently, in Arizona. Briefly examined here are historical examples of the diminishment of property rights by a superior force and the strikingly similar arguments in support of that diminishment, and

WHEREAS, the concepts and techniques for diminishing the water rights of the Standing Rock Sioux Tribe in the Missouri River, its tributaries and aquifers are not novel. The colonization of Ireland by the English (*circa* 1650), for example, was justified in a manner that provides insight in the federal treatment of Indian water rights in the Missouri River Basin. Sir Thomas Macaulay, a prominent English politician in the first half of the 19th-century and one of the greatest writers of his or any other era, rationalized the taking of land from the native Irish and the overthrow of King James II in 1692, which overthrow was due, in part, to the King's efforts to restore land titles to the native Irish: (Sir Thomas Macaulay, 1848, *The History of England*, Penguin Classics, pp 149-151)

To allay national animosity such as that which the two races [Irish and English] inhabiting Ireland felt for each other could not be the work of a few years. Yet it was a work to which a wise and good Prince might have contributed much; and King James II would have undertaken that work with advantages such as none of his predecessors or successors possessed. At once an Englishman and a Roman Catholic, he belonged half to the ruling and half to the subject cast, and was therefore peculiarly qualified to be a mediator between them. Nor is it difficult to trace the course which he ought to have pursued. He ought to have determined that the existing settlement of landed property should be inviolable; and he ought to have announced that determination in such a manner as effectually to quiet the anxiety of the new proprietors, and to extinguish any wild hopes which the old proprietors might entertain. Whether, in the great transfer of estates, injustice had or had not been committed, was immaterial. The transfer, just or unjust, had taken place so long ago, that to reverse it would be to unfix the foundations of society. There must be a time limitation to all rights. After thirty-five years of actual possession, after twenty-five years of possession solemnly guaranteed by statute, after innumerable leases and releases, mortgages and devises, it was too late to search for flaws in titles. Nevertheless something might have been done to heal the lacerated feelings and to raise the fallen fortunes of the Irish gentry. The colonists were in a thriving condition. They had greatly improved their property by building, planting and fencing..... There was no doubt that the next Parliament which should meet at Dublin, though representing almost exclusively the English interest, would, in return for the King's promise to maintain that interest in all its legal rights, willingly grant to him a considerable sum for the purpose of indemnifying, at least in part, such native families as had been wrongfully despoiled.

Having done this, he should have labored to reconcile the hostile races to each other

by impartially protecting the rights and restraining the excesses of both. He should have punished with equal severity that native who indulges in the license of barbarism and the colonists who abused the strength of civilization..... no man who was qualified for office by integrity and ability should have been considered as disqualified by extraction or by creed for any public trust. It is probable that a Roman Catholic King, with an ample revenue absolutely at his disposal, would, without much difficulty, have secured the cooperation of the Roman Catholic prelates and priests in the great work of reconciliation. Much, however, might still have been left to the healing influence of time. The native race might still have had to learn from the colonists industry and forethought, arts of life, and the language of England. There could not be equality between men who lived in houses and men who lived in sties, between men who were fed on bread and men who were fed on potatoes, between men who spoke the noble tongue of great philosophers and poets and men who, with the perverted pride, boasted that they could not writhe their mouths into chattering such a jargon as that in which the Advancement of Learning and the Paradise Lost were written. Yet it is not unreasonable to believe that if the gentle policy which has been described had been steadily followed by the government, all distinctions would gradually have been effaced, and that there would now have been no more trace of the hostility which has been the curse of Ireland ...and

WHEREAS, the Master Manual rationale... Currently, such reserved or aboriginal rights of tribal reservations have not been quantified in an appropriate legal forum or by compact with three exceptions.... The Study considered only existing consumptive uses and depletions; therefore, no potential tribal water rights were considered... or the ESA rationale.... The environmental baseline used in ESA Section 7 consultations on agency actions affecting riparian ecosystems should include for those consultations the full quantum of: (a) adjudicated (decreed) Indian water rights; (b) Indian water rights settlement act; and (c) Indian water rights otherwise partially or fully quantified by an act of Congress... Biological opinions on proposed or existing water projects that may affect the future exercise of senior water rights, including unadjudicated Indian water rights, should include a statement that project proponents assume the risk that the future development of senior water rights may result in a physical or legal shortage of water.... does not represent a significant step forward from that advanced by Macaulay given the opportunity of 150 years for refinement in America. There cannot be significant differences between the statement of the Corps of Engineers and the Macaulay logic; and

WHEREAS, it is material, not immaterial, whether there has been injustice or a fitting of the law to the purpose in the transfer of Standing Rock waters of the Missouri River, its tributaries and its aquifers to non-Indians in the Master Manual update. It is rejected as correct ... that after the new proprietor's (downstream navigation, upstream recreation and endangered species) have enjoyed the Indian "estate" for a period of 25 to 35 years, the wild hopes of the Indian proprietors for participation must be extinguished. It is rejected as correct that the lacerated Indian feelings be healed, or for a considerable sum, despoiled Indian families can be made whole and the new possessors of Standing Rock Sioux water rights can be indemnified. It is rejected as proper that this be justified on the basis that the new possessor has greater industry, forethought, arts of life, language, diet, and housing. It is rejected as untrue that after numerous leases, releases, and mortgages by non-Indians relying upon unused Indian *Winters* doctrine water rights, it is too late to search for flaws in titles. It is accepted as true that the Master Manual promotes reliance by non-Indians

upon unused Indian *Winters* doctrine water rights; and

WHEREAS, the rationale of Supreme Court Justices, Master Manual and ESA is but a limited improvement from historical examples even earlier than Macaulay. Over 400 years ago, the sovereigns of England and Scotland, upon their union, sought possession of the borderlands between the two nations and to dispossess the native tribal inhabitants. The following provides the rationale of the Bishop of Glasgow against those ancient inhabitants as they sought (in vain) to stay in possession of their ancient lands:

I denounce, proclaim and declare all and sundry acts of the said murders, slaughters,... thefts and spoils openly upon daylight and under silence of night, all within temporal lands as Kirklands; together with their partakers, assistants, suppliers, known receivers and their persons, the goods reft and stolen by them, art or part thereof, and their counselors and defenders of their evil deeds generally CURSED, execrated, aggregate and re-aggregate with the GREAT CURSING.

I curse their head and all their hairs on their head; I curse their face, their eye, their mouth, their nose, their tongue, their teeth, their crag, their shoulders, their breast, their heart, their stomach, their back, their wame (belly), their arms, their legs, their hands, their feet, and every part of their body, from the top of their head to the sole of their feet, before and behind, within and without.

I curse them going and I curse them are riding; I curse them standing, and I curse them sitting; I curse them eating, I curse them drinking; I curse them walking, I curse them sleeping; I curse them arising, I curse them laying; I curse them at home, I curse them from home; I curse them within the house, I curse them without the house; I curse their wives, their barns, and their servants participating with them in their deeds. I wary their corn, their cattle, their wool, their sheep, their horses, their swine, their geese, their hens, and all their livestock. I wary their halls, their chambers, their kitchens, their storage bins, their barns, their cowsheds, their barnyards, their cabbage patches, their plows, their harrows, and the goods and houses that is necessary for their sustenance and welfare.

The malediction of God that lighted upon Lucifer and all his fellows, that struck them from the high heaven to the deep hell, must light upon them. The fire in the sword that stopped Adam from the gates of Paradise, must stop them from the glory of heaven until they forbear and make amends; and

WHEREAS, truly, the rationale of the Master Manual may be a slight improvement in the techniques that were used to justify dispossession 400 years ago and represents progress, Standing Rock and other tribes have repeatedly encountered equally effective, if less colorful, opposition to their efforts to preserve, protect, administer and utilize their water rights; and

WHEREAS, the distinguishing feature for the Standing Rock Sioux Tribe, however, is the fact that the water right "estate" in the Missouri River has not been taken from them, even though it is under attack in the Master Manual. It is proposed in the Master Manual to commit water away from the Indians, but the process is not

accomplished, and those who would rely on unused Indian water rights have not yet taken possession and executed mortgages, leases and releases on the basis of them. The Standing Rock Sioux Tribe remain in position to retain its "estate" in the Missouri River by rejecting the Master Manual and taking affirmative action to protect its ancient and intact possessions; and

WHEREAS, by taking steps to protect their ancient possessions the Standing Rock Sioux Tribe recognizes that it cannot expect support from the United States or its agencies acting as Trustee. Strong reaction can be expected from any current attempt to do so, including strong reaction by the Trustee. First, the Trustee has no funds for litigation of Indian water right issues. Second, the Trustee has considerable funds for settlement of Indian water right issues, but the Indian costs in lost property are great. Third, the Trustee has considerable technical criteria and requirements to impose on the Indian tribes as a basis for limiting the Indian water right "estate": irrigable land criteria, water requirement criteria, limitation on beneficial uses and, most limiting, economic feasibility criteria that few, if any, existing non-Indian water projects could survive.

NOW THEREFORE BE IT RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe rejects the Master Manual Review and Update by the U. S. Army Corps of Engineers for the express reason that it establishes a plan for future operation of the Missouri River addressing inferior downstream navigation, upstream recreation and endangered species water claims of the States and Federal interests and specifically denies proper consideration or any consideration of the superior, vested water rights of the Standing Rock Sioux Tribe while committing reservoir releases to purposes and interests in direct opposition to those of the Tribe.

BE IT FURTHER RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe, seeking to protect and preserve its valuable rights to the use of water in the Missouri River, its tributaries and aquifers upon which the Tribe relies and has relied since ancient times for its present and future generations, directs the Chairman to take all reasonable steps, through the appointment of himself, Tribal Council members and staff to working groups to petition members of Congress and officials at the highest levels in the Bush Administration, including the Department of Justice, among other proper steps, for the single purpose of ensuring a full rejection and re-constitution of the Master Manual as now proposed for action by the Corps to properly reflect the rights, titles and interests of the Standing Rock Sioux Tribe.

BE IT FURTHER RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe proclaims its continued dominion over all of the lands within the boundaries of the Standing Rock Sioux Indian Reservation as reserved from time immemorial including but not limited to rights, jurisdictions, privileges, prerogatives, liberties, immunities, and temporal franchises whatsoever to all the soil, plains, woods, wetlands, lakes, rivers, aquifers, with the fish and wildlife of every kind, and all mines of whatsoever

kind within the said limits; and the Tribal Council declares its water rights to irrigate not less than 303,650 arable acres with an annual diversion duty of 4 acre feet per acre, to supply municipalities, commercial and industrial purposes and rural homes with water for not less than 30,000 future persons having an annual water requirement of 10,000 acre feet annually, to supply 50,000 head of livestock of every kind on the ranges having an annual water requirement of 1,500 acre feet annually: such proclamation made on the basis of the status of knowledge at the start of the third millennia and subject to change to include water for other purposes, such as oil, gas, coal or other minerals, forests, recreation, and etc; and such proclamation for the purposes and amount of water required to be adjustable in the future to better reflect improved knowledge and changing conditions.

BE IT FURTHER RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe directs the Chairman to take all reasonable steps, through the appointment of himself, Tribal Council members and staff to working groups to petition members of Congress and officials at the highest levels in the Bush Administration to support and promote legislation that would, among other things, enable the Standing Rock Sioux Tribe to exercise its rights to the use of water in the Missouri River, in part, by purchasing the generators and transmission facilities of the United States at Oahe Dam at fair market value, subject to such offsets as may be agreed upon, with provisions to sell power generated at Oahe Dam at rates necessary to honor all existing contracts for the sale of pumping power and firm, wholesale power during their present term and sufficient to retire debts of the United States that may be agreed upon; provided, however, that the Tribe may increase power production at the dam by feasible upgrades and market the new power at market rates and after expiration of current contracts market power at rates reflective of the market; and provided further that legislation to purchase generators and transmission facilities will also include provisions to finance wind and/or natural gas power generation on the Standing Rock Indian Reservation to combine with hydropower production, thereby using Tribe's water and land resources effectively for the benefit of the Tribe without further erosion, diminishment and denigration of Tribe's water right claims.

BE IT FURTHER RESOLVED THAT, the Standing Rock Sioux Tribal Council rejects all reports and investigations of the Bureau of Reclamation on the Cannonball and Grand Rivers watersheds and any and all proposals by Bureau of Reclamation for an Indian Small Water Projects Act and that all ongoing efforts of the Bureau of Reclamation respecting these specific efforts will cease by this directive of the Tribal Council.

BE IT FURTHER RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe directs the Chairman to take all reasonable steps, through the appointment of himself, Tribal Council members and staff to working groups, to petition members of Congress, officials at the highest levels in the Bush Administration, including the Department of Justice, the Churches and others disposed toward true and genuine justice, and to take all other necessary steps to demonstrate the injustice of the

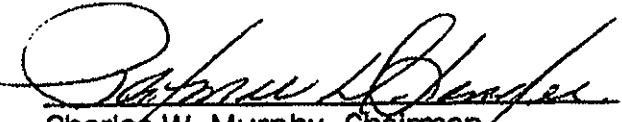
officials at the highest levels in the Bush Administration, including the Department of Justice, the Churches and others disposed toward true and genuine justice, and to take all other necessary steps to demonstrate the injustice of the United States Supreme Court, when engaged in a Whiggish course, to subject the least powerful to the will of the States in matters involving property rights as evidenced by the *Dred Scott*, the *O'Connor Ghost* and comparable decisions of expediency.

BE IT FURTHER RESOLVED THAT, the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.



CERTIFICATION

We, the undersigned, Chairman and Secretary of the Tribal Council of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of (17) members, of whom 12 constituting a quorum, were present at a meeting thereof, duly and regularly, called, noticed, convened and held on the 5th day of April, 2001, and that the foregoing resolution was duly adopted by the affirmative vote of 11 members, with 0 opposing, and with 1 not voting. THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.

DATED THIS 5th DAY OF APRIL, 2001.


Charles W. Murphy, Chairman
Standing Rock Sioux Tribe

ATTEST:


Elaine McLaughlin, Secretary
Standing Rock Sioux Tribe


(OFFICIAL TRIBAL SEAL)

WHEREAS, the Standing Rock Sioux Tribe (hereinafter referred to as the "Tribe") is an American Indian Tribe recognized by the Secretary of the Interior with a constitution duly approved on April 24, 1959, by the Assistant Secretary of the Interior, under which the Standing Rock Sioux Tribal Council (hereinafter referred to as the "Council") is the governing body of the Tribe, and

WHEREAS, free access to and unhindered control of the waters of the Standing Rock Sioux Indian Reservation is essential to the existence of the Standing Rock Sioux Tribe and its members and without such access and control the viability of the Standing Rock Sioux Indian Reservation as a permanent home and abiding place will be increasingly threatened and the economic development of the Standing Rock Sioux Tribe retarded or destroyed, and

WHEREAS, historic and continuing encroachment upon Tribal Water Rights by federal and state agencies and other interests threatens a crises of increasing magnitude for the Standing Rock Sioux Tribe and will result in the irreversible commitment of a substantial portion of Tribal Waters to non-tribal interests, and

WHEREAS, at the present time no effective method exists for managing and protecting the waters of the Standing Rock Sioux Indian Reservation, with the result that uncontrolled use and obstruction of those waters causes 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 insure an acceptable quality of life within the reservation, and

WHEREAS, the Standing Rock Sioux Tribe has sovereign jurisdiction over and beneficial ownership of the waters of the Standing Rock Sioux Indian Reservation as guaranteed by the Fort Laramie Treaty of April 29, 1868.

NOW THEREFORE BE IT RESOLVED, that the Standing Rock Water Code adopted by the Tribal Council be enacted and implemented pursuant to Tribal Resolution No. 66-83, with the effective date of February 3, 1983.

BE IT FURTHER RESOLVED, that the Standing Rock Sioux Tribe Indian Winters Doctrine Water Rights are supreme, prior and paramount to state created water rights with a priority date of April 29, 1868.

BE IT FURTHER RESOLVED, that a public notice be posted in the official newspapers of Sioux County of North Dakota and Corson County of South Dakota pursuant to Chapter 2, Section 203, Subsection (a) and (b) of the Standing Rock Water Code.

BE IT FURTHER RESOLVED, that the Standing Rock Water Code be incorporated and made a part of the Standing Rock Code of Justice.

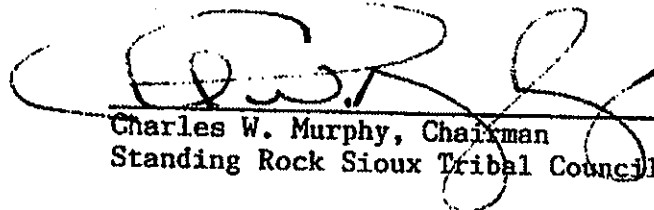
BE IT FURTHER RESOLVED, that the Water Administrator of the Standing Rock Sioux Tribe is hereby authorized and directed to print in final form the Standing Rock Water Code and forms that will facilitate the regulatory responsibilities and processing of permits authorizing the use of waters for all beneficial purposes of the Standing Rock Sioux Tribe.

BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribe are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION


We, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribal Council, hereby certify that the Tribal Council is comprised of 15 members, of whom 11, constituting a quorum, were present at a meeting thereof duly and regularly called, noticed, convened and held the 5 day of July, 1985, that the foregoing resolution was duly adopted by the affirmative vote of 9 members, with 0 opposing, and with 2 members not voting.

Dated this 5th day of July, 1985.



Charles W. Murphy, Chairman
Standing Rock Sioux Tribal Council

ATTEST:



Elaine Brave Bull, Secretary
Standing Rock Sioux Tribal Council

RESOLUTION NO. 690-09

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[a], 1[b], 1[c], and 1[j], is authorized to negotiate with Federal, State and local governments and others on behalf of the Tribe, and is further authorized to promote and protect the health, education and general welfare of the members of the Tribe and to administer such services that may contribute to the social and economic advancement of the Tribe and its members; and is further empowered to authorize and direct subordinate boards, committees or Tribal Officials to administer the affairs of the Tribe and to carry out the directives of the Tribal Council; and is empowered to manage, protect and preserve the property of the Tribe and natural resources of the Standing Rock Sioux Reservation; and

WHEREAS, the Standing Rock Sioux Tribal Council has enacted numerous codes and ordinances for the preservation and protection of our natural resources and environment, including but not limited to the Water Code [SRST Code of Justice, Title XXXIV]; Game and Fish Code; Environmental Quality Code [SRST Code of Justice, Title XXIX]; and Resolution 106-01; and

WHEREAS, the Standing Rock Indian Reservation possesses geothermal resources which may be utilized as renewable energy for Tribal members, schools and businesses on the Standing Rock Reservation; and

WHEREAS, the Standing Rock Sioux Tribal Council supports the full development and utilization of renewable sources of energy on the Standing Rock Indian Reservation, in order to protect the Reservation environment and to create jobs for the enrolled members of the Standing Rock Sioux Tribe; and

WHEREAS, the utilization of geothermal resources impacts the health and welfare of Tribal members, the political integrity of the Standing Rock Sioux Tribe, and the economy on the Standing Rock Indian Reservation, and accordingly the regulation of the water resources utilized in the production of geothermal energy is an important governmental function of the Tribe; and

WHEREAS, the Water Resources Control Board shall implement this Ordinance in a manner consistent with the laws of the Standing Rock Sioux Tribe and the laws of the United States;

NOW THEREFORE BE IT RESOLVED, that the Standing Rock Sioux Tribal Council hereby approves of the attached ***Ordinance to Provide for the Regulation of the Development of Geothermal Resources***, as Chapter 15 of the Standing Rock Sioux Tribe Water Code; and

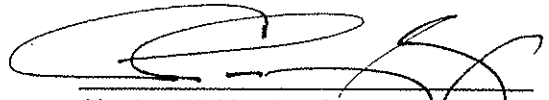
BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION


We, the undersigned, Chairman and Secretary of the Tribal Council of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of [17] member, of whom 12, constituting a quorum, were present at a meeting duly and regularly, called, noticed, convened and held on the 1st day of **DECEMBER, 2009**, and that the foregoing resolution was duly adopted by the affirmative vote of 11 members, with 0 and with 1 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.**

DATED THIS 1st DAY OF DECEMBER, 2009.

ATTEST:



Charles W. Murphy, Chairman
Standing Rock Sioux Tribe



Adele M. White, Secretary
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

Meeting Date: 12-01-2009
Motion No.: 63