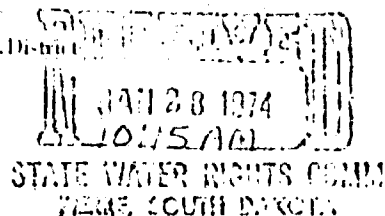




1170-2

1. Considered MARCH 20, 1974
2. Name of Applicant JOHN & DARLENE STOVALL
3. Post Office Address HERMOSA
4. Amount of water claimed 5.73
5. Source of water supply BATTLE CREEK
6. Water to be used for IRRIGATION
Acres to be irrigated 405.0
7. Water to be diverted and used in CUSTER County
about 6E 1.5 miles of HERMOSA.
8. Proof of Publication Received 3-21-74
Not Received
9. Application Approved
Subject to
Not Approved
Action deferred ✓
10. Remarks:

No. 1170-2
 Map No. 994-2 Water Division No. 2 **BATTLE CREEK**
 (Blanks to be Filled by the Engineer for the W. R. C.)


APPLICATION FOR PERMIT

To Appropriate Water within the State of South Dakota

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

1. Name of Applicant John and Darlene Stowell
 Post-office address Hermosa State South Dakota
 If a corporation, show date and place of incorporation _____
2. Method of accomplishing work (contract, employment of others, or by direct labor) contract direct labor
3. Name of diversion work Flood water Irrigation on Battle Creek
4. Amount of water claimed (cubic feet per second) 578 of 5 (continuous allowable)
5. Source of water supply Battle Creek
6. Location of point of diversion SW 1/4 of NW 1/4 of Section 7
(E 2 E 2 N 2 SW 1/4 NW 1/4) T 35 Range 9 E
 County Custer
7. Annual period or periods during which water is to be used MAY, June, whenever creek is flooding
8. Use to be made of water, (irrigation, industrial, municipal, commercial, recreation, etc.) irrigation recreation
9. For irrigation use, Total number of acres to be irrigated 405

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

Land Description	No. Acres Irr.	Land Description	No. Acres Irr.
NE 1/4 NW 1/4 - Sec. 7	40	SW 1/4 NE 1/4 - Sec. 7	40
E 2 E 2 N 2 SW 1/4 NW 1/4 - Sec. 7	5	SE 1/4 NE 1/4 - Sec. 7	40
S 2 NW 1/4 NE 1/4 - Sec. 7	20	NE 1/4 SE 1/4 - Sec. 7	40
S 2 NE 1/4 NE 1/4 - Sec. 7	20	NW 1/4 SE 1/4 - Sec. 7	40
Land Description	No. Acres Irr.	space is needed	
N 2 SW 1/4 SE 1/4 - Sec. 7	20	1 _____ years. Additional time required to complete _____ years.	
N 2 SE 1/4 SE 1/4 - Sec. 7	20	1 _____ years.	
NW 1/4 SW 1/4 - Sec. 8	40	Application <u>Custer Chronicle</u>	
SW 1/4 SW 1/4 - Sec. 8	40		
SW 1/4 SE 1/4 - Sec. 8	40		

12. Principal Features of the Proposed Water Supply System.

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

Pump and pipeline to ditches already made.

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

clean & repair old ditches.

C. Works proposed to apply water to beneficial use.

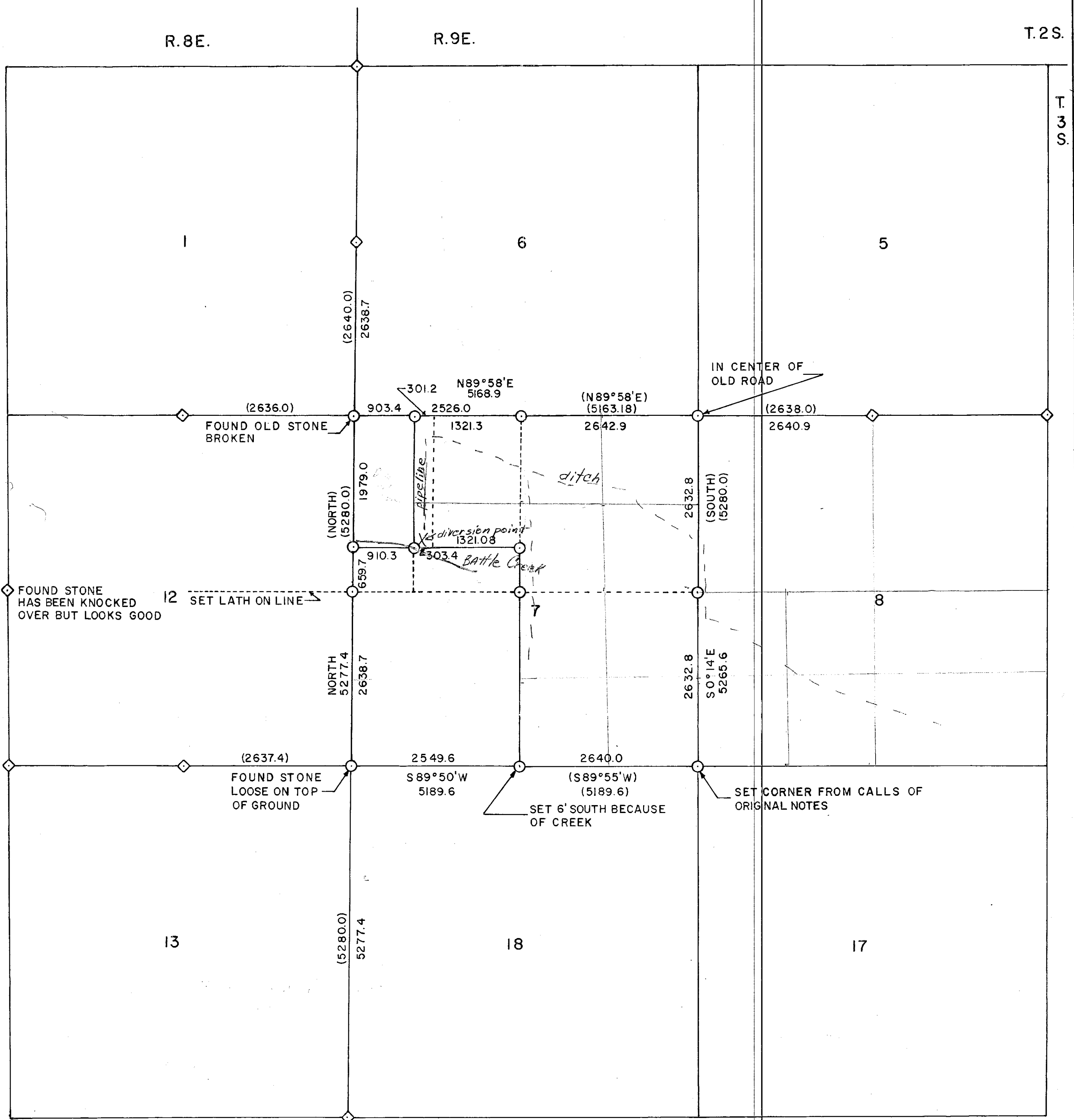
pump water during flood stage.Estimated Total Cost \$ 6000.00
 Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach map.
 (See instructions concerning preparation.)

STATE OF SOUTH DAKOTA

County for CusterI, John Stowell, the applicant, certify that I have read the foregoing application and have examined the attached map and that the matters therein stated are true and that I intend, and am able to complete the necessary construction.Signed J. W. StowellSubscribed and sworn to before me this 23 day Jan, 1974

Notary Public for other qualified officers

SURVEY OF SEC. 7 T.3S. R.9E.



LEGEND
◇ FOUND STONE CORNER
○ SET 5/8" REBAR

() DENOTES "RECORDED IN ORIGINAL SURVEY NOTES"

SCALE
1"=1000'

State of South Dakota
County of Jackson

I, Frank A. Bryant, Register of Deeds for the State of South Dakota, do hereby certify that I have made the survey of the above described section and that the same is in accordance with the original survey notes.

Registered Land Agent

Frank A. Bryant

On the 5th day of Sept. 1922, before me, Notary Public, personally appeared Frank A. Bryant, known to me to be the person whose name is subscribed to the foregoing certificate, and he acknowledged to me that he was the person who made the survey of the above described section.

Notary Public

J. P. Hammon

My commission expires

8-15-22

MAP N2994-2 APPL N21170-2

WATER RIGHT APPLICATION APPROVAL

The Water Resources Commission hereby approves Water Right Application No. 1170-2

JOHN & DARLENE STOVALL
(Applicant)

HERMOSA
(Post Office Address)

SOUTH DAKOTA 57744
(State)

With the following modifications:

THIS PERMIT IS APPROVED WITH A DIVERSION RATE OF 5.0 C.F.S.

THIS PERMIT IS APPROVED CONTINGENT UPON THE PERMIT HOLDER CONTROLLING HIS IRRIGATION WITH DRAINALS SO WATER AS NEEDED FOR DOWNSTREAM DOMESTIC USE, INCLUDING LIVESTOCK WATERING AND PRIOR WATER RIGHT USE IS BY-PASSED.

IN NO CASE IS THE PERMIT HOLDER TO DIVERT WATER EXCEPT WHEN THERE IS A CONTINUOUS SUSTAINED FLOW OF SURFACE WATER IN BATTLE CREEK FROM ITS DIVERSION TO THE MOUTH OF BATTLE CREEK.

THE PERMIT HOLDER UNDER THIS PERMIT SHALL STOP DIVERSION OF WATER FROM BATTLE CREEK WHENEVER HE IS SO INSTRUCTED BY A REPRESENTATIVE OF THE WATER RIGHTS COMMISSION.

Date of first receipt of application JANUARY 28 19 74

Date of return to applicant for correction, amendments or changes required — 19 —

Date of receipt of corrected application — 19 —

Approved SEPTEMBER 11 19 74 Recorded in Book 13 Page 66

WATER RIGHT PERMIT NO 1170-2

The Water Resources Commission hereby grants and issues this Water Right Permit No. 1170-2 authorizing the construction of the water use system and the putting of water to beneficial use as stated in the Application and as modified in the Water Right Application approval, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is JANUARY 28 19 74
2. The equivalent of at least one-fifth of the work above specified is to be completed on or before MARCH 11 19 75
3. The whole of said work is to be completed on or before SEPTEMBER 11 19 75
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is SEPTEMBER 11 19 76
5. The water appropriated shall be used for the purpose of IRRIGATION

6. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be injuriously affected by this appropriation.

7. The amount of the appropriation herein granted shall not exceed 3.00 cubic feet per second; neither shall it exceed the capacity of the above described water supply system, nor shall it exceed the amount of water needed for beneficial uses served, and if for the irrigation purposes said appropriation must be limited to not more than 3 acre feet per acre per year and be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before SEPTEMBER 11 19 76 said water to be used during the following described annual period: MAY, JUNE WHENEVER CREEK IS FLOODING

Witness my hand this 13th day of SEPTEMBER 19 74

WATER RESOURCES COMMISSION

By:

Donnell Dineen
Chief Engineer, Executive Officer

Certificate of Construction Issued JANUARY 19 19 81

Water License Issued JANUARY 19 19 81

Permit No. 1170-2

Water Diversion No. 2 Battle Creek Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify That John and Darlene Stovall

_____ the holder of
Permit No. 1170-2, issued upon Application No. 1170-2, bearing date of priority of January 28, 1974,
authorizing the diversion of 3.00 cu. ft. per second of the waters of Battle Creek
County of Custer, State of South Dakota at a point 1550 feet south and 1620 feet west of the NE corner, Section 7, T3S, R9E
for irrigation

_____ purposes, has not complied with the provisions of the laws of the State of South Dakota relating to proof of
completion of the works of diversion set out and described in said Permit; that said works are found in satisfactory
condition for diverting and conveying to the place of intended use 3.33 cu. ft. per second of water.

Date January 19, 1981


JOHN HATCH, Chief Engineer
Water Rights Division

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 1170-2

(1) WHEREAS, On the 28th day of January A. D. 19 74
John & Darlene Stevall

made Water Right Application No. 1170-2 for a permit to use 3.00 cubic feet per second of the waters of Battle Creek

County of Custer, State of South Dakota, for Irrigation

purposes; and

(2) WHEREAS, On the 11th day of September A. D. 19 74

Permit No. 1170-2, with a date of priority of January 28, 1974

was issued to said applicant 5 for the diversion of said water, and provided for the completion of construction of the water supply system therein described on or before the 11th day of September A. D. 19 75 and for the application to beneficial use of said water on or before the 11th day of September A. D. 19 76

and:

(3) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to completion of the construction of the water supply system and is entitled to divert 3.00 cubic feet per second of water for beneficial use and,

(4) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to the application of water to beneficial use of the following extent:

to irrigate the following lands all in T3S-R9E

Section 7 - acres		Section 7 cont. - acres	
NW $\frac{1}{4}$ NW $\frac{1}{4}$	8	SW $\frac{1}{4}$ SE $\frac{1}{4}$	9
NE $\frac{1}{4}$ NW $\frac{1}{4}$	28	SE $\frac{1}{4}$ SE $\frac{1}{4}$	12
SE $\frac{1}{4}$ NW $\frac{1}{4}$	12	Section 8	
NW $\frac{1}{4}$ NE $\frac{1}{4}$	3	SW $\frac{1}{4}$ N $\frac{1}{4}$	4
SW $\frac{1}{4}$ NE $\frac{1}{4}$	35	NW $\frac{1}{4}$ SW $\frac{1}{4}$	30
SE $\frac{1}{4}$ NE $\frac{1}{4}$	20	NE $\frac{1}{4}$ SW $\frac{1}{4}$	9
NW $\frac{1}{4}$ SE $\frac{1}{4}$	40	SW $\frac{1}{4}$ SW $\frac{1}{4}$	23
NE $\frac{1}{4}$ SE $\frac{1}{4}$	34	SE $\frac{1}{4}$ SW $\frac{1}{4}$	17
		TOTAL	264 acres

(5) NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota, We hereby grant and confirm to John & Darlene Stovall

_____ of Hermosa, SD

the holder S and owner S of said permit No. 1170-2 a water right, dating from January 28, 1974

_____ to use of 3.0 cubic feet per second of the waters

of Battle Creek

in the County of Custer and State of South Dakota, or so much thereof as may be necessary for the

purposes hereinafter mentioned, to be diverted at a point 1550 feet south and 1620 feet west of the NE corner, Section 7, T3S, R9E

and conducted to and upon portions of land in Sections 7 and 8, T3S, R9E more fully described on the face of this License

for the purpose of Irrigation

Subject to any limitations listed in Water Right Permit No. 1170-2 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 19th day of January _____ A. D.
Nineteen Hundred and Eighty-one

WATER MANAGEMENT BOARD

By: John Hatch
Chief Engineer, Executive Officer JOHN HATCH

Form 6 - Notice of Intent to Appropriate Water

Publish first publication, on or before 1170-2 March 7, 19 74

NOTICE
INTENT TO APPROPRIATE WATER

Pierre, South Dakota 57501

February 27, 19 74

Notice is hereby given that John and Darlene Stovall

whose post office address is Hermosa, South Dakota, has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use

5.78 cubic feet of water per second of time from the Battle Creek through the Stovall Flood Irrigation Project, the point of diversion of which is to be located in the

S1/4 NW1/4

of Section 7, Twp. 35, Range 9E. Said water to be used for the purpose of providing irrigation on all or portions of the following described land:

NE1/4, NE1/4 NW1/4, SW1/4 NW1/4, SE1/4, Section 7; NE1/4 SE1/4, SE1/4 SW1/4, Section 8, T35, R9E

This application No. 1170-2 will be considered by the Water ~~Resources~~ Rights Commission at their office at Pierre upon the 20th day of March, 19 74, at 2:30 P. M. All interested persons may appear and be heard.

~~WATER RESOURCES COMMISSION~~
WATER RIGHTS COMMISSION

By:

BURTON F. JONES, Water Rights Specialist

BFJ/GW
KMEY

cc: J. W. Stovall, Hermosa, S.D. 57744

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County OF CUSTER) ss.

I, JESSIE Y. SUNDSTROM hereby

certify that the annexed printed copy of Notice of Intent to Appropriate
Water was taken from the CUSTER COUNTY CHRONICLE

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

CITY of CUSTER

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

March 7, 1974

March 14, 1974

Jessie Y. Sundstrom
(Signature)

Public
(Title)

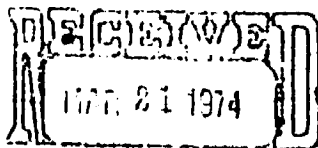
March 14, 1974
(Date Signed)

CUSTER COUNTY CHRONICLE
MARCH 7, 1974
PAGE 4

NOTICE
INTENT TO APPROPRIATE
WATER

Notice is hereby given that John
and Darlene Sovall whose post of-
fice address is Hermosa, South Dak-
ota, have made an application in ac-
cordance with provisions of the wat-
er laws of South Dakota for a permit
to appropriate for beneficial use
3.78 cubic feet of water per second
of time from Battle Creek through
the Sovall Flood Irrigation Pro-
ject, the point of diversion of which
is to be located in the SW 1/4 NW
1/4 of Section 7, Twp. 38, Range
9E. Said water to be used for the
purpose of providing irrigation on
all or portions of the following des-
cribed land: NE 1/4, NE 1/4 NW 1/4,
SW 1/4 NW 1/4, SE 1/4, Section 7;
W 1/2 SW 1/4, SE 1/4 SW 1/4,
Section 8, T38, R9E.

This application No. 1170-2 will
be considered by the Water Rights
Commission at their office at
Pierre upon the 20th day of March,
1974, at 2:30 p.m. All interested
persons may appear and be heard.
By: WATER RIGHTS COMMISSION
/s/ Burton F. Jones
Water Rights Specialist



STATE WATER RIGHTS COM.
PIERRE, SOUTH DAKOTA

Thompson, S.D.

March 3, 1974

Water Rights Comm.
Pierre, S.D.

Dear Mr. Brewster:

I was surprised to see
the legal notice in theuster
Chronicle for Mr. Stovall's water
right application No. 1170-2, as
I had been informed there was
no more right available on
Battle Creek. If I was mis-
informed and there are rights
available, I am requesting from
you information on the
procedure to follow in
filing for these rights and
what rights would be available.

Thank You

Respectfully Yours
Donald E. Kropp

March 26, 1974

Mr. Donald E. Knapp
Hermosa, South Dakota 57744

Dear Mr. Knapp:

Reference is made to your letter received March 13, 1974, regarding the water right application of John Stovell to divert water from Battle Creek.

Mr. Stovell's Water Right Application No. 1170-2 proposed to divert up to 5.78 cubic feet per second of the flood flows of Battle Creek during May and June to irrigate up to 405 acres of land.

The Water Rights Commission at its meeting on March 20, 1974, deferred action on Mr. Stovell's application pending investigation by the Commission staff. The Commission instructed its staff to investigate and report on existing irrigation, other uses, flow records, etc. pertaining to Battle Creek.

After the investigation and report is completed, this office will be in better position to answer your question as to what amount of unappropriated water, if any, might be available for new water rights.

Enclosed for your information are copies of the forms and instructions used in making applications for new water rights.

Very truly yours,

Burton F. Jones

BFJ/sq
Encl: As stated

September 20, 1976

Mr. Don Knapp
Hermosa, S.D. 57744

Dear Mr. Knapp:

I made an investigation on September 8th and 9th, 1976 of your complaint that John Stovall was pumping water from Battle Creek at a rate that would interfere with your domestic and livestock water supply.

In an interview with Mr. Stovall he said he only pumped two days this year. The Creek was flowing at an estimated 10 c.f.s. at the time of the investigation. For your information Mr. Stovall's application for permit stipulates as follows:

"This permit is issued with the diversion rate of 3.0 c.f.s."

This permit is approved contingent upon the permit holder controlling his irrigation withdrawals so water as needed for downstream domestic use, including livestock watering and prior water right use is by-passed.

In no case is the permit holder to divert water except when there is a continuous sustained flow of surface water in Battle Creek from his diversion to the mouth of Battle Creek.

The permit holder under this permit shall stop diversion of water from Battle Creek whenever he is so instructed by a representative of the Water Rights Commission."

You should have adequate water for domestic and livestock use when the creek is flowing. Mr. Stovall must by-pass water as stipulated in his water right Application.

Sincerely,

LE ROY MERNAUGH
Water Resources Engineer I

LM/bw

September 20, 1976

Mr. John Stovall
Hermosa, S.D. 57744

Dear Mr. Stovall:

On September 9, 1976 I visited you regarding a complaint filed in our office by land owner downstream from your irrigation project. He stated that he was concerned that your irrigation system would deprive him of water for his domestic use and livestock water supply.

This letter is to make you aware that your application for permit No. 1170-2 stipulates as follows:

"This permit is issued with a diversion of 3.0 c.f.s."

This permit is approved contingent upon the permit holder controlling his irrigation withdrawals so water as needed for downstream domestic use, including livestock watering and prior water right use is by-passed.

In no case is the permit holder to divert water except when there is a continuous sustained flow of surface water in Battle Creek from his diversion to the mouth of Battle Creek.

The permit holder under this permit shall stop diversion of water from Battle Creek whenever he is instructed by a representative of the Water Rights Commission.

By following the stipulations in your Water Rights Application No. 1170-2 there should be no complaints filed against your project.

Sincerely,

LE ROY MLRNAUGH
Water Resources Engineer I

LM/bw

WATER RIGHT APPLICATION NO. 1170-2: JOHN STOVALL

Water Right Application No. 1170-2 of John & Darlene Stovall to divert up to 5.78 cubic feet per second of water from Battle Creek during "May, June, (whenever creek is flooding)" to irrigate up to 405 acres of land was considered by the Water Rights Commission on March 20, 1974. While no one appeared in opposition to this application, the Commission staff indicated there had been questions about existing water rights on Battle Creek and existing flow records indicate there are very low flows in Battle Creek during some periods of time. The Commission deferred action pending investigation by the Commission staff.

There are many old water rights filed for diversion of water from Battle Creek (most are no longer valid). There are a number of miles of old abandoned irrigation ditches in the valley. Water Right Application No. 1170-2 was the second application received to divert water from Battle Creek since 1914.

It appears to the staff that there are six valid water rights to divert water from Battle Creek. There is not agreement among the people along Battle Creek that this is correct. There is one United States Geological Survey stream flow gaging station on Battle Creek.

A mile west of Hermosa, Neugebauer Brothers irrigate under a right based on a location filing by O.H. Klein on May 1, 1881.

The gaging station is located near Hermosa.

Water Right Application No. 1170-2 proposes to divert water by pumping from Battle Creek about 5½ miles southeast of Hermosa.

Water Right No. 319-2 originally issued to Arthur H. Kroth (priority, July 17, 1948) now operated by Aldren E. Baker authorizes pump diversion of up to 2.9 c.f.s. of water about 8 miles southeast of Hermosa.

Location Certificate 0359-2 in the name of John Reddick (priority, March 2, 1895) is the basis for diversion on land now owned by a Rapid City doctor, and operated by Clarence Kroth. This is a direct diversion from the creek through a headgate and is located about 9½ miles southeast of Hermosa.

Location Certificate 044-2 in the name of H.N. Steele (priority October 14, 1886) is the basis for irrigation by Curtice Randall. This ditch diverts water from a headgate on the above-mentioned "Reddick Ditch". Mr. Randall also has submitted an incomplete application to divert 4.07 c.f.s. of water at a location about 12 miles southeast of Hermosa.

Location Certificate 0345-2 in the names of Dudley Phelps and Israel Bower is the basis for irrigation by two irrigators, Harrington-Tiltrum and Dr. R. A. Boyce. These are ditch and pump diversions at a location about 14 miles southeast of Hermosa.

Some of the ditches are old long ditches and portions of these ditches have considerable seepage, a part of which seems to return to the creek to increase the flow. The diversion rates into some of the old ditches can be varied greatly. On two of the ditches it is understood that the usual practice is to alternate the use of the water. When water is available there may be more use of water by some of the ditches now than in the past.

For a guideline in considering how much of the time there would be water available it is assured that the flow as measured at the gaging station should be about 15 c.f.s. before irrigation diversions proposed in Water Right Application 1170-2 should start. Attached is a copy of part of the flow records at the gaging station for a 22-year period. This shows that during the 22-year period there was an average flow of 15 c.f.s. or more in May during 8 years and in June during 10 years. Also attached are graphs showing when the average of the measured flow equaled or exceeded specified amounts. These graphs show a flow of 15 c.f.s. or more about 25% of the time during the months of May and about 37% of the time during the months of June.

Considering the time that there would be no pumping even if there were sufficient flow, the Commission staff has some reservations about the proposed irrigation. However the Commission staff believes the application can be approved with qualifications, providing the applicant, who applied to divert water only when the creek is flooding, is aware that he must control his irrigation so as not to take water that would otherwise be used for downstream domestic use, including livestock watering, and prior water right use. The applicant must also be aware that there will be many years when he cannot legally divert the water for irrigation and there will be many years when the diversion can be for a short period only. The Commission staff is concerned about the proposed diversion rate of 5.78 c.f.s. of water. This relatively large diversion rate means a more drastic effect on downstream flows and would prevent the applicant from validly using his system as often as he could wish at lower diversion rates.

The recommendation of the Commission staff is that Water Right Application No. 1170-2 be approved for a diversion rate of 3 c.f.s. of water. It is further recommended that the application be approved containing the following qualifications:

This permit is approved contingent upon the permit holder controlling his irrigation withdrawals so water as needed for downstream domestic use, including livestock watering and prior water right use, is by-passed;

In no case is the permit holder to divert water except when there is a continuous sustained flow of surface water in Battle Creek from his diversion to the mouth of Battle Creek;

The permit holder under this permit shall stop diversion of water from Battle Creek whenever he is so instructed by a representative of the Water Rights Commission.

FLOW THAT WAS EQUALLED OR EXCEEDED, IN CFS.

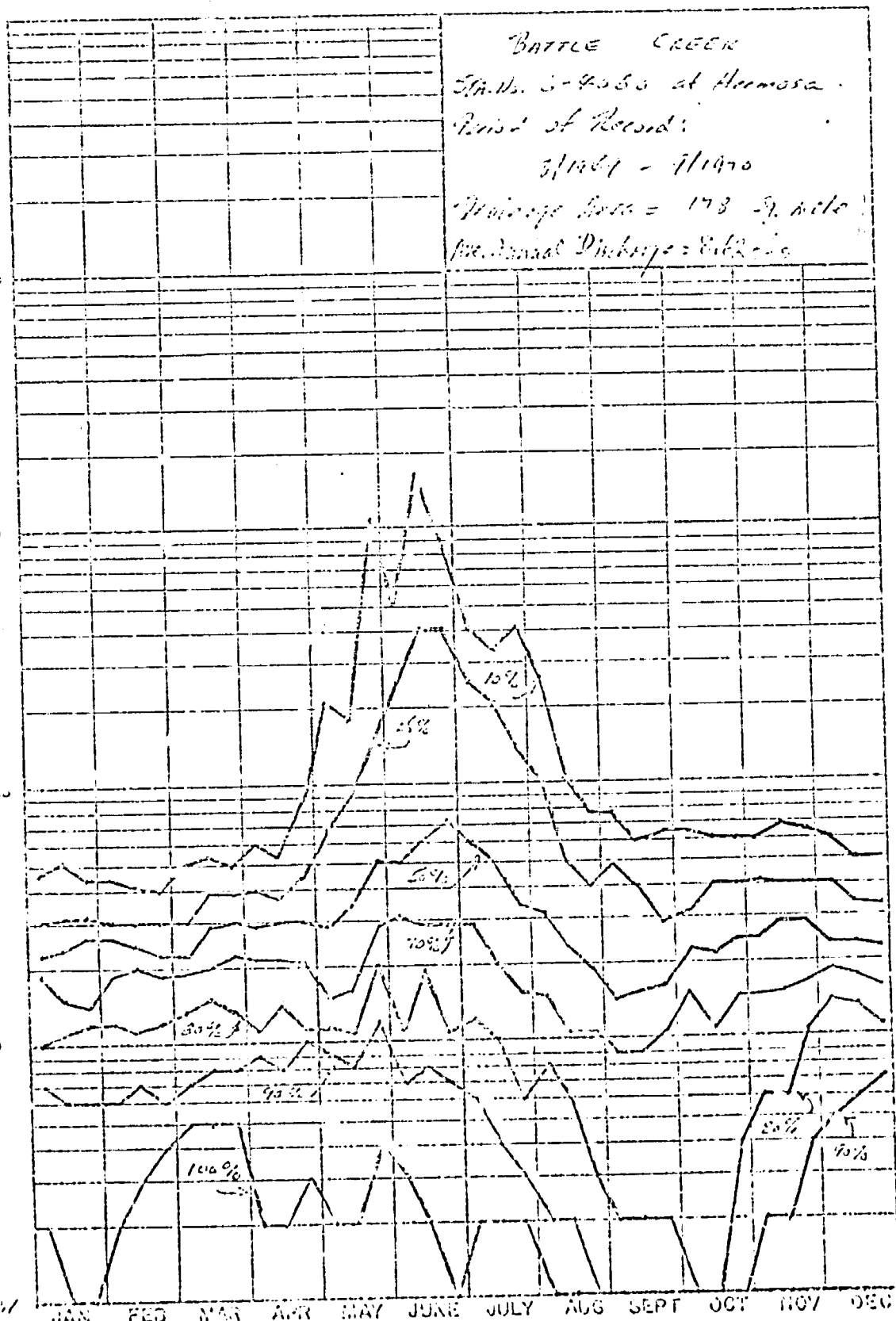
1955

100

75

50

25



Source: U. S. GEOLOGICAL SURVEY RECORDS
 STATE WATER PLAN
 SOUTH DAKOTA CONSERVATION DISTRICT

BATTLE CREEK FLOWS NEAR HEPMOFA

<u>Year</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>
1951	3.0	12.9	16.2	4.7	5.7
1952	125.0	31.6	9.3	2.2	1.3
1953	7.5	13.3	2.5	12.3	1.1
1954	1.5	0.8	0.4	0.2	0.2
1955	0.7	1.3	0.7	0.2	0.1
1956	15.1	3.5	5.8	3.3	0.2
1957	88.0	97.7	49.7	25.5	5.2
1958	20.9	13.1	5.2	2.6	1.8
1959	2.2	4.8	5.3	0.7	0.7
1960	4.0	4.7	0.8	0.3	0.1
1961	0.9	3.2	3.9	0.2	0.1
1962	47.5	93.5	75.5	17.3	2.1
1963	26.5	94.3	29.7	5.3	2.9
1964	9.0	23.4	21.3	2.5	1.5
1965	129.0	102.0	46.5	13.6	5.6
1966	6.0	3.3	2.5	3.1	1.6
1967	3.8	158.0	25.8	9.0	6.8
1968	4.8	13.5	5.1	5.3	5.8
1969	3.3	2.8	29.5	3.2	3.9
1970	7.0	26.6	2.9	2.3	1.7
1971	5770	80.8	14.3	6.1	5.0
1972	9.4	142.0	29.5	17.1	8.7

RECEIPT (

WATER RIGHTS COMMISSION

State of South Dakota

No 4 7880

PIERRE,

January 5 19 51

J W Stovall, Hermosa, SD 57744

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

Fee for Application for Permit to Appropriate Water No. _____ (examination, processing, recording and filing) _____		
Fee for inspecting Construction, and Issuing Cert. of Construction No. 1170-2	50	00
Fee for inspecting Beneficial Use, and Issuing Water License No. 1170-2		
Fee for issuing Location Certificate-Dry Draw, No. _____		
Fee for filing _____		
Fee for certified copy of _____		
Fee for Print copy of map _____		
Fee for Certifying _____		
Fee for _____ (any other work as provided by law)		
TOTAL	50	00

WATER RIGHTS COMMISSION

By (W. S. / J. H. K.)
Chief Engineer, Executive Officer
JOHN HATCH / (J. H. K.)

Permit No. 1170-2Water Division 2 Battle Creek Water District

**REPORT OF EXAMINATION OF WORKS
AND/OR APPLICATION OF WATER TO BENEFICIAL USE**

TO: WATER RIGHTS, WATER MANAGEMENT BOARD / FOSS BLDG., PIERRE, SOUTH DAKOTA 57501

I have this day made a thorough examination of the water use system constructed by John + Darlene Stoval of Hermosa, S. Dak. holder of Permit No. 1170-2, bearing date of priority of January 28, 1974 authorizing the diversion of: 3.0 cu. ft. per second of the waters of Battle Creek for Irrigation purposes, in Custer County.

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

The Water Use System consists of,

A. Works used to divert the water:

Engine - 4 cyl. Diesel - 780. (est)
Pump - Rain Master Model 8DP.
Ser # 147561 pumps 1500 gpm.

B. Works used to transport water to place of use,

1200 ft 12" PVC pipe
Main Ditches with headgates

C. Works used to apply water to beneficial use.

Spreader Dikes and Ditches

The system is in the following condition: Good.The point of diversion is located 1550 ft S and 1620 ft W of the NE Cor Sec. 7, T 35 R 9EThe works are capable of diverting and conveying to the place of use 3.33 cu. ft. per second of water which is to be used for IrrigationWater has been put to beneficial use to the maximum extent as follows: The following in Sec. 7,

T 35 R 9E - NW 1/4 NW 1/4 - 8 Ac., NE 1/4 NW 1/4 - 28 Ac., SE 1/4 NW 1/4 - 12 Ac.,
NW 1/4 NE 1/4 - 3 Ac., SW 1/4 NE 1/4 - 35 Ac., SE 1/4 NE 1/4 - 20 Ac., NW 1/4 SE 1/4 - 40 Ac.,
NE 1/4 SE 1/4 - 34 Ac., SW 1/4 SE 1/4 - 7 Ac., SE 1/4 SE 1/4 - 12 Ac.

The following in Sec. 8, T 35 R 9E, SW 1/4 NW 1/4 - 4 Ac., NW 1/4 SW 1/4 - 30 Ac.,
comprising a total of 284 acres of land. NE 1/4 SW 1/4 - 9 Ac., SW 1/4 SW 1/4 - 23 Ac.,
SE 1/4 SW 1/4 - 17 Ac.

$$1500 \div 450 = 3.33$$

$$284 \div 70 = 4.06 \text{ cfs}$$

$$\text{License fee } 3.33 \text{ cfs.}$$

1/19/80 License for 3.00 cfs
all Permit approved for
600

Date July 23, 1980
P. Roy J. McLaughlin
(Signature)

No.

1170-2

SOUTH DAKOTA Department of
Water & Natural Resources

Joe Foss Building Water Rights Division
Pierre, South Dakota 57501

(605) 773-3352

January 23, 1981

John & Darlene Stovall
Hermosa, SD 57744

Dear Mr. & Mrs. Stoval:

Enclosed herewith are, Water License No. 1170-2 and Certificate of Construction.

Water License No. 1170-2 is the final water right document completing your process of obtaining a water right.

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

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

JH:gy

enclosures

NOTE: Your pump capacity is 3.30 cfs (1482 gpm); however, you are only entitled to divert 3.00 cfs (1341 gpm). Any diversion in excess of 3.00 cfs would be a violation of your Water Right.

WNR-817-7/79
Transmittal of Water License

South Dakota
Department of
Water & Natural Resources

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

March 23, 1987

JOHN & DARLENE STOVAL
RR #2 BOX 63
HERMOSA, SD 57744

NOTICE

Re: Violation of Requirement To Submit 1986 Irrigation
Questionnaire

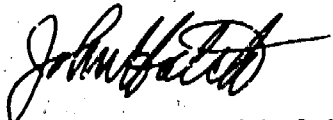
Our records indicate that the 1986 Irrigation Questionnaire has not been submitted for Permit No(s). 1170-2. The request for the Questionnaire was dated November 3, 1986. The Water Management Board has directed that owners of water permits who have not submitted 1986 Irrigation Questionnaires be given notice of hearing(s) to be held by the Board to determine if any action is to be taken concerning the violation.

The hearings will be held at 2:00 pm, May 6, 1987 in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to procedures contained in SDCL 1-26. Following the hearing(s), the Water Management Board can:

1. Amend Permit No(s). 1170-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action;
3. Take no action.

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



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

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

**South Dakota Department of
Water & Natural Resources**

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

April 15, 1987

1170-2

John & Darlene Stoval
RR #2 Box 63
Hermosa, SD 57744

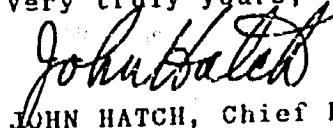
Dear Mr. & Mrs. Stoval:

This will acknowledge receipt of and thank you for the return of your 1986 Irrigation Questionnaire. A notice was sent to you March 23, 1987 regarding the Irrigation Questionnaire submittal violation of Water Permit No. 1170-2 and the date hearings were to be held before the Water Management Board to determine any action to be taken concerning the violation.

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

If you have any questions, please contact us.

Very truly yours,



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

SOUTH DAKOTA Department of
Water & Natural Resources
 Joe Foss Building
 523 East Capitol
 Pierre, South Dakota 57501-3181

August 15, 1990

NOTICE OF ORDER

TO: Battle Creek Water Users

FROM: John Hatch, Chief Engineer *John Hatch*
 Water Rights Division
 (605) 773-3352

SUBJECT: Order To To Establish Minimum Flow At Highway 40
 Battle Creek Stream Gauge To Provide Water For
 Livestock Watering (Domestic Use)

The purpose of this notice is to order that a minimum flow of 3.0 cubic feet per second (cfs) [1350 gallon per minute], gauge stage 2.70, be maintained during irrigation pumping at the Highway 40 stream gauge, also known as the Battle Creek gauge below Hermosa, located in the SE 1/4 Section 3, T4S, R10E to provide water for livestock watering (domestic use). This notice is being provided to irrigation water right owners and domestic users on the attached list. Using the 3.0 cfs standard, no irrigation is authorized under present flow conditions in Battle Creek.

The many miles of creek along with unpredictable flows makes Battle Creek a difficult creek to regulate fairly. One exception to the 3.0 cfs standard will be when a rainstorm produces sudden, but short term runoff. Even though 3.0 cfs may not be available at the Highway 40 bridge in Section 3, under upstream "full channel" conditions, where the runoff flows may last only one to three days, but are expected to reach the Highway 40 bridge, irrigation pumping will be authorized for the one to three day period that it takes the short term runoff flows to pass an irrigation diversion point.

If the 3.0 cfs standard and/or the above exception prove to be unworkable, we will have to do something else. The purpose of this order is an attempt to fairly regulate the flows of Battle Creek for the best benefit of all users. If someone has comments or suggestions, please write or let Del Brosz, Tim Schaal or myself know at (605) 773-3352.

Irrigation Water Right Owners and Domestic Users
Battle Creek

Stanley Neugebauer, Neugebauer Dairy, Inc., RR 1, Box 96, Hermosa
SD 57744
Clarence Fcos, RR 4, Box 27, Hermosa SD 57744
Herb Kaiser, HCR 89, Box 303, Hermosa SD 57744
Gene Baker, RR 4, Box 11, Hermosa SD 57744
Ed Kanesky, Box 52, Caputa SD 57725
H. J. Borgmeyer, 1721 11th St, Rapid City SD 57701
Keith Robertson, HCR 89, Box 294, Hermosa SD 57744
John & Darlene Stovall, HCR 89, Box 317, Hermosa SD 57744
Clarence Werner, HCR 89, Box 297, Hermosa SD 57744
Fred Rittberger, Rittberger Beef & Dairy, Inc, HCR 83, Box 13,
Hermosa SD 57744
Donald Kaiser, RR 4, Box 18, Hermosa SD 57744
Louis Freiberg, Attorney, First Federal Plaza, 909 St. Joe St.
#420, Rapid City SD 57701



DEPARTMENT OF WATER & NATURAL RESOURCES

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

1170-2

May 3, 1991

Clarence & Carol Foos
HCR 89, Box 315
Hermosa, SD 57744

Dear Mr. & Mrs. Foos:

I am writing in response to your April 19 and May 2, 1991 letters concerning the flows in Battle Creek. Since the receipt of your April 19 letter, I have also been in contact with Tim Edman from the Governor's Office concerning this matter.

The Neugebauer Brothers have three Water Rights/Permits from Battle Creek, Water Right Nos. 969-2 and 1191-2 and Water Permit No. 2054-2. Water Right No. 969-2 has two priority dates. Both priority dates are for irrigation of the same 121.7 acres of land. One priority date is based on a water right filing claim made in May of 1881. This gives the Neugebauers the first right on Battle Creek. Under the 1881 priority, they can divert up to 1.73 cubic feet per second (cfs) from Battle Creek directly onto the land.

The portion of Water Right No. 969-2 with the second priority date authorizes the Neugebauers to divert flows from Battle Creek into their storage dam for later irrigation use. Water Right No. 969-2 allows up to 43.9 acre-feet to be held in storage. Diversion of flows from Battle Creek for storage has a priority date of June 11, 1968.

Water Right No. 1191-2 authorizes the diversion of 0.33 cfs from Battle Creek to irrigate 23 acres with a priority date of May 1, 1881. This land is located on the south side of Battle Creek across from the 121.7 acres irrigated under Water Right No. 969-2.

The qualifications on Water Right Nos. 969-2 and 1191-2 are as follows:

1. Diversions of flow from Battle Creek for direct application to the land have a priority date of May 1, 1881. When such diversions are being made, low flows as needed for downstream domestic use shall be by-passed.
2. Diversions of flows from Battle Creek for storage into the dam have a priority date of June 11, 1968. When such diversions are being made, sufficient water shall be by-passed to satisfy downstream domestic use and prior water rights.

Page 2
Foos
May 3, 1991

Water Permit No. 2054-2 authorizes 1.71 cfs from Battle Creek to irrigate 120 acres approximately 2 miles downstream of the other two existing Water Rights. Water Permit No. 2054-2 has a priority date of March 15, 1988. The qualifications on Water Permit No. 2054-2 are as follows:

1. That Permit No. 2054-2 is subject to installation of a gaging station at the Highway 40 bridge over Battle Creek, located in the SE 1/4 of Section 3-T4S-R10E.
2. That a minimum of 3 cfs be maintained at the Highway 40 gage to insure flows for prior downstream existing water rights and domestic use.
3. That Permit No. 2054-2 is subject to at least 16.71 cfs bypassing the USGS gaging station at Hermosa during pumping under No. 2054-2.
4. This permit is subject to the irrigation water use questionnaire being submitted each year.

When Water Permit No. 2054-2 was approved at the July 27, 1988 Water Management Board Meeting there was a discussion on "Flood Flows". This discussion was held because the Neugebauers were asking to divert at a rate greater than the allowable 1 cfs per 70 acres irrigated. SDCL 46-5-6 states that the diversion rate requirement of 1 cfs per 70 acres shall not apply in cases of flood water at such times when the flow of the stream is much in excess of the recorded and approved rights on the stream. The Water Management Board determined that "Flood Flows" for this application are considered to be twice the appropriated downstream water rights or 30 cfs.

There has been some confusion placed on the Neugebauer Water Rights/Permits. The discussion at the July 1988 Water Management Board Meeting is the only time the term "Flood Flows" has been used. The term "Flood Flows" is not in any of the qualifications that pertain to the Neugebauer Water Rights/Permits. The minimum flow requirement of 3.0 cfs at the lower Battle Creek gaging station is a qualification on Water Permit 2054-2 only.

My August 15, 1990 Notice of Order to Battle Creek Water Users established a minimum flow of 3.0 cfs at the lower Battle Creek gaging station to provide water for downstream domestic use. This standard pertained to all Battle Creek Water Rights/Permits. The 3.0 standard was selected as a management tool. It gives us an amount of flow at the lower Battle Creek gage to compare with downstream flows. If this 3.0 cfs standard does not work out, it may be raised or lowered.

Page 3
Foos
May 3, 1991

On April 18, 1991 when Del Brosz and Tim Schaal met with you, they read the lower Battle Creek gage at 2.65 or 2.3 cfs. You had indicated a reading of 2.59, or 1.5 cfs. On April 30th the USGS in Rapid City informed us that 0.04 feet needs to be added to the outside staff gage because of movement of the gage, probably caused by ice action.

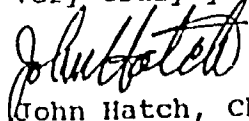
On April 18th, Battle Creek was flowing all the way to the Cheyenne River with an estimated flow into the Cheyenne River approximately the same as at the gaging station. It appears that on this day the 3.0 cfs standard was more than sufficient. Depending on the time of year and existing weather conditions, we may need to vary this standard to fairly regulate the flows of Battle Creek.

We do not believe that the Neugebauers have violated the qualifications of their permits. This spring there has always been water available in Battle Creek for domestic use (livestock water). In checking with the Forest Service, we were informed that your leases on the grasslands along Battle Creek are for the period from December 16 to May 15. Therefore, water for livestock will not be necessary below your property during the summer months. If prior water right holders wish to irrigate and there is not enough water in the Creek, junior water right holders will have to stop pumping.

Enclosed is a listing of the existing Water Rights/Permits on Battle Creek. Also enclosed as requested, is a copy of the General Rules pertaining to a request to the Water Management Board for a declaratory ruling and copies of Water Right Nos. 969-2 & 1191-2 and Water Permit No. 2054-2.

If you have questions, please contact Del Brosz, Tim Schaal or myself at (605) 773-3352.

Very truly yours,



John Hatch, Chief Engineer
Water Rights Division
(605) 773-3352

cc: Stanley Neugebauer
John Stovall
Gene Baker
Keith Robertson
Dr. H. J. Borgmeyer
Rich Cleland
Fred Rittberger
Donald Kaiser
Herb Kaiser
Tim Edman, Governor's Office
all with copy of Water Rights/Permits List

South Dakota

GREAT FACES. GREAT PLACES.

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

October 28, 1991

1170-2

John & Darlene Stoval
HC 89 Box 317
Hermosa, SD 57744

Dear Mr. & Mrs. Stoval:

Thank you for the prompt return of your 1991 irrigation questionnaire. On your questionnaire, you had inquired about the use of water and retaining your water right.

Water use is a requirement for keeping a water permit or water right valid. SDCL 46-5-37 states that when a person entitled to the use of appropriated water fails to use beneficially all or any part of such water for the purpose for which it was appropriated, for a period of three years, such unused water shall revert to the public and shall be regarded as unappropriated public water.

There are "legal excuse" reasons for nonuse of water which would suspend the period of nonuse. They are: 1) the unavailability of water to satisfy a permit or right, 2) legal proceedings which prevent the use of water and 3) water use under existing climatic conditions which would result in a waste of water.

I hope that the above has answered your questions concerning the use of water under your permit. If you have anymore questions, please contact me.

Sincerely,

Genny McMath

Genny McMath
Natural Resources Analyst
(605) 773-3352

1170-2

Existing Water Rights/Permits on Battle Creek
Listed in Upstream to Downstream order

Number	Name	Diversion Rate (cfs)	Priority Date
Water Right No. 969-2	Neugebauer Bros.	1.73	5/1/1881 & 6/11/1968
Water Right No. 2153-2	Neugebauer Bros.	0.33	5/1/1881
Water Permit No. 2054-2	Neugebauer Bros.	1.71	3/15/1988
Water Right No. 1170-2	John Stovall	3.00	1/28/1974
Water Permit No. 319-2	Gene Baker	2.90	7/17/1948
WR Filing No. 0359-2	Keith Robertson & Dr. Borgmeyer	1.47	3/3/1895
WR Filing No. 0422-2	Spanish 5 Ranch	1.82	10/14/1886
WR Filing No. 0421-2	Spanish 5 Ranch	1.80	10/27/1893
Water Right No. 1209-2	Edward Kanesky	1.07	9/29/1900
Water Right No. 1221-2	Rittberger Bros.	1.14	9/29/1900
Water Right No. 1275-2	Donald Kaiser	0.70	1935
Water Right No. 187-2	Clarence Foos	0.86	9/11/1912
		Total	18.53 cfs

L



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

NOV 12 1997

John and Darlene Stovall
HCR 89, Box 317
Hermosa SD 57744

Dear Mr. & Mrs. Stovall:

Enclosed are Water License No. 2371-2 and Reissued Water License No. 1170-2. These licenses are the final document which completes the process of obtaining a water right. Also, enclosed is the receipt for the \$50.00 assessed for the inspection and issuance of the license.

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

Very truly yours,

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

ks

enclosures

STATE OF SOUTH DAKOTA

REISSUED WATER LICENSE NO. 1170-2

(1) John & Darlene Stovall were issued Water License No. 1170-2, January 19, 1981 to divert 3.00 cubic feet of water per second from Battle Creek, Custer County, South Dakota for irrigation purposes. Water License No. 1170-2, with a priority date of January 28, 1974 was issued for diversion of water with construction of the described water supply system completed and the application to beneficial use of said water completed.

The original water license, issued January 19, 1981 contained an error in the legal description of the diversion point. Water License No. 1170-2 is being reissued to correct the error.

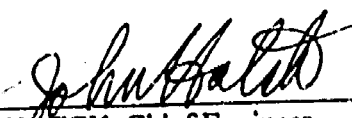
(2) It is certified that the water right holders have complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and are entitled to divert 3.00 cubic feet of water per second for beneficial use. The location of the diversion point is 1,550 feet south and 1,620 feet west of the N 1/4 corner of Section 7-T3S-R9E (SW 1/4 NW 1/4).

(3) The water right holders have complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate the following land:

Section 7-T3S-R9E		Section 8-T3S-R9E	
NW 1/4 NW 1/4	8 acres	SW 1/4 NW 1/4	4 acres
NE 1/4 NW 1/4	28 acres	NW 1/4 SW 1/4	30 acres
SE 1/4 NW 1/4	12 acres	NE 1/4 SW 1/4	9 acres
NW 1/4 NE 1/4	3 acres	SW 1/4 SW 1/4	23 acres
SW 1/4 NE 1/4	35 acres	SE 1/4 SW 1/4	17 acres
SE 1/4 NE 1/4	20 acres		
NW 1/4 SE 1/4	40 acres		
NE 1/4 SE 1/4	34 acres		
SW 1/4 SE 1/4	9 acres		
SE 1/4 SE 1/4	12 acres		
		Total 284 acres	

Water Right No. 2371-2 authorizes irrigation of the same acreage from a dry draw.

(4) Pursuant to South Dakota Water Law 45-5-30.1 John and Darlene Stovall, HCR 89 Box 317, Hermosa SD 57744 the holders and owners of Water License No. 1170-2 are reissued a license to appropriate 3.00 cubic feet of water per second from Battle Creek with a priority date of January 28, 1974 from the location specified in (2) of this license for the purpose of irrigation. This license is subject to any limitations or qualifications listed in Water Permit No. 1170-2 and subject to South Dakota State Law.


JOHN HATCH, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

NOV 12 1997

date



Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: John Stovall – Water Right No. 1170-2

ADDRESS: COUNTY: Custer County

DATE: March 29, 2004 TELEPHONE: (605) 255 - 4284

RE: Call from Mr. Stovall

COMMENTS:

Mr. Stovall called wanting to ensure he maintains Water Right No. 1170-2 from Battle Creek. He said that it has been a few years since he irrigated. He has a motor that went out and he's looking at replacing it. The previous motor was a one phase motor and he has learned that the electric company is putting a 3 phase line in place in about one year. He hates to purchase a one phase motor at a cost of \$10,000 that will soon be outdated. Wanted to know what he needed to do to maintain the water right.

I explained the forfeiture for nonuse statute and that staff could not supercede what this statute states. I also explained the legal excuse rule.

Told him if water was not available from Battle Creek this could constitute legal excuse for the nonuse of water. Also said that if he received sufficient water from Water Right No. 2371-2, which is for irrigation of the same acreage from a dry draw, that this may also constitute legal excuse for not using water from Battle Creek.

Finally, I told him the one way to ensure the status is to irrigate. This may mean renting a pump and motor and running it for the purpose of irrigating for a few day to preserve his water right. He said his current pump and pipe line is not set up for a rental set up. I told him he could rent a unit and run a separate line for the purpose of spreading water on the irrigated acreage.

NAME:

Eric Hamberg



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 20, 2004

NOTICE OF SHUTOFF ORDER

TO: JOHN/DARLENE STOVALL
HCR 89 BOX 317
HERMOSA SD 57744

FROM: *for* GARLAND ERBELE, Chief Engineer
Water Rights Program

SUBJECT: Shutoff Order for Battle Creek Water Rights

Shutoff Order for Water Right Nos. 1170-2

Effective immediately no diversions of water from Battle Creek will be allowed. On July 20, 2004, flow in Battle Creek is at 0.79 cubic feet of water per second (cfs) which is well below the 3 cfs minimum flow bypass for domestic use. This flow is measured at the USGS gaging station by the Hwy 40 bridge east of Hermosa. Water availability in Battle Creek has reached critically low levels and diversions of water are interfering with domestic use including livestock watering. According to South Dakota Codified Law 46-1-5, domestic use takes precedence over appropriative water uses such as irrigation and commercial uses.

Flows in Battle Creek will be closely monitored, and if the flows increase and stabilize at a level sufficiently higher than the 3.0 cfs domestic use bypass, this shutoff order may be rescinded. If conditions do not improve, this order remains in effect until December 31, 2004.

I am asking for your cooperation in complying with this shutoff order. If you have any questions, please contact Mark Rath or Don Stroup with the Water Rights Program at (605) 773-3352. Thank you.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 18, 2005

NOTICE OF MODIFICATION TO 1990 BATTLE CREEK ORDER

TO: Battle Creek Water Users

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program

SUBJECT: Chief Engineer's Order for Battle Creek Water Rights to Protect Domestic Uses

**Modified Chief Engineer Order for Water Right Nos. 187-2, 319-2, 969-2,
(1170-2), 1209-2, 1221-2, 1275-2, 1283-2, 2153-2, 2367-2,
2367A-2, 2367B-2, 2368-2, 2368A-2, 2373-2.**

Effective immediately the August 15, 1990 Chief Engineer's Order requiring the 3.0 cubic feet of water per second (cfs) minimum flow bypass at the Hwy 40 bridge east of Hermosa is modified to a **1.5 cubic foot of water per second (cfs) domestic use bypass** as measured at the USGS gaging station, BATTLE CR BELOW HERMOSA SD - No. 06406500. This gage is located by the Hwy 40 bridge east of Hermosa and stream flow readings can be accessed over the USGS website at <http://waterdata.usgs.gov/sd/nwis/>.

On July 27, 1988 the South Dakota Water Management Board conducted a hearing and subsequently issued Water Permit No. 2054-2 for diversion of flood flows from Battle Creek. The Board issued the permit with the following qualification to address domestic use and prior water rights downstream from the Hwy 40 gaging station:

That a minimum of 3 cfs be maintained at the Highway 40 gage to insure flows for prior downstream existing water rights and domestic use.

The downstream existing water rights below the Highway 40 gage account for approximately 1.5 cfs of the 3.0 cfs bypass requirement. The remaining 1.5 cfs is attributable to the amount of water necessary to meet downstream domestic uses. South Dakota Codified Law 46-1-5 directs that

domestic use takes precedence over appropriative rights such as irrigation and commercial use. To be consistent with the 1988 Water Management Board determination of domestic use, a 1.5 cfs

bypass for domestic use at the Hwy 40 gaging station is now enacted on all Battle Creek water rights other than Water Right No. 2054-2 which has a separate qualification addressing bypass requirements. If flows in Battle Creek at the Hwy 40 gaging station drop below 1.5 cfs, upstream diversions from the creek must be reduced or cease so that a minimum flow of 1.5 cfs is maintained.

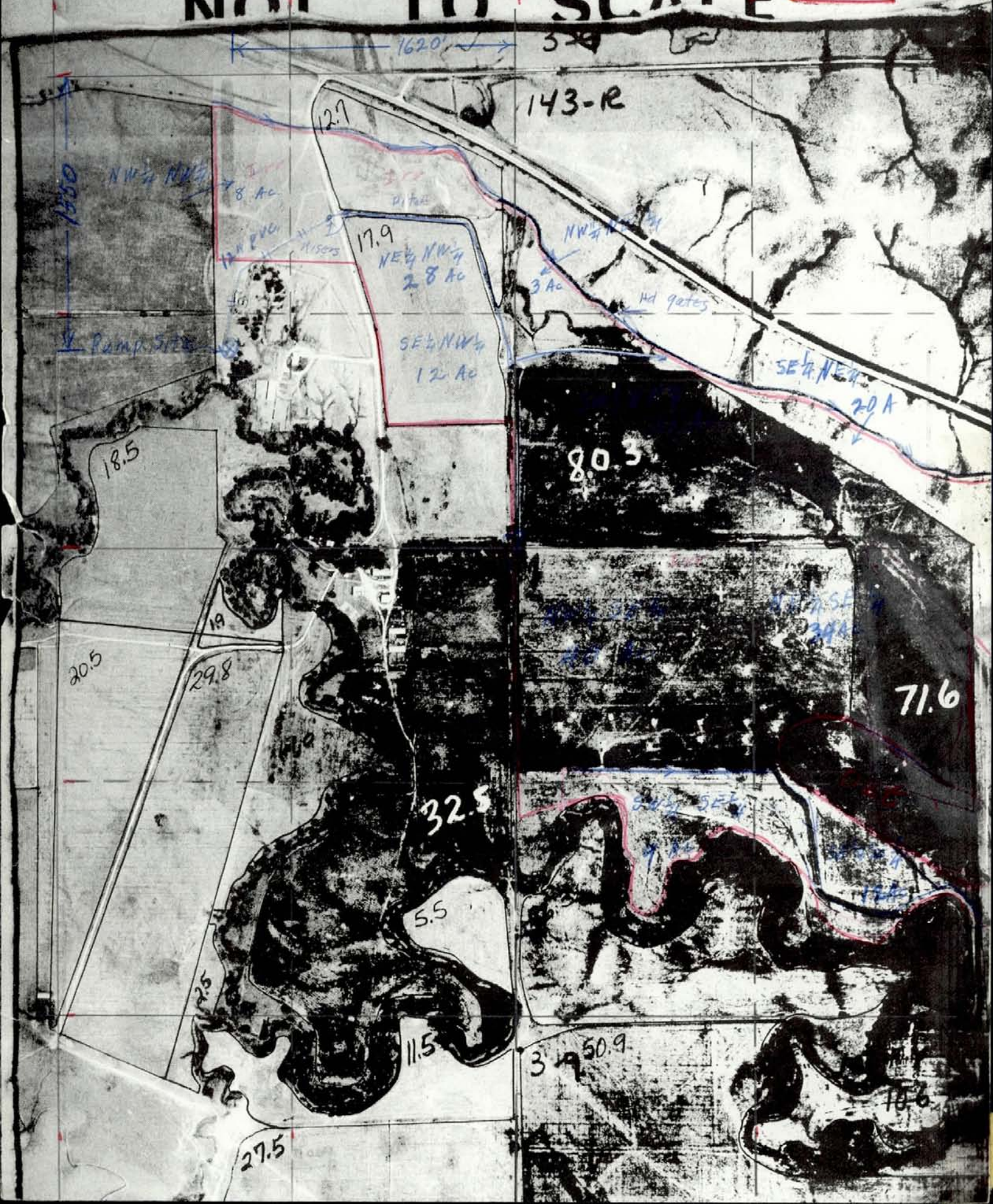
Battle Creek water users have a history of working together in scheduling their diversion from the creek to make maximum beneficial use of the limited resource while protecting domestic use. However if this cooperative use proves unworkable, shutoff orders based upon priority will be required.

Given the current drought conditions, the Water Rights Program intends to monitor Battle Creek flows carefully to ensure domestic needs are maintained.

If you have any questions, please contact Mark Rath or Don Stroup with the Water Rights Program at (605) 773-3352. Thank you.

Permit #

1170-2



NOT TO SCALE

3-9

142-12

8

SW $\frac{1}{4}$ NW $\frac{1}{4}$

4 Ac

NW $\frac{1}{4}$ SW $\frac{1}{4}$
30 Ac.

Irr.

NE $\frac{1}{4}$ SW $\frac{1}{4}$

9. Ac

SE $\frac{1}{4}$ SW $\frac{1}{4}$
17 Ac

SW $\frac{1}{4}$ SW $\frac{1}{4}$
23 Ac

22.5

Irr.

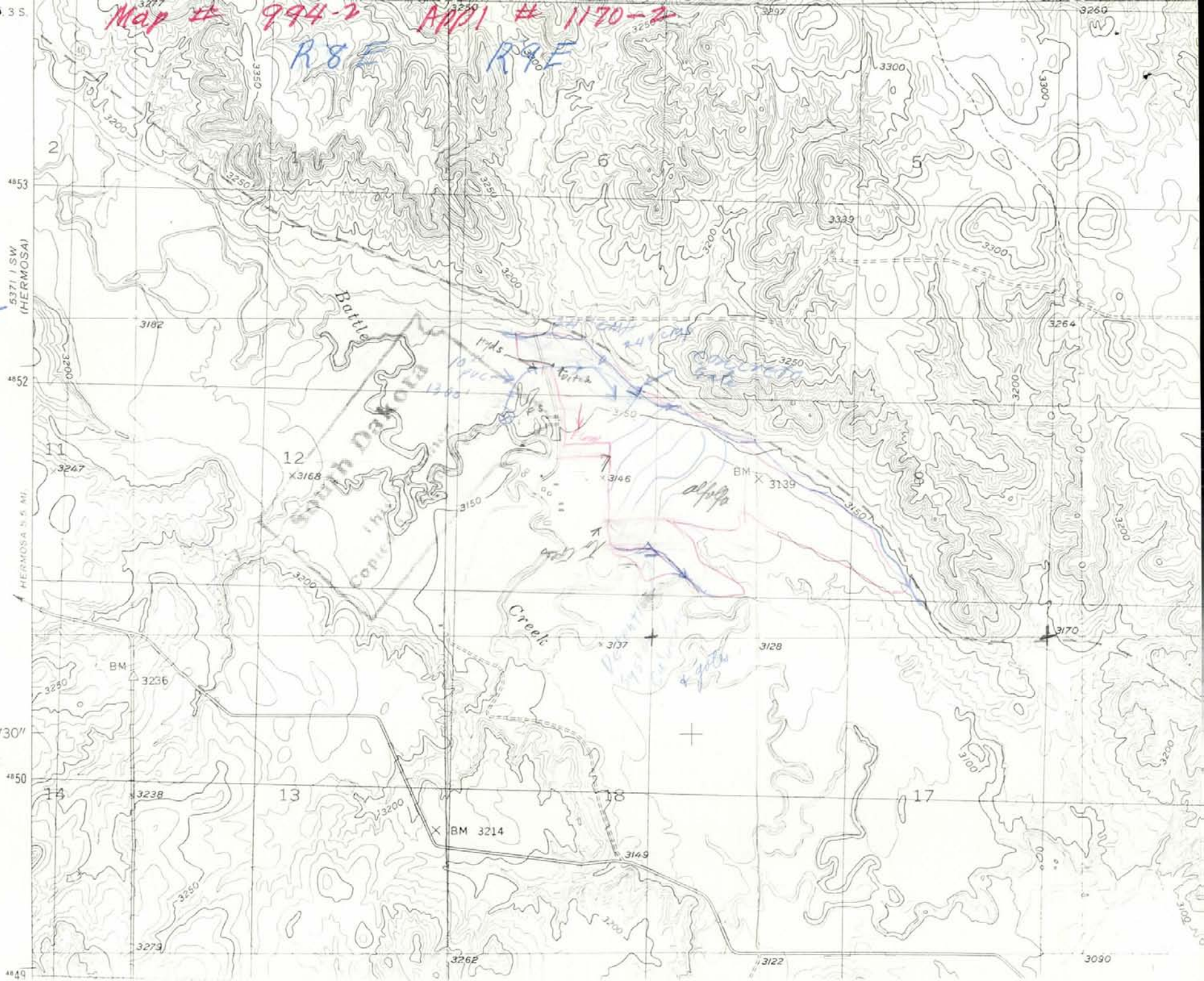
John + Darlene Stoval
Permit # 1170-2

3-9

RE

35

1170-2





11 10-2
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 14, 2006

TO: John and Darlene Stovall, 14829 SD Hwy 40, Hermosa SD 57744
Edward and Betty Kanesky, Box 52, Caputa SD 57725
Rittberger Brothers, HC 89, Box 302A, Hermosa SD 57744
Donald Kaiser, HCR 89, Box 303, Hermosa SD 57744
Clarence and Carol Foos, PO Box 317, Hermosa SD 57744
Neugebauer Brothers, HC 89, Box 209, Hermosa SD 57744
Battle Creek Valley Ranch, c/o Gary Baker, 15299 Baker Rd, Hermosa SD 57744
Custer Ranch, LLC, c/o Robert Wordeman, HC 89 Box 298, Hermosa SD 57744
Rodales Ranch, Inc., c/o Robert Borgmeyer, 6770 North Longfellow Dr, Tucson AZ 84717-2420
Birdsall Sand and Gravel, c/o Kyle Frisinger, PO Box 767, Rapid City SD 57709

FROM: Garland Erbele, Chief Engineer
Water Rights Program DENR *Garland Erbele*

SUBJECT: Battle Creek Bypass Order

On March 2nd, the Water Management Board considered a request for a declaratory ruling on the April 2005 order that modified the bypass at the USGS gaging station below Hermosa from 3.0 cubic feet of water per second (cfs) to 1.5 cfs. The Board after hearing all the testimony affirmed the modified order of the 1.5 cfs bypass. The Board will now adopt finding of fact, conclusions of law and a final decision at their May 3rd meeting. The final decision is then subject to appeal to the courts.

Under the 2005 Order, diversion of water from Battle Creek must cease if flow at the Highway 40 gage east of Hermosa is 1.5 cfs or less. Real time gage readings can be accessed at USGS website <http://waterdata.usgs.gov/sd/nwis/>. This order applies to all Battle Creek water rights.

If drought conditions continue, it is likely that Battle Creek water right holders are facing a year where very limited diversions may be allowed based on the 1.5 cfs bypass. At our meeting last May in Rapid City, it was agreed that permit holders would coordinate their withdrawals from the creek to maintain the 1.5 cfs flow at the gaging station below Hermosa and limit withdrawals to a single user each day. I again encourage similar cooperation. If you desire to be included in the effort to coordinate diversions, it is your responsibility to make your interest known. If the cooperative effort fails, diversions will be based on priority when sufficient flows exit at the Hwy 40 gaging station.

Please contact Don Stroup or Eric Gronlund at (605) 773-3352 if you have questions about the Board's action.



1170-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 5, 2007

Dear Water Right Holder:

On May 18, 2005, DENR met with the water right holders on Battle Creek to discuss management of the creek. During that meeting, we proposed that rather than manage Battle Creek on a strict priority basis like we do with the Cheyenne River, it may work better for individual irrigators to coordinate their pumping on a daily basis. It was our hope that by allowing irrigators to coordinate their withdrawals, all the irrigators would have an opportunity to benefit from the limited flows of Battle Creek. That has been the basis with which we managed Battle Creek the past two years.

The only way this would work is if all the water right holders agreed to this plan and worked together to manage withdrawals from the creek. However, DENR has received a complaint that not all of the irrigators agree with this plan. Therefore, we are going back to managing Battle Creek on a strict priority basis. Under that scenario, pumping is regulated on the basis of seniority of your water right. I have included a copy of the water rights and the priority dates for Battle Creek.

I also want to remind you of the 1.5 cubic foot per second bypass limitation that was established by the Water Management Board for the Highway 40 USGS gage. Once flows drop to this level all pumping from Battle Creek is discontinued. Gage reading are available on the USGS website at <http://sd.water.usgs.gov/> and click on "Realtime Map."

Lastly, DENR has transferred a water rights engineer to our Rapid City office. His name is Aaron Tieman. Since he is located in Rapid City full time, Aaron will be able to respond more quickly to issues arising on Battle Creek.

If you have any questions, please feel free to contact at me at (605)773-3352.

Sincerely,

Garland Erbele, P.E.
Chief Engineer, Water Rights Program

Cc: Diane Best, Attorney Generals Office

Encl:

1170-2

PERMIT NO	PTL	PRIOR1	PTL	PRIOR2	PRIORDATE	COUNTY	STAUSE	FIRST_NAME	LAST_NAME	ADDRESS2	CITY	STATE	ZIP	PLUS4
2153-2					05/01/1882	CU	LC	IRR	NEUGEBAUER BROTHERS DAIRY	14197 SD HWY 40	HERMOSA	SD	57744	
969-2					05/01/1882	CU	LC	IRR	NEUGEBAUER BROTHERS	14197 SD HWY 40	HERMOSA	SD	57744	
2368-2					10/14/1887	CU	LC	IRR	CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
2368A-2					10/14/1887	CU	PE	IRR	CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
0421-2					10/27/1894	CU	PE	IRR	JD RANCH REAL ESTATE LLC	HCR 89 BOX 298	HERMOSA	SD	57744	
0170-2					12/29/1895	CU	PE	IRR	FOOS	HCR 89 BOX 317	HERMOSA	SD	57744	
2373-2					03/02/1896	CU	LC	IRR	RODALES RANCHES, INC.	8730 SHERIDAN LAKE RD	HERMOSA	SD	57725	9066
1209-2					09/29/1900	CU	LC	IRR	KANESKY	BOX 52	CAPUTA	SD	57725	
1221-2					09/29/1900	CU	LC	IRR	RITBERGER BROTHERS	15663 SD HWY 40	HERMOSA	SD	57744	
2367A-2					01/01/1905	CU	LC	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
2367B-2		01/01/1905		07/17/1948	01/01/1905	CU	PE	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
187-2					09/11/1912	CU	LC	IRR	FOOS	PO BOX 317	HERMOSA	SD	57744	0317
1275-2					01/01/1935	CU	LC	IRR	KAISER	15745 SD HWY 40	HERMOSA	SD	57744	
319-2					07/17/1948	CU	LC	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
1170-2					01/28/1974	CU	LC	IRR	STOVALL	14829 SD HWY 40	HERMOSA	SD	57744	
1283-2					08/01/1975	CU	PE	COM	LIEN & SONS INC	PO BOX 440	RAPID CITY	SD	57709	0440
2054-2					03/15/1988	CU	LC	IRR	NEUGEBAUER BROTHERS	14197 SD HWY 40	HERMOSA	SD	57744	



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

June 20, 2012

JOHN AND DARLENE STOVALL
14829 SD HWY 40
HERMOSA, SD 57744

Dear Water Right Holder;

The SD Department of Environment and Natural Resources (DENR) is alerting all Battle Creek water right holders of the possibility of shutoff orders being issued for Battle Creek. This letter is **not** a shutoff order but is intended to give you advanced warning that your ability to divert water may be cut short this year.

As a result of the continuing lack of precipitation, Battle Creek flows measured below Hermosa remain below the historical average and are approaching the 1.5 cubic foot per second bypass limitation that was established by the Water Management Board for the USGS gage below Hermosa. Once flows drop to this level shutoff orders will be issued on a priority date bases. In the meantime, water right holders can help by closely monitoring water usage and trying to avoid wasting water. If shut-off orders are issued, you will receive another letter from the department. The attached list of water rights give the priority for shutting off users.

South Dakota water law gives the highest priority to domestic use, which includes livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses, including irrigation, will begin to interfere with domestic use. If levels become critically low, the department will issue shut-off orders to protect domestic water uses. Once these orders are issued, the department will continue to monitor water availability and should conditions improve, the shutoff orders would be rescinded.

The US Geological Survey has an Internet site showing real-time river flows at 159 stream gauging stations across the state including three gaging sites on Battle Creek. To access this information go to <http://waterdata.usgs.gov/sd/nwis/rt> and click on the link "Statewide Streamflow Current Conditions Table".

Thank you for your cooperation. If you have any questions, please contact Mark Rath at (605) 773-3352 or Aaron Tieman at (605) 394-2229.

Sincerely,

Garland Erbele, Chief Engineer
DENR, Water Rights Program

attachment

06/20/2012

Battle Creek Water Rights

PERMIT_NO	STATUS	LIC_CFS	P-Order	PRIORDATE	LAST_NAME
2153-2	LC	0.33	1	05/01/1881	NEUGEBAUER BROTHERS DAIRY
969-2	LC	1.73	1	05/01/1881	NEUGEBAUER BROTHERS
2368-2	LC	1.85	2	10/14/1886	WYOMING DAKOTA RAILROAD PROPERTIES INC
2368A-2	PE	0.00	2	10/14/1886	WYOMING DAKOTA RAILROAD PROPERTIES INC
0421-2	PE	0.00	3	10/27/1893	JD RANCH REAL ESTATE LLC
2373-2	LC	1.66	4	03/02/1895	RODALES RANCHES INC
1209-2	LC	1.07	5	09/29/1900	KANESKY
1221-2	LC	1.14	5	09/29/1900	RITTBARGER BROTHERS
2367B-2	LC	1.14	6	01/01/1905	BATTLE CREEK VALLEY RANCH
187-2	LC	0.86	7	09/11/1912	FOOS
2367B-2	LC	1.57	8	07/17/1948	BATTLE CREEK VALLEY RANCH
1170-2	LC	3.00	9	01/28/1974	STOVALL
1283-2	PE	3.34	10	08/01/1975	LIEN & SONS INC
2054-2	LC	0.81	11	03/15/1988	NEUGEBAUER BROTHERS



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

NOTICE OF SHUTOFF ORDER
July 2, 2012

TO: JOHN AND DARLENE STOVALL
14829 SD HWY 40
HERMOSA SD 57744

FROM: GARLAND ERBELE, Chief Engineer
SD DENR Water Rights Program

SUBJECT: Battle Creek Water Rights Shutoff Order

Shutoff Order for Water Right Nos. 1170-2

To protect the senior priority water rights, the department is issuing shutoff orders to Battle Creek water right. Effective immediately, diversions of water from Battle Creek will not be allowed until further notice.

Flow in Battle Creek has declined to the point where domestic use of water, which includes livestock watering from the river, has become a concern. This order will be rescinded as soon as conditions improve.

If conditions do not improve, this order will remain in effect until **December 31, 2012**.

The USGS maintains a website where you can view real-time stream flow measurements at several sites along the river, the web address is:

<http://waterdata.usgs.gov/sd/nwis/rt>

I am asking for your cooperation in complying with this shutoff order. The ongoing drought is creating hardship for all the water right holders along the creek.

If you have any questions, please contact Mark Rath (605- 773-3352) or Aaron Tieman (605- 394-6831) with the Water Rights Program. Thank you



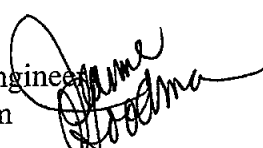
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

NOTICE OF SHUTOFF ORDER
JUNE 26, 2013

TO: JOHN AND DARLENE STOVALL
14829 SD HWY 40
HERMOSA SD 57744

FROM: JEANNE GOODMAN, Chief Engineer
SD DENR Water Rights Program 

SUBJECT: Battle Creek Shutoff Order for Junior Priority Date Water Rights

Shutoff Order for Water Right Nos. 1170-2

The flow in Battle Creek is below 1.5 cubic feet per second (cfs) at the USGS gaging station below Hermosa, SD. Therefore, to protect domestic use, the department is issuing shutoff orders to Battle Creek water rights. Effective immediately, diversions of water from Battle Creek will not be allowed until further notice.

Flow in Battle Creek has declined to the point where domestic use of water, which includes livestock watering from the river, has become a concern. This order will be rescinded as soon as conditions improve.

If conditions do not improve, this order will remain in effect until **December 31, 2013**.

The USGS maintains a website where you can view real-time stream flow measurements at several sites along the river, the web address is:

<http://waterdata.usgs.gov/sd/nwis/rt>

I am asking for your cooperation in complying with this shutoff order. The ongoing drought is creating hardship for all the water right holders along the creek.

If you have any questions, please contact Lynn Beck (605-773-3352), Mark Rath (605-773-3352) or Aaron Tieman (605-394-6831) with the Water Rights Program. Thank you.

CERTIFICATION

I hereby certify that on June 26, 2013 postage, prepaid envelope(s) containing a Notice dated June 26, 2013 regarding Battle Creek Shut-off Notices addressed as stated below:

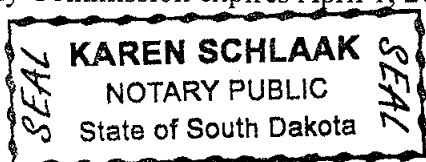
NEUGEBAUER BROTHERS DAIRY	STANLEY NEUGEBAUER	14197 SD HWY 40	HERMOSA	SD	57744
WYOMING DAKOTA RAILROAD PROPERTIES INC	DAVID S DRACH	120 S 6TH ST - 9TH FLOOR	MINNEAPOLIS	MN	55402
TRAVIS BIES		25813 SOUTH FOR ROAD	FAIRBURN	SD	57738
JD RANCH REAL ESTATE LLC		HCR 89 BOX 298	HERMOSA	SD	57744
RUSHMORE VIEW RANCH	ROBERT J BORGMEYER	1721 ELEVENTH ST	RAPID CITY	SD	57701
EDWARD AND BETTY KANESKY		BOX 52	CAPUTA	SD	57725
RITTBERGER BROTHERS		15663 SD HWY 40	HERMOSA	SD	57744
BATTLE CREEK VALLEY RANCH	GARY BAKER, GENERAL PTR	15199 BAKER RD	HERMOSA	SD	57744
CLARENCE FOOS		15810 SD HWY 40	HERMOSA	SD	57744
JOHN AND DARLENE STOVALL		14829 SD HWY 40	HERMOSA	SD	57744
PETE LIEN & SONS INC	KYLE FRISINGER	PO BOX 440	RAPID CITY	SD	57709


Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 26th day of June, 20 13.


Karen Schlaak
Notary Public
My Commission expires April 1, 2019





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

July 12, 2016

denr.sd.gov

Dear Water Right Holder;

I am sending a reminder to all Battle Creek water right holders of the low flow bypass qualification for Battle Creek. This letter is **NOT** a shutoff order but is intended as a reminder that your ability to divert water may be cut short this year if flow in the creek drops to trigger the required 1.5 cubic foot per second (cfs) creek bypass. The bypass qualification on Battle Creek water rights is:

A minimum flow of 1.5 cfs shall be maintained at the Highway 40 gage to insure flows for domestic use and prior existing rights.

As a result of the continuing lack of precipitation, Battle Creek flows measured below Hermosa remain below the historical average and are approaching the 1.5 cfs bypass limitation that was established by the Water Management Board for the USGS gage below Hermosa. Once flows drop to this level shutoff orders will be issued on a priority date basis. In the meantime, water right holders can help by closely monitoring water usage and avoid wasting water. If shut-off orders are issued, you will receive another letter from the department. Below is a list of water rights according to priority for shutting off users.

PERMIT_NO	Priority	STATUS	USE	LAST_NAME
2153-2	May 1, 1881	LC	IRR	NEUGEBAUER BROTHERS DAIRY
969-2	May 1, 1881	LC	IRR	NEUGEBAUER BROTHERS
2368-2	October 14, 1886	LC	IRR	WYOMING DAKOTA RAILROAD PROPERTIES INC
2368A-2	October 14, 1886	PE	IRR	WYOMING DAKOTA RAILROAD PROPERTIES INC
2373-2	March 2, 1895	LC	IRR	RUSHMORE VIEW RANCH
1209-2	September 29, 1900	LC	IRR	KANESKY
1221-2	September 29, 1900	LC	IRR	RITTBERGER BROTHERS
2367B-2	January 1, 1905	LC	IRR	BATTLE CREEK VALLEY RANCH
187-2	September 11, 1912	LC	IRR	FOOS
1170-2	January 28, 1974	LC	IRR	STOVALL
1283-2	August 1, 1975	PE	COM	LIEN & SONS INC
2054-2	March 15, 1988	LC	IRR	NEUGEBAUER BROTHERS

South Dakota water law gives the highest priority to domestic use, which includes livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses, including irrigation, will begin to interfere with domestic use. If levels become critically low, the department will issue shut-off orders to protect domestic water uses. Once these orders are issued, the department will

continue to monitor water availability and should conditions improve, the shutoff orders could be rescinded.

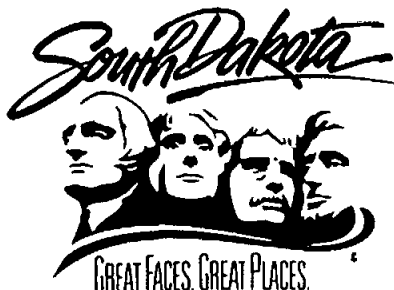
The US Geological Survey has an Internet site showing real-time river flows at 161 stream gauging stations across the state including three gaging sites on Battle Creek. The Highway 40 gage is "No. **06406500 - Battle Creek below Hermosa, SD**". To access this information go to <http://waterdata.usgs.gov/sd/nwis/rt> and click on the link "Statewide Streamflow Current Conditions Table".

Thank you for your cooperation. If you have any questions, please contact Mark Rath at (605) 773-3352 or Aaron Tieman at (605) 394-2229.

Sincerely,

A handwritten signature in cursive script, reading "Jeanne Goodman", followed by a horizontal line.

Jeanne Goodman, Chief Engineer
DENR, Water Rights Program



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

July 11, 2017

Dear Water Right Holder;

I am sending a reminder to all Battle Creek water right holders of the low flow bypass qualification for Battle Creek. This letter is **NOT** a shutoff order but is intended as a reminder that your ability to divert water may be cut short this year if flow in the creek drops to trigger the required 1.5 cubic foot per second (cfs) creek bypass. The bypass qualification on Battle Creek water rights is:

A minimum flow of 1.5 cfs shall be maintained at the Highway 40 gage to insure flows for domestic use and prior existing rights.

As a result of the continuing lack of precipitation, Battle Creek flows measured below Hermosa remain below the historical average and are approaching the 1.5 cfs bypass limitation that was established by the Water Management Board for the USGS gage below Hermosa. Once flows drop to this level shutoff orders will be issued on a priority date basis. In the meantime, water right holders can help by closely monitoring water usage and avoid wasting water. If shut-off orders are issued, you will receive another letter from the department. Below is a list of water rights according to priority for shutting off users.

PERMIT NO	STAT	LIC CFS	P-Order	PRIORDATE	LAST NAME
2153-2	LC	0.33	1	05/01/1881	NEUGEBAUER BROTHERS DAIRY
969-2	LC	1.73	1	05/01/1881	NEUGEBAUER BROTHERS
2368-2	LC	1.85	2	10/14/1886	BRENT & TAYLOR FOX
2368A-2	LC	0.00	2	10/14/1886	WYOMING DAKOTA RAILROAD PROPERTIES INC
2373-2	LC	1.66	4	03/02/1895	RUSHMORE VIEW RANCH
1209-2	LC	1.07	5	09/29/1900	KANESKY
1221-2	LC	1.14	5	09/29/1900	RITTBERGER BROTHERS
2367B-2	LC	1.14	6	01/01/1905	BATTLE CREEK VALLEY RANCH
187-2	LC	0.86	7	09/11/1912	FOOS
2367B-2	LC	1.57	8	07/17/1948	BATTLE CREEK VALLEY RANCH
1170-2	LC	3.00	9	01/28/1974	STOVALL
1283-2	PE	3.34	10	08/01/1975	LIEN & SONS INC
2054-2	LC	0.81	11	03/15/1988	NEUGEBAUER BROTHERS

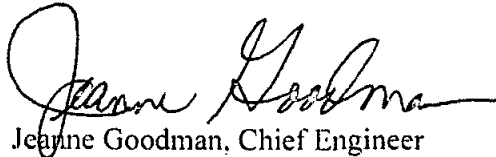
South Dakota water law gives the highest priority to domestic use, which includes livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses, including irrigation, will

begin to interfere with domestic use. If levels become critically low, the department will issue shut-off orders to protect domestic water uses. Once these orders are issued, the department will continue to monitor water availability and should conditions improve, the shutoff orders could be rescinded.

The US Geological Survey has an Internet site showing real-time river flows at 161 stream gauging stations across the state including three gaging sites on Battle Creek. The Highway 40 gage is "**No. 06406500 - Battle Creek below Hermosa, SD**". To access this information go to **<http://waterdata.usgs.gov/sd/nwis/rt>** and click on the link "Statewide Streamflow Current Conditions Table".

Thank you for your cooperation. If you have any questions, please contact Mark Rath or Aaron Tieman at (605) 773-3352.

Sincerely,

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

Jeanne Goodman, Chief Engineer
DENR, Water Rights Program



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

December 29, 2017

1170-2

Mr. Marlin Maude
14864 Hwy 40
Hermosa SD 57744

Dear Mr. Maude:

This letter is in regards to a map you sent me and our subsequent December 28, 2017 telephone conversation concerning your plans to install a center pivot irrigator and add a diversion point on Battle Creek. Since the center pivot will irrigate land already covered by Water Right No. 1170-2, you do not to file an application to amend No. 1170-2. We will need a letter from the holder of water right requesting to add a diversion point on Battle Creek.

South Dakota Codified Law, SDCL 46-5-13.1, allows the Chief Engineer to administratively change the location of a diversion point or add diversion points to an existing water right. The additional point of diversion can be added if it is from the same source of water, no additional water is appropriated, if the water use is for irrigation, no new land is to be irrigated and the change does not increase the potential for interference with existing diversions.

Since Water Right No. 1170-2 is held by John and Darlene Stovall, the Stovalls are the ones who need to send the letter requesting the additional diversion point. The letter will need to request to add a diversion point located in the S½ SE¼ of Section 7 T3S-R9E from Battle Creek for irrigation covered under Water Right No. 1170-2. There will not be additional water appropriated and will continue to irrigate the acres covered by Water Right No. 1170-2. The letter should be addressed to:

Jeanne Goodman, Chief Engineer
SD DENR Water Rights Program
523 E Capitol Ave
Pierre SD 57501

Since you already provided a map showing the proposed change, you will not need another map.

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

Sincerely,

Mark D Rath
Natural Resources Engineer
Water Rights Program

RECEIVED

JAN 16 2018

WATER RIGHTS
PROGRAM

Darlene Stovall
14829 SD Hwy 40
Hermosa, SD 57744

January 10, 2018

Jeanne Goodman, Chief Engineer
SD DENR Water Rights Program
523 E. Capitol Avenue
Pierre, SD 57501

Dear Ms. Goodman,

As the holder of Water Right No. 1170-2, I am writing to request to add a diversion point on Battle Creek as the attached letter from Mr. Mark Rath explains I need to do.

The diversion point to be added is located in the S ½ SE ¼ of Section 7 T3S-R9E from Battle Creek for irrigation covered under Water Right No. 1170-2. There will not be additional water appropriated and will continue to irrigate the acres covered by Water Right No. 1170-2.

A map has already been provided to your office.

Thank you for your assistance.

Sincerely,



Darlene Stovall

cc: Marlin & Jinx Maude
14864 SD Hwy 40
Hermosa, SD 57744



Sorensen Irrigation, LLC.

Tanner Sorensen
(308) 763 - 1028
(308) 487 - 3880



Sorensen
Irrigation

RECEIVED (308) 487-3880

DEC 20 2017 Date: 12/01/2017

WATER RIGHTS
PROGRAM

Grower: Marlin Maude

Farm: System Design 1 : 12/1/2017

Field Name: Copy of Field Layout 1 :
12/1/2017

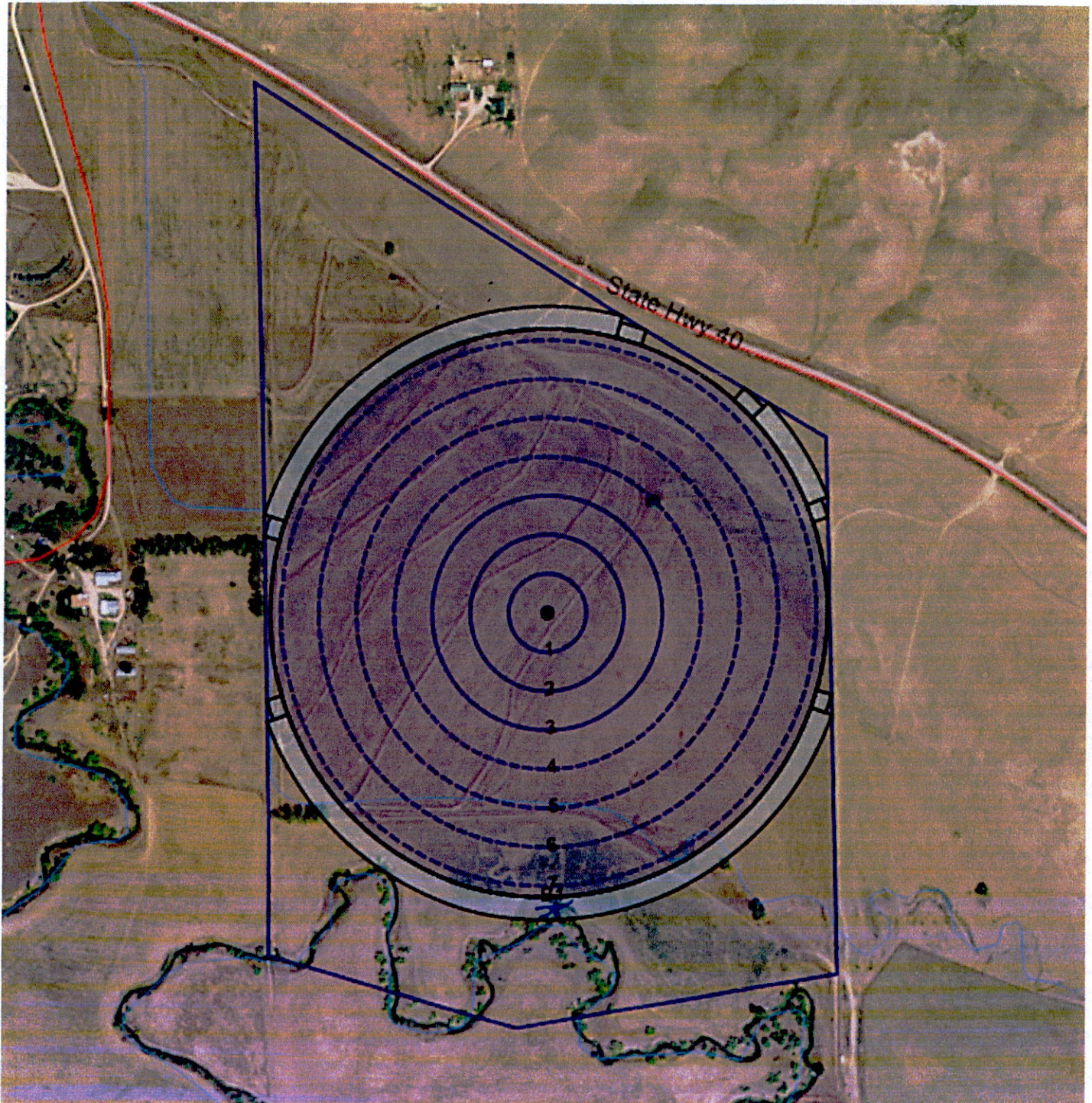
Field Area: 195.81 acres

System Model: E2065

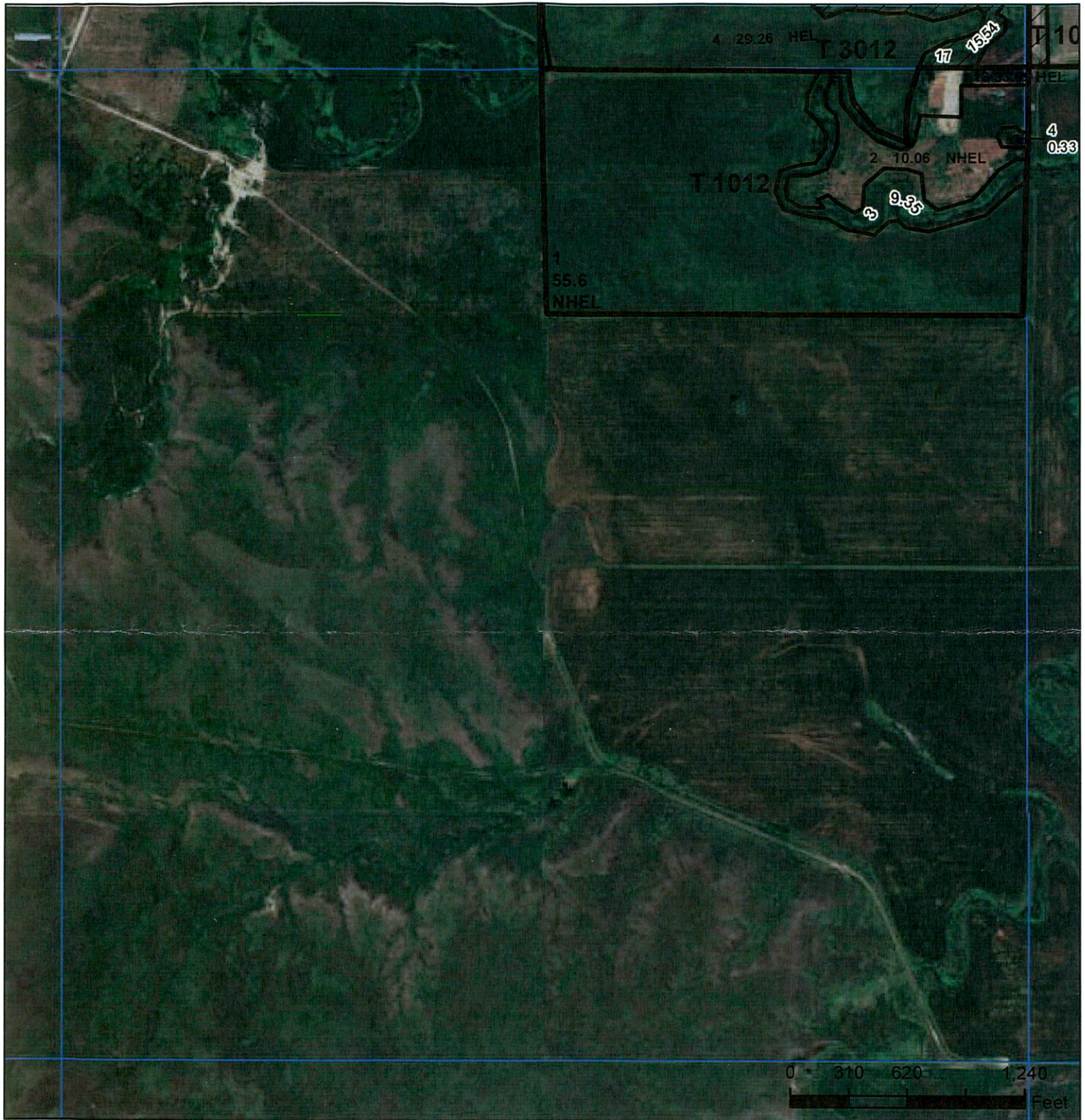
System Length: 1,278.00 ft

Total Irr. Area: 131.83 acres

Number of Spans: 7



★ = New Pump Station



Common Land Unit
 [White Box] Other Ag
 [Hatched Box] Cropland
 [Diagonal Lines Box] Rangeland
 [Thick Black Line] Tract Boundary

Wetland Determination Identifiers
 [Red Circle] Restricted Use
 [Yellow Triangle] Limited Restrictions
 [Green Square] Exempt from Conservation
 [Green Square] Compliance Provisions



2016 Program Year
Map Created October 15, 2015

Farm 1888

18 -3S -9E

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).



United States
Department of
Agriculture

Custer County, South Dakota





Common Land Unit

	Rangeland
	Tract Boundary
	Cropland
	PLSS

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation
- Compliance Provisions



2016 Program Year

Map Created October 15, 2015

Farm 1888

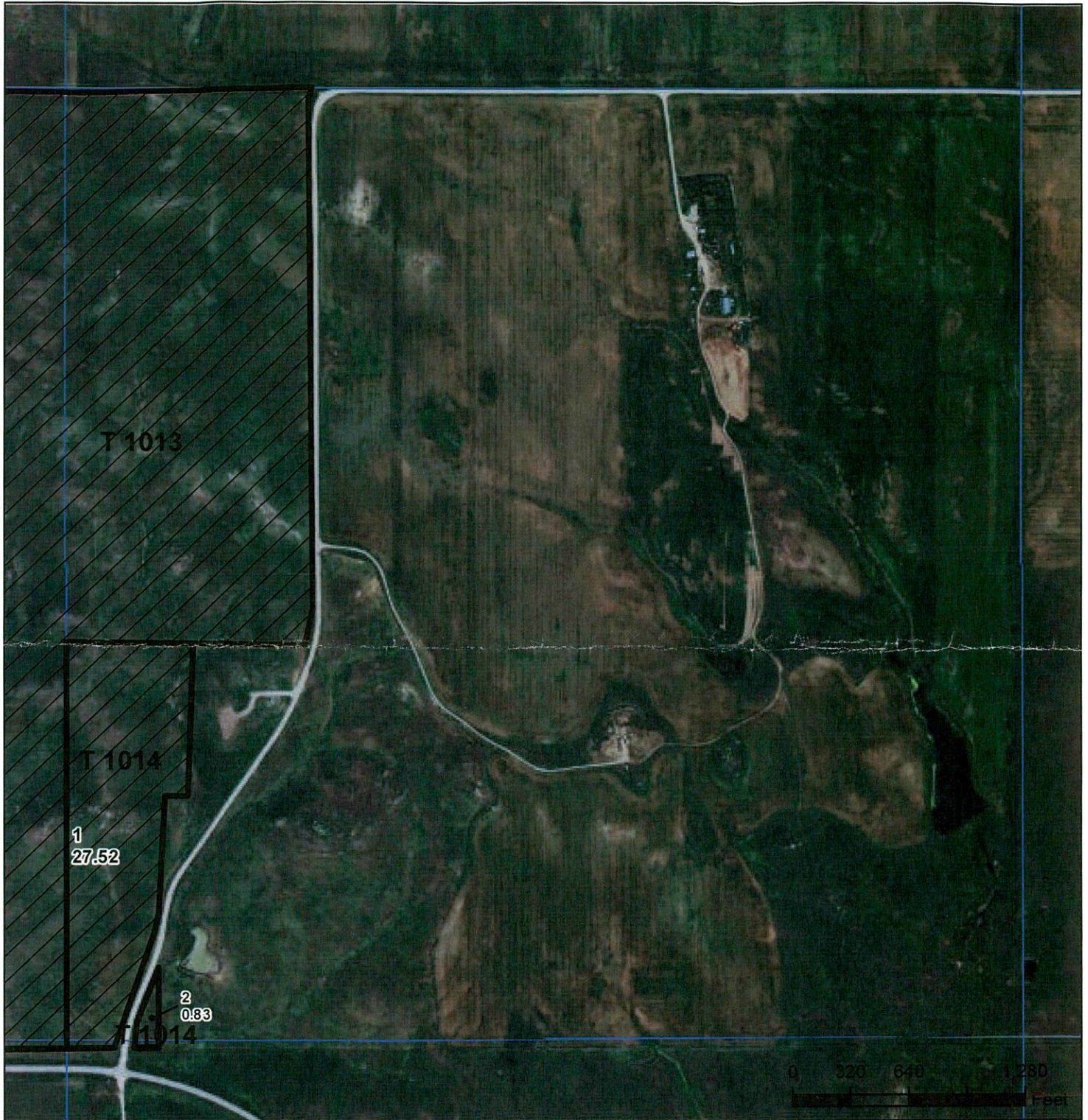
8 -3S -9E

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United States
Department of
Agriculture

Custer County, South Dakota



Common Land Unit Other Ag Rangeland PLSS Tract Boundary

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation
- Compliance Provisions



2016 Program Year

Map Created October 15, 2015

Farm 1888

9 -3S -9E

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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

January 16, 2018

1170-2

Darlene Stovall
14829 Hwy 40
Hermosa SD 57744

Dear Ms. Stovall:

This is in regards to your letter requesting adding a diversion point to your existing irrigation project covered by Water Right No 1170-2. South Dakota Codified Law, SDCL 46-5-13.1, allows the Chief Engineer to administratively change the location of a diversion point or add diversion points to an existing water right under certain conditions. Your request to add a diversion on Battle Creek for your irrigation project authorized by Water Right No. 1170-2 has been approved.

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

Sincerely,

Mark D Rath
Natural Resources Engineer
Water Rights Program

CY: Marlin and Jinx Maude
14864 Hwy 40
Hermosa SD 57744

Approval of Location Change and/or Additional Diversion Point(s)

NAME: John and Darlene Stovall

ADDRESS: 14829 SD Hwy 40, Hermosa SD 57744

DATE: January 16, 2018 **COUNTY:** Custer **TELEPHONE:** 605-391-0933

GENERAL DESCRIPTION OF AUTHORIZED PROJECT:

The permit holder is authorized to divert up to 3.0 cfs from Battle Creek to irrigate 284 acres located in the N½ & SE¼ of Sec 7 and the W½ of Sec 8 all in T3S-R9E. The water right holder intends switch from flood irrigation to center pivot irrigation on 131.83 of the existing authorized acres located in the E½ of Section 7 T3S-R9E. To facilitate this change in the means of irrigation, the water right holder requests to add a diversion point in the S½ SE¼ of Section 7 T3S-R9E. There is no request to increase the existing diversion rate and there will be no change to the acres irrigated.

AUTHORITY:

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

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

Yes, the diversion is from Battle Creek in Custer County.

- **If irrigation, no new land is irrigated**

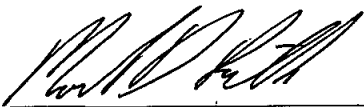
Same acres covered under No 1170-2 will be irrigated.

- **Review of Existing Diversions**

The requested additional diversion point will not adversely affect existing water rights on Battle Creek.

RECOMMENDED ACTION

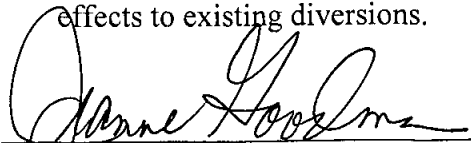
Based on the above criteria, it is recommended that the diversion point(s) be licensed as developed.



Mark D. Rath, Natural Resources Engineer
Water Rights Program

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

This change in location and/or additional diversion point(s) does not increase the potential for adverse effects to existing diversions.



Jeanne Goodman, Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

August 16, 2022

JOHN/DARLENE STOVALL
14829 SD HWY 40
HERMOSA, SD 57744

Dear Battle Creek Water Right Holder:

I am writing to remind Battle Creek water right holders and operators of the bypass qualification that was placed on your water permit by the Water Management Board in 2005:

A minimum flow of 1.5 cubic feet of water per second (cfs) shall be maintained at the SD Highway 40 gage to insure flows for domestic use and prior existing water rights.

Recently, creek flows measured at the USGS gaging station at the SD Highway 40 bridge have been dropping below the 1.5 cfs cutoff and when it does, diversion of water for irrigation purposes shall cease. This 1.5 cfs limit is in place to protect domestic use, including livestock watering and those water rights that are most senior.

Realtime flows in the in Battle Creek can be monitored by going to the following website:

<https://waterdata.usgs.gov/sd/nwis/current/?type=flow>

USGS Stream Gage No. 06406500 – Battle Creek below Hermosa, SD

Thank you for your cooperation. If you have any questions, please contact Mark Rath, or Nakaila Steen at (605) 773-3352.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

RAPID CITY ONE-STOP
221 MALL DRIVE, SUITE 201
RAPID CITY, SD 57701
danr.sd.gov

JOHN/DARLENE STOVALL

1170-2

14829 SD HWY 40

HERMOSA, SD 57744

April 15, 2026

Dear Battle Creek Water Right/Permit Holder:

I am writing to remind Battle Creek water right/permit holders and operators of the bypass qualification that was placed on your water permit by the Water Management Board in 2005:

A minimum flow of 1.5 cubic feet of water per second (cfs) shall be maintained at the SD Highway 40 gage to insure flows for domestic use and prior existing water rights.

Recently, creek flows measured at the USGS gaging station at the SD Highway 40 bridge have been near 2.5 cfs and this winter and spring have been very dry. We are closely monitoring the gage. When flow past the gage drops to the 1.5 cfs cutoff or less, diversion of water from the creek shall cease. This 1.5 cfs limit is in place to protect domestic use, including livestock watering and those water rights that are most senior.

Realtime flows in the in Battle Creek can be monitored by going to the following website:

<https://waterdata.usgs.gov/monitoring-location/USGS-06406500/#dataTypeId=daily-00060-0&period=PLY&showFieldMeasurements=true>

USGS Stream Gage No. 06406500 – Battle Creek below Hermosa, SD

Thank you for your cooperation. If you have any questions, please contact Nakaila Steen or another member of the DANR-Water Rights Program at (605) 394-2229 (Rapid City Office) or (605) 773-3352 (Pierre Office). We would appreciate it if you would call Nakaila in our Rapid City office and provide an up-to-date phone number and email for faster communication on this matter.

Sincerely,

Adam Mathiowetz, PE
Acting Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

RAPID CITY ONE-STOP
221 MALL DRIVE, SUITE 201
RAPID CITY, SD 57701
danr.sd.gov

Notice of Shutoff Order

June 18, 2026

To: JOHN/DARLENE STOVALL
14829 SD HWY 40
HERMOSA, SD 57744

From: ADAM MATHIOWETZ, PE
ACTING CHIEF ENGINEER, WATER RIGHTS PROGRAM

Subject: Shutoff Order for Water Right No. 1170-2

To protect domestic users, the department is issuing shutoff orders to Battle Creek water rights/permit holders. Effective immediately, diversions of water from Battle Creek will not be allowed until further notice.

Flow in Battle Creek has declined to the point where domestic use of water, which includes livestock watering from the creek, has become a concern. This order will be rescinded if conditions improve. If a runoff event temporarily raises flow at the SD Highway 40 gage above 1.5 cubic feet of water per second (cfs), the Water Rights Program can be contacted to see if temporary permission to utilize water from the creek can be allowed while the gage is above 1.5 cfs.

If conditions do not improve, this order will remain in effect until **December 31, 2026**.

The USGS maintains a website where you can view real-time stream flow measurements at several sites along the creek, the web address is:

<https://waterdata.usgs.gov/state/south-dakota/>

USGS Stream Gage No. 06406500 – Battle Creek below Hermosa, SD

I am asking for your cooperation in complying with this shutoff order. The ongoing drought is creating hardship for all the water right holders along the creek.

If you have any questions, please contact Nakaila Steen or another member of the DANR-Water Rights Program at (605) 394-2229 (Rapid City Office) or (605) 773-3352 (Pierre Office). We would appreciate it if you would call Nakaila in our Rapid City office and provide an up-to-date phone number and email for faster communication on this matter.