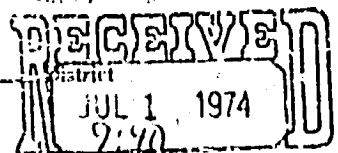


Map No. SEE 838-2 Water Division No. 2 BATTLE CREEK
 (Blanks to be Filled by the Engineer for the W. R. C.)



APPLICATION FOR PERMIT

STATE WATER RIGHTS COMM.
PIERRE, SOUTH DAKOTA

"VESTED RIGHT CLAIM"

To Appropriate Water within the State of South Dakota

(NOTE-Draw a line through items not applicable)

- Name of Applicant Neugebauer Brothers
 Postoffice address Hermosa State South Dakota
 If a corporation show date and place of incorporation _____
- Method of accomplishing work (contract, employment of others, or by direct labor) Completed
- Name of diversion work Neugebauer Brothers Irrigation South of Battle Creek
- Amount of water claimed (cubic feet per second) 0.33
- Source of water supply Battle Creek
- Location of point of diversion Approximately 1100 feet South and 1370 feet East of the NE Corner of Section 31, T2S, R8E
NE 54 County Custer
- Annual period or periods during which water is to be used April through October
- Use to be made of water, (irrigation industrial, municipal, commercial, recreation, etc.) Irrigation
- For irrigation use, Total number of acres to be irrigated 23

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.
Being principally that portion of the NE 1/4 Sec. 31, T2S, R8E located south of Battle Creek	23		

Attach sheet if more space is needed

- Time required to complete construction of water supply system completed years. Additional time required to complete application of water to the proposed beneficial use completed years.
- Choice of newspaper for Notice of Intent to Appropriate Water publication N/A
- Principal Features of the Proposed Water Supply System.

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

Centrifugal pump with suction hose and tractor power take-off

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

Irrigation ditch reconstructed annually

C. Works proposed to apply water to beneficial use.

Siphons

Estimated Total Cost \$ 3,000.00

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 of Custer

I, Walter Neugebauer, 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 Walter NeugebauerSubscribed and sworn to before me this 27 day of June 1974

Notary Public (or other qualified officer)

WATER RIGHT APPLICATION APPROVAL

The Water Rights Commission hereby approves Water Right Application No. 1191-2
NEUGEBAUER BROS. HERMOSA
 (Applicant) (Post Office Address)
SOUTH DAKOTA 57744 with the following modifications:
 (State)

"VESTED RIGHT" CLAIMED
 PRIORITY FOR THIS PERMIT IS ESTABLISHED UNDER
 WATER FILING NO 0254-2 WHICH HAS BEEN CANCELLED.

Date of first receipt of application JULY 1 1974
 Date of return to applicant for correction, amendments or changes required JULY 10 1974
 Date of receipt of corrected application JULY 12 1974
 Approved JULY 17 1974 Recorded in Book 13 Page 41

WATER RIGHT PERMIT NO. 1191-2

The Water Rights Commission hereby grants and issues this Water Right Permit No. 1191-2 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 MAY 1 1881
2. The equivalent of at least one-fifth of the work above specified is work completed on or before 19
3. The whole of said work is work completed on or before 19
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is COMPLETED
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 .33 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 actually and beneficially applied for irrigation on or before JUNE 30 1955 said water to be used during the following described annual period: APRIL THRU DECEMBER

Witness my hand this 22ND day of JULY 1974

WATER RIGHTS COMMISSION

By:

Donald D. Dineen
 Chief Engineer, Executive Officer

Certificate of Construction Issued JULY 22 1974
 Water License Issued JULY 22 1974

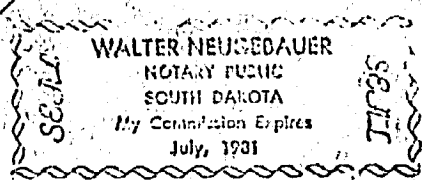
Hermosa, South Dakota

November 13, 1973

To Whom It May Concern:

I was born in 1903 in Hermosa and have lived in the Hermosa area all my life as a neighbor to Mr. Shoemaker. I cut irrigated corn on this 23 acres for Mr. Shoemaker and helped thrash grain on the place. I know that Mr. Shoemaker irrigated all of the land on his place when there was water available, and as long as he was able to.

Harold Hasselstrom



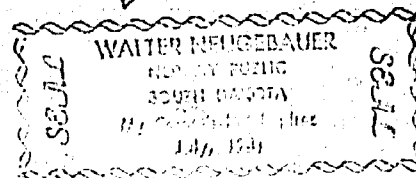
Hermosa, South Dakota
November 13, 1973

To Whom It May Concern:

I have lived in the Hermosa area since 1910 within two miles of my brother-in-law, Henry Shoemaker, who sold his place to the Neugebauers in 1933.

I know that all the land that was irrigable on his place was irrigated, including that on the South side of Battle Creek that is in question now. Ditches also took water further East onto the Fred Straitor place. Some of the old ditches that were used to take water to the Straitor place South of the Creek are still viable but not used by the Neugebauers.

Peter J. Rient



NOTE: This Form is supplemental to Form 2, and is to be used when an affidavit pertaining to construction and water use, already complete, is needed.

**AFFIDAVIT OF CONSTRUCTION OF WATER USE
SYSTEM AND APPLICATION OF WATER TO BENEFICIAL USE**

Name of Applicant (Same as Form 2) Neugebauer Brothers

Post Office Address Hermosa, State South Dakota

If a Corporation show date and place of incorporation _____

13. Notice of Appropriation (If available)

Date of Posting 1881 Date of Recording 1881

Recording Data Book 4, Loc. page 146, Custer County Courthouse

14. Date of start of construction of water supply system 1881

15. Date that water was first applied to beneficial use 1881

16. Name of owner of original water supply system O. H. Klein

17. Amount of water originally applied to beneficial use Approx. 1 c. f. s.

18. Present Use of Water

Amount of water now being used Approx. 1 c. f. s.

Date that this amount of water was first used 1881

19. Chronological History of Water Use

Construction of the system was believed to have started soon after the 1881 posting and filing. It is believed that the water has been used at frequent intervals, when water was available, after 1881.
See attached affidavits.

Attach to this Form 2B any copies of notices, postings, filings, publications, affidavits, or other records that apply. You may also attach any written statement by you, or by others, that you deem pertinent.

STATE OF SOUTH DAKOTA)

County of Custer) ss.

I, Neugebauer Bros, the applicant, certify that I have read the foregoing and that the matters therein stated are true.

Signed Arthur P. Neugebauer

Subscribed and sworn to before me this 11th day of July, 1974

Walter Neugebauer
(Notary Public or other qualified Officer)

I, the undersigned, do hereby certify that I know about the water use system described above that I have read the foregoing and that the matters therein stated are true.

WALTER NEUGEBAUER
NOTARY PUBLIC
SOUTH DAKOTA
My Commission Expires
July, 1981

Form 15.

Permit No. 1191-2

Water Diversion No. 2 BATTLE CREEK Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That Neugebauer Bros.

the holder of

Vested Right

Permit No. 1191-2, issued upon Application No. 1191-2, bearing date of priority of May 1, 1881

authorizing the diversion of .33 cu. ft. per second of the waters of

Battle Creek County of Custer, State of South Dakota at

a point approximately 1100 ft. South and 1370 ft. East of the 1/4 Corner

Section 31, T2S, R8E

for irrigation

purposes, has ⁸ 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 ^{recognized as} found in satisfactory condition for diverting and conveying to the place of intended use .33 cu. ft. per second of water.

Date July 22, 1974

By: **WATER RIGHTS COMMISSION**

DONALD DRISCO/L, Chief Engineer

WATER LICENSE NO. 1191-2

(1) WHEREAS, On the 1st day of July A. D. 19 74

Neugebauer Bros.

made Water Right Application No. 1191-2 Vested Right for permit to use .33 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 22nd day of July A. D. 19 74
Vested Right
 Permit No. 1191-2, with a date of priority of May 1, 1961

was issued to said applicant for the diversion of said water, and provided for the completion of construction of the water supply system therein described ~~on or before the 1st day of January 1977~~ and for the application to beneficial use of said water ~~on or before the 1st day of January 1977~~

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 .33 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.

for irrigating 23 acres in the NE 1/4 SW 1/4, Section 31, T28, R6E, located South of
Battle Creek

(5) NOW, THE FURTHER, By the virtue of the authority vested in us by the laws of the State of South Dakota, We hereby grant and confirm to 1111 Neugebauer Bros.

_____ of Hermosa, South Dakota
the holder B and owner B of said Vested Right permit No. 1191-2 a water right dating from May 1, 1981
to use of .33 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 hereinbelow mentioned, to be diverted at a point approximately 1100 ft. South and 1370 ft.
East of the NW Corner, Section 31, T2S, R8E

and conduct to and upon portions of the NE 1/4 SW 1/4, Section 31, T2S, R8E, more fully described
on the face of this license

for the purpose of Irrigation

Subject to any limitations listed in Water Right Permit No. 1191-2 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 22nd day of July A. D.
Nineteen Hundred and Seventy-four

WATER RESOURCES COMMISSION

By:

Chief Engineer, Executive Officer DONALD DRISCOLL

This Water license No. 1191-2 is based on a Vested Right claim recorded and filed
by the Water Rights Commission.

Water Rights Division - DWR
Conversation or File Documentation

969-2
File No. 1191-2

NAME OF PERSON OR FILE: Nengebauer Brothers
ADDRESS: RR 1 Box 96 Hermosa COUNTY Custer
DATE: 6/25/85 TELEPHONE 255-4212
RE: Complaints on pumping from Battle Creek
COMMENTS:

I received two complaints on June 24, 1985 concerning the Nengebauer pumping from Battle Creek. Gene Baker & John McEwen both live downstream and called about the low flow conditions for domestic use & prior water rights. They said Nengebauers were pumping into their dam and wanted it stopped. I called Stan Nengebauer and he said they would stop pumping into the dam, but wanted to pump some water onto their own from the 1881 priority date. I told him they would have to be careful and be sure to allow enough water by-passed for downstream domestic use. We sent them a copy of their permits and a letter explaining the qualifications.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: Timothy H. Schaal

4/82

1191-2

**Dakota Department of
Water & Natural Resources**

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

Water Rights Division
605 773-3352

June 25, 1985

Neugebauer Brothers
ATTN: Stanley Neugebauer
RR 1 Box 96
Hermosa SD 57744

Dear Mr. Neugebauer:

This letter is a follow up to your telephone conversation June 24, 1985 with Tim Schaal concerning the complaints we have received about your irrigation pumping.

Enclosed are copies of your permits along with other correspondence in your file. The qualifications on your permits are as follows:

1. Diversions of flows from Battle Creek for direct application to the land have a priority 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 your dam have a priority 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.
3. Diversion of water from Battle Creek when there is now an excess flow from the diversion point to the Cheyenne River shall be limited to a daily number of pumping hours according to the following formula: a diversion rate of 1 cfs per 70 acres irrigated divided by the actual diversion rate in cfs times 24 hours (see permit for actual qualifications).

The complaints we received indicated you were pumping into your dam when sufficient flows were not available for domestic use and prior water rights. According to the qualifications of your permit you may not make diversions into your dam under present flow conditions. Also, with the current low flow conditions of Battle Creek any direct diversion from the Creek, must be limited to allow water for downstream domestic use. Failure to comply with the qualifications will be a violation of your permits and subject to action by the Water Management Board.

Very truly yours,



JOHN HATCH, Chief Engineer
Water Rights Division

TS:JH:ks
enclosures

Equal Opportunity Employer

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

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

March 23, 1987

NEUGEBAUER BROTHERS, Stanley Neugebauer
RR 1 BOX 96
HERMOSA, SD 57744

NOTICE

Re: Violation of Requirement To Submit 1986 Irrigation
Questionnaire

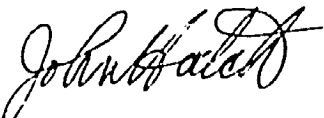
Our records indicate that the 1986 Irrigation Questionnaire has not been submitted for Permit No(s). 969-2, 1191-2. The request for the Questionnaire was dated November 3, 1986. The Water Management Board has directed that owners of water permits who have not submitted 1986 Irrigation Questionnaires 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). 969-2, 1191-2 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 3, 1987

1191-2
969-2

Stanley Neugebauer
Neugebauer Brothers
PR #1 Box 96
Hermosa, SD 57744

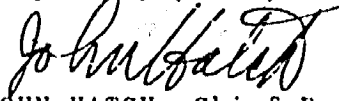
Dear Mr. Neugebauer:

This will acknowledge receipt of and thank you for the return of your 1986 Irrigation Questionnaires. A notice was sent to you March 23, 1987 regarding the Irrigation Questionnaire submittal violation of Water Permit Nos. 1191-2 and 969-2 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 57501-3161

January 29, 1988

NEUGEBAUER BROTHERS -Stanley Neugebauer
1 BOX 96
BERMOSA, SD 57744

NOTICE

Re: Violation of Requirement To Submit 1987 Irrigation
Questionnaire

Our records indicate that the 1987 Irrigation Questionnaire has not been submitted for Permit No(s). 969-2, 1191-2. The request for the Questionnaire was dated October 8, 1987. The Water Management Board has directed that owners of water permits who have not submitted 1987 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 9:00 am, March 2, 1988 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). 969-2, 1191-2 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

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

NOTE: If the questionnaire(s) is received in this office before the March 2 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

February 12, 1988

969-2
1191-2

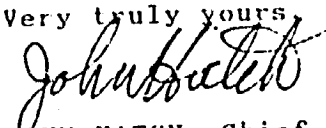
Neugebauer Dairy
Stan Neugebauer
RR 1, Box 96
Hermosa SD 57744

Dear Mr. Neugebauer:

I am writing to acknowledge receipt of your 1987 Irrigation Questionnaire(s). A notice was sent to you January 29, 1988 regarding the requirement to submit the Irrigation Questionnaire(s) for Water Permit No. 969-2 & 1191-2 and the hearing date before the Water Management Board.

Since your questionnaire was received prior to the March 2, 1988 Water Management Board Meeting, your name has been deleted from the Board Meeting agenda. If you have any questions, please contact us.

Very truly yours,



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

L

South Dakota
Department of
Water & Natural Resources

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

September 21, 1988

NOTICE

Neugebauer Bros.
Rt 1, Box 96
Hermosa SD 57744

Dear Sirs:

I am writing to notify you that pursuant to the Notice of Intent to Validate Vested Water Right Claims dated June 20, 1988 that I intend to oppose validation of your water right claim No(s). 1191-2 until a field inspection has been completed. The claim has either never been inspected or an inspection was conducted so long ago that a new inspection is needed. An inspection is needed to determine the current state of your vested water right claim.

A staff member from the Division of Water Rights will be contacting you and scheduling an inspection of your water project. If we can answer any questions, please contact us.

Very truly yours,

for *Delvin W. Brong*
JOHN HATCH, Chief Engineer
Water Rights Division
605 773-3352



Water Rights Division - DWR
Conversation or File Documentation

969-2
File No. 1191-2

NAME OF PERSON OR FILE: Neugebauer Dairy

ADDRESS: RR1 Box 96 Hermosa SD 57749 COUNTY Custer

DATE: August 6, 1990 TELEPHONE 255-4212

RE: Complaint on Pumping from Battle Creek

COMMENTS: (255-4104)

Mrs. Carol Foss called today and wanted us to stop Neugebauer's pumping. She said the lower gage reading was 2.60 (1.64 cfs) and they needed water for domestic use. After talking to her for about an hour, she said Battle Creek was running all the way to the Cheyenne River and they did not have any cattle in their pasture. She wanted more flow for when they do put the cattle in the pasture. Tried to explain to her that we were probably NOT going to shut Neugebauer's off because they had water for domestic use. Set up a meeting with Mrs Foss for 10:00 on August 8, 1990 to discuss this with her.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

NAME: Tim Schaal

Division - D.W.
Conversation or File Documentation

969-2
1191-7

NAME OF PERSON OR FILE: Neugebauer Dairy
ADDRESS: RR1 Box 96, Hermosa SD 57744 COUNTY Custer
DATE: March 15, 1990 TELEPHONE 255-4212
RE: Complaint on Pumping from Battle Creek into Dam

COMMENTS:

On March 14, 1990, Don Kaiser, Mrs. Clarence (Carol) Foss and Coene Baker called in to complain about Neugebauers pumping from Battle Creek into their dam when they did not have enough flow in the creek down at their place. It sounded like the creek was flowing at Baker's & Kaiser's but stopped flowing in Foss's property just downstream of the new gaging station. I talked to Merv Neugebauer and he said they had been pumping for a couple of days and would stop. They thought the people downstream probably had enough flow since the creek had been flowing at their place for some time. Merv said they should have called Kaiser or Foss and checked on the flow before they started to pump and will check with them before they start pumping again. I talked to Stan Neugebauer on March 15, 1990 and told him if we continue to get complaints we may have to bring this matter before the Water Management Board.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

Water Rights Division - DWR

769-2
File No. 1191-2

Conversation or File Documentation

NAME OF PERSON OR FILE: Clarence FoosADDRESS: Hermosa, SD COUNTY: CusterDATE: July 11, 1990 TELEPHONE: 252-4104RE: Battle Creek Flows

COMMENTS:

Clarence Foos called to complain that Battle Creek was dry in their pasture. He called USGS and the flow at the gage was about 1 cfs. I called Stan Neugebauer and he stated that they were pumping. I asked him to turn off the pump and he said he would do that.

I called Mrs Foos and told her that Neugebauer was going to stop pumping. She stated that a 3cfs bypass at the gage was not enough. She thinks it should be changed to 9 cfs. With 9 cfs flow at the gage the water barely gets to the Cheyenne River.

File in Permit or other file as necessary. Use to document conversations and what the other party was told; why action or decision was made.

4/82

NAME: Melvin D. Brown

 **Department of
Water & Natural Resources**

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

August 9, 1990

NOTICE

Stanley Neugebauer
Neugebauer Dairy
RR 1, Box 96
Hermosa, SD 57744

Dear Mr. Neugebauer:

This letter is a follow up to the conversation you had on August 8, 1990 with Tim Schaal, concerning the complaints we received on your irrigation pumping. Mr. Schaal had also met with the downstream landowners along Battle Creek.

The qualifications on your permits (No. 269-2 & 1191-2) are as follows:

1. Diversions of flows from, Battle Creek for direct application to the land have a priority date of May 1, 189 . When such diversions are being made, low flow as needed for downstream domestic use shall be by-passed.
2. Diversions of flows from Battle Creek for storage into your 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.

Complaints occur when flows from Battle Creek are being diverted through your dam, which means diversions are being made into the dam and out of the dam at the same time. This situation is confusing and is not in compliance with the permit qualifications.

Your system must to be changed prior to the 1991 irrigation season to eliminate diversions through the dam. Either a pipe line or new ditches need to be installed to allow your fields to be irrigated, when water is available, directly from Battle Creek. Diversions into the dam may be stored for later irrigation.

Flow measurements were also taken on Battle Creek August 8, 1990. The flows were 2.93 cfs at the Hermosa gaging station, approximately 1 mile below your diversion point and 1.3 cfs at the lower Battle Creek gaging station, approximately 17 road miles

August 9, 1990

NOTICE

Page 2

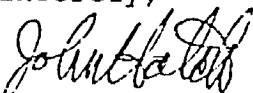
below Hermosa. The flow was also measured at 0.22 cfs or approximately 100 gpm at the lower end of Battle Creek just upstream of the confluence with the Cheyenne River (approximately 22 miles below Hermosa).

After discussing this with Mr. Schaal and because of the declining flow rates in Battle Creek, you agreed to stop diverting from Battle Creek Thursday morning, August 9, 1990. This was done to leave the remaining flows for downstream livestock watering (domestic use).

With the limited flows available in Battle Creek and distances involved, cooperation between all water users is essential. Before any of the permit holders begin pumping from Battle Creek for irrigation, water must be available for downstream domestic use. This will require communication with downstream domestic water users and cooperation by everyone to obtain the best use of Battle Creek flows.

If you have any questions, please let us know.

Sincerely,



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

cc: Clarence Foos
Herb Kaiser
Gene Baker
Ed Kanasky
Louis Freiberg

CERTIFICATION

I hereby certify that on August 9, 1990 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice addressed as follows:

Stanley Neugebauer, Neugebauer Dairy, RR 1, Box 96, Hermosa SD 57744

Clarence Foss, 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

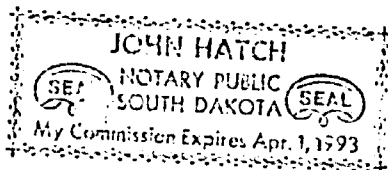
Ed Kanesky, Box 52, Caputa SD 57725

Louis Friberg, Attorney, First Federal Plaza, 909 St. Joe St. #420, Rapid City SD 57701

Karen Schlaak
KAREN SCHLAACK
Senior Secretary

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

Sworn to, before me, this 10th day of August, 1990.



John Hatch
Notary Public

1191-2

**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
Water Rights Division
(605) 773-3352 *John Hatch*

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 gallons per minute], gauge stage 2.77, 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 95, Hermosa
SD 57744
Clarence Foos, 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

1191-2

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.

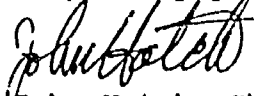
On April 18th, Battle Creek was flowing all the way to the Cheyenne River with an estimated flow into the Cheyenne River approximately the same as at the gaging station. It appears that on this day the 3.0 cfs standard was more than sufficient. Depending on the time of year and existing weather conditions,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

Existing Water Rights/Permits on Battle Creek
Listed In Upstream to Downstream Order

	Name	Diversion Rat. (cfs)	Priority Date
Water Right No. 968-2	Neugebauer Bros.	1.73	5/1/1881 & 6/11/1968
Water Right No. 1191-2	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	3.0	1/28/1974
WR Filing No. 0359-2	Keith Robertson & Dr, Borgmeyer	1.47	3/3/1895
WR Filing No. 0422-2	Rich Cleland	1.82	10/14/1886
WR Filing No. 0421-2	Rich Cleland	1.80	10/27/1893
Water Right No. 1209-2	Clarence Werner	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



JUL 23 1991

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 LAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

2153-2

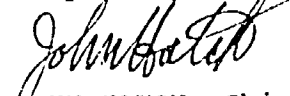
1191-2

Stan Neugebauer
Neugebauer Brothers Dairy
HCR 89 Box 209
Hermosa, SD 57744

Dear Mr. Neugebauer:

Enclosed are your Validated Vested Water Right Nos. 1191-2 and 2153-2, and Water License No. 2153-2. 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
(605) 773-3352

enclosures

The applicable portions of Vested Right No. 1191-2 (validated May 1, 1991) are incorporated into this Vested Right Water License No. 2153-2.

SOUTH DAKOTA

VESTED WATER RIGHT NO. 1191-2 FOR IRRIGATION

Date of Receipt of Claim July 1, 1974.

Date of Validation May 1, 1991.

The Water Management Board validated Vested Water Right Claim No. 1191-2 for irrigation purposes for Neugebauer Brothers Dairy, HCR 89, Box 209, Hermosa, SD with the following limitations, conditions and qualifications:

1. Vested Water Right No. 1191-2 appropriates 0.33 cubic feet of water per second from Battle Creek to irrigate 19 acres located in the NE1/4 SE1/4 of Section 31, T2S, R8E
2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per irrigated acre per year. The water is to be used during the following annual period: April 1 - October 31.
3. The priority date of the Vested Water Right is May 1, 1881.
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

Validation of No. 1191-2 is for irrigation of 19 acres in the NE1/4 SE1/4 of Section 31, T2S, R8E.

WATER MANAGEMENT BOARD

By: John H. Stoltz
Chief Engineer

JUL 23 1991

date

Division of Water Rights
Dept. of Water and Natural Resources

REPORT ON
VESTED RIGHT CLAIM NO. 1191-2
NEUGEBAUER BROTHERS
JANUARY 7, 1991

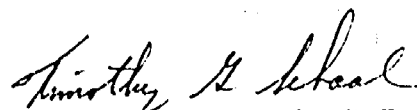
Vested Right Claim No. 1191-2 was filed in 1974 for 0.33 cfs from Battle Creek to irrigate 23 acres located in the NE 1/4 SE 1/4 of Section 31-T2S-R8E. Vested Right Claim No. 1191-2 has a priority date of 1881 which was established under Water Right Filing No. 0254-2.

The Neugebauer Brothers also have Water Right No. 969-2 from Battle Creek, which also has a priority date of 1881 established under Water Right Filing No. 0254-2. Water Right Filing No. 0254-2 was cancelled on July 17, 1968 after the applicable portions were incorporated into Water Permit No. 969-2.

An inspection of Vested Right Claim No. 1191-2 was conducted on September 21, 1989 for validation purposes. The system was found to be as described on the Vested Right Claim, except 4 acres of the 23 acre field are located in the NW 1/4 SE 1/4 of Section 31-T2S-R8E.

Conclusion:

1. The project was inspected and found to exist as described, except for the above mentioned 4 acres.
2. According to the affidavit of water use the system was constructed during 1881 and water has been put to beneficial use since that time.
3. It is recommended that Vested Right Claim No. 1191-2 be validated for only the 19 acres located in the NE 1/4 SE 1/4 of Section 31-T2S-R8E and another Vested Right Claim filed for the other 4 acres located in the NW 1/4 SE 1/4 of Section 31-T2S-R8E.


Timothy G. Schaal, P.E.
Natural Resources Engineer

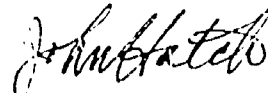
RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF
VESTED WATER RIGHT CLAIM NO. 1191-2, NEUGEBAUER BROTHERS DAIRY

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Validation of Vested Water Right Claim No. 1191-2, Neugebauer Brothers Dairy, HCR 89 Box 209, Hermosa, SD.

The Chief Engineer is recommending VALIDATION of Claim No. 1191-2 for 0.33 cfs because 1) water has been appropriated as described for irrigation use with a priority date of May 1, 1881 2) the use has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) it is in the public interest with the following qualification:

Validation of No. 1191-2 is for irrigation of 19 acres in the NE 1/4 SE1/4 of Section 31-T2S-R8E.

See report on Claim No. 1191-2 for additional information.



JOHN HATCH, Chief Engineer
January 31, 1991



DEPARTMENT OF WATER & NATURAL RESOURCES

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

April 2, 1991

NOTICE

TO: Neugebauer Brothers Dairy
HCR 89, Box 209
Hermosa, SD 57744

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

SUBJECT: Hearing to Consider Validation of Vested Water Right Claim
No. 1191-2, Neugebauer Brothers Dairy

A Notice of Intent to Validate Vested Water Right Claim No. 1191-2 was published June 22 & 29, 1988 in the Custer County Chronicle. The Division of Water Rights opposed validation of Claim No. 1191-2 for purposes of completing an on-site inspection of the claim. The inspection of Claim No. 1191-2 was completed on September 21, 1989, by Tim Schaal, staff engineer. A copy of recommendation of the Chief Engineer and report on the claim are enclosed.

The Water Management Board will consider validation of Claim No. 1191-2 at 8:45 am on May 1, 1991, in the meeting room Chef Louie's, 601 E. Havens, Mitchell, SD. The agenda time is an estimate.

Pursuant to the findings of the on-site inspection, validation of Claim No. 1191-2 is recommended for a diversion rate of 0.33 cubic feet of water per second from Battle Creek to irrigate 19 acres. Following the hearing, the Board is authorized to 1) validate Claim No. 1191-2 as recommended for 0.33 cfs to irrigate 19 acres, 2) validate Claim No. 1191-2 as licensed prior to the on-site inspection, 3) validate Claim No. 1191-2 based on evidence presented at the public hearing, or 4) defer validation of Claim No. 1191-2.

This hearing is an adversary proceeding. You have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided for by law.

cc: Diane Best, Assistant Attorney General

enclosure

CERTIFICATION

I hereby certify that on April 3, 1991 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice of Hearing to Consider Validation of Vested Water Right Claim No. 1191-2, Neugebauer Brothers Dairy addressed as stated on the notice.

Cheryl F. Frost
Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 9th day of April, 1991.

John Hatch
Notary Public

