

Map No. VIR Water Division No. 2 BATTLE CREEK
 (Returns to be Filed by the Engineer for the W. R. C.)

RECEIVED
 SEP 4 1974
 9/5

APPLICATION FOR PERMIT

"VESTED RIGHT CLAIM"

STATE WATER RIGHTS CL
 PIERRE, SOUTH DAKOTA

To Appropriate Water within the State of South Dakota

(NOTE - Draw a line through items not applicable)

1. Name of Applicant Milo Harrington and Milton Tittemore Richard White
 Postoffice 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) completed
 3. Name of diversion work Phelps Upper Irrigation System
 4. Amount of water claimed (cubic feet per second) 1.07
 5. Source of water supply Battle Creek
 6. Location of point of diversion Between a point South 24° East, 1320' and a point South 49° East, 3300 feet from the NW Corner, Section 4, T4S, R10E
 _____ County Custer
 7. Annual period or periods during which water is to be used April through October
 8. Use to be made of water, (irrigation, industrial, municipal, commercial, recreation, etc.) irrigation
 9. For irrigation use, _____ Total number of acres to be irrigated 75

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.
NW 1/4 NW 1/4	11		
E 1/2 NW 1/4	64		
All in Sec. 4, T4S, R10E			

Attach sheet if more space is needed

10. 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.
 11. Choice of newspaper for Notice of Intent to Appropriate Water publication N/A
 12. Principal Features of the Proposed Water Supply System.
 A. Works proposed to divert water from its natural source.
~~XXXXXXXX~~ Centrifugal pump 6"
 Industrial Engine, propane
 B. Works proposed to transport water to place of use.
 3400 feet of 4 and 6 inch aluminum pipe
 Existing old ditches
 C. Works proposed to apply water to beneficial use.
 25 sprinkler heads-hand moved
 gravity irrigation through
 existing laterals
 Estimated Total Cost \$ _____
 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 _____) ss.

I, _____ 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.

Subscribed and sworn to before me this 27 day of Aug, 1974

Signed Milo Harrington
Milton Tittemore
Paul England
 Notary Public (or other qualified officer)
 DAVE ENGLAND, NOTARY PUBLIC
 My Commission Expires October 5, 1978

John McInerney
RICHARD WHITE
The Water Rights Commission hereby approves Water Right Application No. 1209-2
HERMOSA
(Applicant) (Post Office Address)
SOUTH DAKOTA 57744 With the following modifications:
(State)

"VESTED RIGHT" CLAIMED
PRIORITY FOR THIS PERMIT IS ESTABLISHED FROM
WATER RIGHT FILING NO 0345-2

Date of first receipt of application SEPTEMBER 4, 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 75

WATER RIGHT PERMIT NO. 1209-2

The Water Rights Commission hereby grants and issues this Water Right Permit No. 1209-2 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 SEPTEMBER 29, 19 00
2. The equivalent of at least one-fifth of the work above specified is not completed not before
3. The whole of said work is not completed not before
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 1.07 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, 19 55; said water to be used during the following described annual period: APRIL THRU OCTOBER

Witness my hand this 16TH day of SEPTEMBER, 19 74

WATER RIGHTS COMMISSION

By:

Donald Driscoll
Chief Engineer, Executive Officer

Certificate of Construction Issued SEPTEMBER 16, 19 74

Water License Issued SEPTEMBER 16, 19 74

STATE OF SOUTH DAKOTA

WATER LICENSE NO. ... 1209-2

(1) WHEREAS, On the 4th day of September A. D. 19 74
Milo Harrington and Milton Tiltum
 made Water Right Application No. 1209-2 Vested Right
 for a permit to use 107 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 16th day of September A. D. 19 74
Vested Right 1209-2, with a date of priority of September 29, 1900
 was issued to said applicant for the diversion of said water, recognizing
 the completion of construction of the water
 supply system therein described and for the purpose of irrigating the following land in Section 4, T4S, R10E
 application to beneficial use of said water on and for the purpose of irrigating the following land in Section 4, T4S, R10E

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 1.07 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 the following land in Section 4, T4S, R10E

<u>SW 1/4 NW 1/4</u>	<u>11 acres</u>
<u>SE 1/4 NW 1/4</u>	<u>64 acres</u>
<u>Total</u>	<u>75 acres</u>

(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 Milo Harrington and Milton Tiltrum

_____ of Hermosa, S.D.

the holder B and owner B of said Vested Right Permit No. 1209-2 a water right, dating from September 29, 1900

_____ to use of 1.07 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 between a point South 24° East, 1320 ft., and a point South 49° East, 3500 ft. from the NW Corner, Section 4, T4S, R10E

and conduct to and upon a portion of Section 4, T4S, R10E, more fully described on the face of this license

for the purpose of irrigation

Subject to any limitations listed in Water Right Permit No. 1209-2 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 16th day of September A. D.
Nineteen Hundred and Seventy-four

WATER RESOURCES COMMISSION

By:

Chief Engineer, Executive Officer DONALD DRISCOLL

His Water Rights

This Water License No. 1209-2 is based on
a "Vested Right" claim recorded and filed
by the Water Rights Commission.

Form 15.

Permit No. 129 1209-2

Water Diversion No. 2 BATTLE CREEK Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That Milo Harrington and Milton Tiltum

Vested Right
/ Permit No. 1209-2, issued upon Application No. 1209-2, bearing date of priority of September 29,
1900 authorizing the diversion of 1.07 cu. ft. per second of the waters of
Battle Creek County of Custer, State of South Dakota, at
between a point South 24° East, 1320 ft., and a point South 49° East, 3300 ft./
from the NW Corner, Section 4, T4S, R10E
, for irrigation

purposes, have ve 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 recognizing as
condition for diverting and conveying to the place of intended use 2.5 cu. ft. per second of water.

Date September 16, 1974

By: WATER RIGHTS COMMISSION

DONALD DRISCOLL, Chief Engineer

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

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

Name of Applicant (Same as Form 2) Milo Harrington & Milton Tiltum
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 September 29, 1900 Date of Recording February 28, 1901
Recording Data Book 9, of Placers, Page 566
14. Date of start of construction of water supply system September 29, 1900
15. Date that water was first applied to beneficial use 1901
16. Name of owner of original water supply system Dudley Phelps & Israel Bower
17. Amount of water originally applied to beneficial use 10 plus c. f. s.
18. Present Use of Water
Amount of water now being used 2½ c. f. s.
Date that this amount of water was first used 1973
19. Chronological History of Water Use

System was started in 1900 as indicated. Water was put to use in 1901 and has been used since that time during most years when water was available.

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)
) ss.
County of _____)

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

Signed _____

Subscribed and sworn to before me this 27 day of Aug., 1974

Dave England
DAVE ENGLAND, NOTARY PUBLIC (Notary Public or other qualified Officer)
My Commission expires October 5, 1976.

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.

Milo Harrington
Milton Tiltum
Margaret J. Phelps

Form 20.

No. 1209-2

NOTICE OF TRANSFER OF WATER PERMIT

TO: ~~WATER RESOURCES~~ COMMISSION
State Office Building No. 2
Pierre, South Dakota 57501

Date May 19 1975

This is to notify you that title to the lands described as follows:

Portions of lands in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$, Section 4, T4S, R10E

formerly owned by Milo Harrington and Milton Tiltrum, Hermosa, S.D.

has been transferred to Richard White, Hermosa, S.D.

together with any rights to the beneficial use of water thereon as evidenced by Water Right Permit No. 1209-2 as provided for in Section 61.0127 of the 1960 Supplement to the South Dakota Code of 1939.

You are therefore hereby requested to file this "Notice of Transfer of Water Permit" in its appropriate file at the Office of Water Resources Commission as evidence of the change of ownership.

WATER RIGHTS COMMISSION

A fee of one dollar is hereto attached to cover filing fees as required under Section 61.0159 of the 1960 Supplement to the South Dakota Code of 1939.

STATE OF SOUTH DAKOTA)
) ss.
County of Pennington)

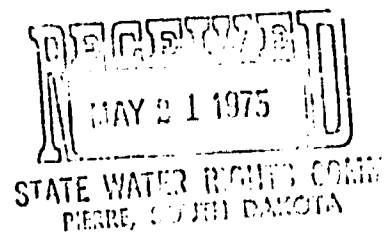
Richard D. White being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and I know of my own personal knowledge that the information herein stated is true.

My Commission expires July 19, 1981

(Signed)

Subscribed and sworn to before me this 20th day of May, 19 75

(Notary Public)



RECEIPT

WATER RIGHTS COMMISSION

State of South Dakota

No 4 6372

PIERRE, March 2, 1978

RECEIVED OF John McInerney, Hermosa, SD 57744

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.	
Fee for Inspecting Beneficial Use, and issuing Water License No.	
Fee for issuing Location Certificate-Dry Draw, No.	
Fee for filing transfer of WR # 1209-2	2 50
Fee for certified copy of	
Fee for Print copy of map	
Fee for Certifying	
Fee for (any other work as provided by law)	
TOTAL	2 50

WATER RIGHTS COMMISSION

By John Hatch
Chief Engineer, Executive Officer
JOHN HATCH gy

Form 20.

No. 1209-2

NOTICE OF TRANSFER OF WATER PERMIT

TO: Water Rights Commission
Foss Building
Pierre, South Dakota 57501

Date: February 22, 1978

This is to notify you that title to the lands described as follows:

75 acres in portions of Section 4, T4S, R10E

formerly owned by Richard White

has been transferred to John McInerney, Hermosa, SD 57744

together with any rights to the beneficial use of water thereon as evidenced by
Water Right Permit No. 1209-2 as provided for in Section 61.0127 of the 1960
Supplement to the South Dakota Code of 1939.

You are therefore hereby requested to file this "Notice of Transfer of Water
Permit" in its appropriate file at the Office of Water Rights Commission as
evidence of the change of ownership.

A fee of Two Dollars and Fifty Cents (\$2.50) is hereto attached to cover
filing fees as required under Section 61.0159 of the 1960 Supplement to the South
Dakota Code of 1939..

STATE OF SOUTH DAKOTA)
) SS.
County of Pennington)

I, John McInerney being first duly sworn on my oath do hereby
and say: That my relation to the above described undertaking is that of Owner,
that I have read the above foregoing statement, and I know of my own personal
knowledge that the information herein stated is true.

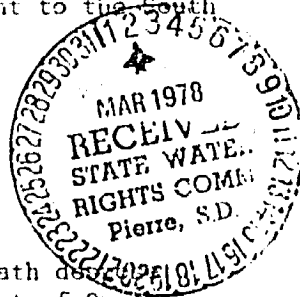
John McInerney
(Signed)

Subscribed and sworn to before me this 22 day of Feb.

1978.

W. A. Nease
(Notary Public)

Notary Public for S.D., 1939



P.O. Box 2211
4820 Riva Ridge Rd.
Rapid City, South Dakota 57709
(605)343-8697 / (605)343-9192

1209-2
BRYCE D. NELSON
REAL ESTATE

May 22, 1987

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

Attention Water Rights Division
Timothy C. Schaal

Dear Mr. Schaal:

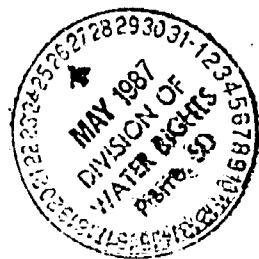
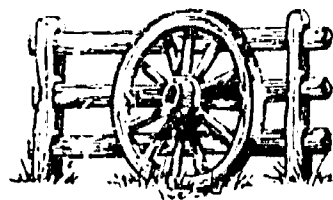
Enclosed is copy of the deed from McInerney to Werners.

If there is something else that we need to do to transfer the water rights associated with this property, please let me know.

Sincerely,

Bryce D. Nelson
Bryce D. Nelson

BDN/bls



RICHARD D. WHITE and LORETTA M. WHITE, husband and wife,

STATE OF SOUTH DAKOTA, COUNTY OF CUSTER-SS

Filed this 13 Day of May 1977 at 11:00 A.M.

BOOK 13 of Deed PAGE 458

grantee S, of Pennington Register of Deeds County,

State of South Dakota for and in consideration of One Dollar (\$1.00)

and other good and valuable consideration-----DOLLARS

GRANT, CONVEY AND WARRANT TO

JOHN McINERNEY and BETTY McINERNEY, husband and wife,

as joint tenants with right of survivorship and not as tenants in common, grantees, of

Hermosa, South Dakota P. O. the following described real estate in the County of

Custer in the State of South Dakota:

West Half (W $\frac{1}{2}$) of Section 28; East Half of the Southeast Quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 29; The East Half of the Northeast Quarter (E $\frac{1}{2}$ NE $\frac{1}{4}$) of Section 32; 80 West Half of the Northwest Quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$) of Section 33; Southwest Quarter (SW $\frac{1}{4}$) of Section 33, except a ten (10) acre tract described as the East Half of East Half of Northeast Quarter of the Southwest Quarter (E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 33, all situated in Township Three (3) South, Range Ten (10) East of the Black Hills Meridian, Custer County, South Dakota. The West Half (W $\frac{1}{2}$) of Section 4, except a five acre tract described as the East Half of the East Half of the East Half of Southeast Quarter of the Northwest Quarter (E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$), also except a five acre tract described as the East Half of the East Half of the East Half (E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$) of Lot Three (3) (Lot 3=NE $\frac{1}{4}$ NW $\frac{1}{4}$) of said Section 4; The Northeast Quarter (NE $\frac{1}{4}$), and the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 8; and The West Half (W $\frac{1}{2}$) of Section 9, all situated in Township Four (4) South, Range Ten (10) East of the Black Hills Meridian, Custer County, South Dakota, together with all improvements, leases, grazing permits, water tanks, and well pumps, all subject to easements, restrictions and covenants of record and subject to all prior reservations of oil, gas and mineral rights of record.

Dated this 9th day of May 1977

Transfer fee \$184.00

RICHARD D. WHITE

TRANSFER FEE PAID \$184.00

LORETTA M. WHITE,

STATE OF SOUTH DAKOTA

County of PENNINGTON

ss.

On this the 9th day of May 1977, before me,

J. W. Miller

the undersigned officer, personally appeared Richard D. White & Loretta M. White, husband and wife, known to me or satisfactorily proven to be the person s whose name s are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Notary Public

Title of Officer

J. W. MILLER, Notary Public

My commission expires Dec. 12, 1984

WARRANTY DEED

MILO HARRINGTON and MARIE HARRINGTON, husband and wife,
and MILTON TILTRUM and PERNIECE TILTRUM, husband and wife, Grantors,
of Custer County, State of South Dakota, for and in consideration
of One Dollar (\$1.00) and other good and valuable consideration,
GRANTS, CONVEYS AND WARRANTS TO RICHARD D. WHITE and LORETTA M. WHITE,
husband and wife, as tenants in common, Grantees, of Wall, South
Dakota, P.O., the following described real estate in the County
of Custer, in the State of South Dakota:

The West Half ($W\frac{1}{2}$) of Section 28
East Half of the Southeast Quarter ($E\frac{1}{2}SE\frac{1}{4}$) of
Section 29
East Half of the Northeast Quarter ($E\frac{1}{2}NE\frac{1}{4}$) of
Section 32
West Half of the Northwest Quarter ($W\frac{1}{2}NW\frac{1}{4}$) of
Section 33
Southwest Quarter ($SW\frac{1}{4}$) of Section 33, except
a ten acre tract described as the $E\frac{1}{2}$ of $E\frac{1}{2}$ of
 $NE\frac{1}{4}$ of $SW\frac{1}{4}$ of Section 33
All above situated in Township 3 South Range
10 EBHM, Custer County, South Dakota.

The West Half ($W\frac{1}{2}$) of Section 4, except a five
acre tract described as the $E\frac{1}{2}$ of $E\frac{1}{2}$ of $E\frac{1}{2}$ of
 $SE\frac{1}{4}$ of $NW\frac{1}{4}$, also except a five acre tract des-
cribed as the $E\frac{1}{2}$ of $E\frac{1}{2}$ of $E\frac{1}{2}$ of Lot 3 (Lot 3=
 $NE\frac{1}{4}NW\frac{1}{4}$) of said Section 4
Northeast Quarter ($NE\frac{1}{4}$) and
the Northeast Quarter of the Southeast Quarter
($NE\frac{1}{4}SE\frac{1}{4}$) of Section 8, and
West Half ($W\frac{1}{2}$) of Section 9, all
situated in Township 4 South Range 10 EBHM,
Custer County, South Dakota.

Subject to easements, reservations, covenants, and
restrictions of record.

Dated this 22nd day of February, 1975.

Transfer Fee: 184⁰⁰
B.M.

TRANSFER FEE PAID \$ 184⁰⁰

Milton Tiltrum

Perniece Tiltrum

Milo Harrington

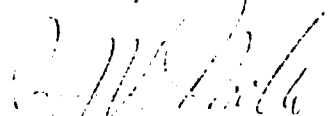
Marie Harrington

ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA }
COUNTY OF PENNINGTON } :SS

On this the 22nd day of February, 1975, before me, the undersigned officer, personally appeared MILO HARRINGTON and MARIE HARRINGTON, husband and wife, and MILTON TILTRUM and BERNIECE TILTRUM, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

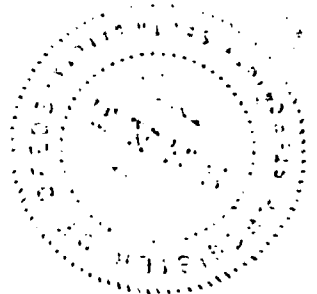
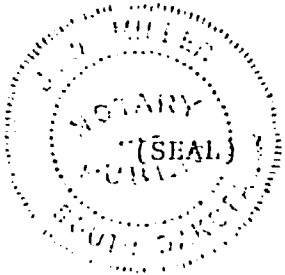
In witness whereof I hereunto set my hand and official seal.



Notary Public, South Dakota

My Commission Expires: 12-12-76

STATE OF SOUTH DAKOTA, COUNTY OF CUSTER-SS B2708
Filed this 13 Day of May 1975 At 11:45 o'clock A.M.
BOOK 33 OF Klead PAGE 457
filed Frances M. Lerson
Register of Deeds



WARRANTY DEED

JOHN B. McINERNEY and BETTY R. McINERNEY, husband and wife, Grantors of Custer County, State of South Dakota, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, grants, conveys and warrants to CLARENCE L. WERNER, a married person, Grantee of Rt. 4, Box 15B, Hermosa, South Dakota 57744, the following described real estate located in the County of Custer, State of South Dakota, to-wit:

The West Half (W1/2) of Section 28; and The East Half of the Southeast Quarter (E1/2 SE1/4) of Section 29; and The East Half of the Northeast Quarter (E1/2 NE1/4) of Section 32; and The West Half of the Northwest Quarter (W1/2 NW1/4) of Section 33 and the Southwest Quarter (SW1/4) of Section 33 except a ten (10) acre tract described as the East Half of the East Half of the Northeast Quarter of the Southwest Quarter (E1/2 E1/2 NE1/4 SW1/4) of Section 33; all situated in Township Three (3) South, Range (10) East of the Black Hills Meridian, Custer County, South Dakota; and

The West Half (W1/2) of Section 4, except a five (5) acre tract described as the East Half of the East Half of the East Half of the Southeast Quarter of the Northwest Quarter (E1/2 E1/2 E1/2 SE1/4 NW1/4), also except a five (5) acre tract described as the East Half of the East Half of the East Half (E1/2 E1/2 E1/2) of Lot Three (3) (Lot 3 = NE1/4 NW1/4) of said Section 4; and

The Northeast Quarter (NE1/4), and the Northeast Quarter of the Southeast Quarter (NE1/4 SE1/4) of Section 8; The West Half (W1/2) of Section 9, all situated in Township Four (4) South, Range Ten (10) East of the Black Hills Meridian, Custer, South Dakota.

Together with all improvements thereon subject to all valid easements, restrictions and covenants of record and subject to all prior valid reservations of oil, gas and mineral rights of record.

Grantors hereby reserve unto themselves, their heirs and assigns, one-half of all oil, gas coal, gravel, sand, clay and minerals of every kind occurring beneath the surface of such land, together with the right to prospect, mine, and operate in and upon such land for such minerals, mineral deposits, oil, uranium, and natural gases, by any and all subterranean mining methods deemed necessary by Grantor for the proper extraction and removal thereof, without any liability on the part of Grantor, their heirs, or assigns, for any damage that may result to the surface of the land, or to any buildings or improvements now or hereafter erected thereon, by reason of any exploration for, mining, or removal of any such products from such land.

Dated this 11th day of May, 1987.

Transfer fee 4,184⁰⁰
B.N.

TRANSFER FEE PAID \$ 184⁰⁰

John B. McInerney
John B. McInerney
Betty R. McInerney
Betty R. McInerney

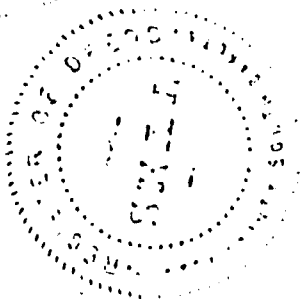
STATE OF SOUTH DAKOTA)
COUNTY OF PENNINGTON)SS

On this the 11th day of MAY, 1987, before me, the undersigned officer, personally appeared John B. McInerney and Betty R. McInerney, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Frank E. Dabney
Notary Public
My Commission Expires: 5-2-91



STATE OF SOUTH DAKOTA, COUNTY OF CUSTER-SS B2710
Filed this 13 Day of May 1987 At 11⁴⁵ o'clock A.M.
BOOK 53 OF Deeds PAGE 459
Jackson Frances McInerney
Register of Deeds

WATER RIGHTS DIVISION
(605) 773-3352

May 28, 1987

Bryce D. Nelson
P.O. Box 2211
4820 Riva Ridge Road
Rapid City, South Dakota 57709

Dear Mr. Nelson:

I am contacting you in regard to your letter of May 22 to Tim Schaal and the warranty deed you sent between McInerney's and Werner's. In order for the water right to be transferred to Clarence Werner, a "Notice of Transfer" will need to be filed with our office.

Enclosed is a partially completed transfer form. This should be signed by the new owner in the presence of a notary. Upon completion the form should be returned to our office with the required filing fee of \$2.50.

Water Right No. 1209-2 will be transferred to the new owner upon receipt of the completed form and filing fee in our office. South Dakota Water Law 46-5-30.3 requires Notice of any sale, grant, lease, conveyance or other transfer of Water Permit or Water Right to appropriate water to be filed with this office within ninety days.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Natural Resources Analyst

GH:ms
Enc.

NO. 1209-2

NOTICE OF TRANSFER OF WATER RIGHT



TO: Water Rights
Foss Building
Pierre, SD 57501

Date: June 17, 1987

This is to notify you that the title to the lands described as follows:

75 Acres-NW $\frac{1}{4}$ Section 4, T4S, R10E

formerly owned by John McInerney, Hermosa, South Dakota

has been transferred to Clarence L. Werner, Rt. 4 Box 15B, Hermosa, SD 57744

(please include complete mailing address)

together with any rights to the beneficial use of water thereon as evidenced by

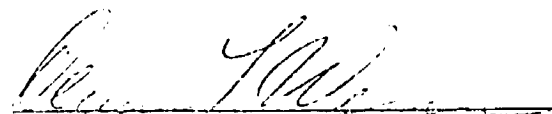
Water Right Permit No. 1209-2 as provided for in SDCL 46-5-32 and 46-5-33.

You are therefore hereby requested to file this "Notice of Transfer of Water Permit" in its appropriate file at the Div. of Water Rights, Water Management Board as evidence of the change of ownership.

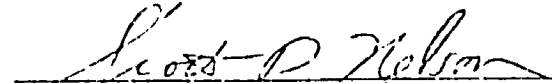
A fee of Two Dollars and Fifty Cents (\$2.50) is hereto attached to cover filing fees as required under SDCL 46-2-13.

STATE OF SOUTH DAKOTA)
County of Custer) ss.

I, Clarence L. Werner being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and I know of my own personal knowledge that the information herein stated is true.


(Signed)

Subscribed and sworn to before me this 17 Day of June, 1987


(Notary Public)

Commission Expires February 6, 1992

WNR-820-9/83

Notice of Transfer of Water Permit

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

410212

Pierre, June 24, 1927, 19

RECEIVED OF Bryce H. Nelson Real Estate, 4920 Reva Ridge Rd., Rapid City SD 57702

the following amount in fees for services rendered as provided for by law: For Clarence Wernar, Rt. 4 Box 5774

Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use _____		
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form 1209-2 _____	2	50
Fee for Filing Extension Request _____		
Fee for Certified Copy of _____		
Fee for Print Copy of Map _____		
Fee for Certifying _____		
Fee for _____		
(Any Other Work Provided by Law)		
Total	2	50

By John Hatch
Chief Engineer JOHN HATCH (103)

 **Department of
Water & Natural Resources**

Joe Foss Building Water Rights Division
Pierre, South Dakota 57501

Phone (605) 773-3352

June 26, 1987

Bryce D. Nelson Real Estate
4820 Reva Ridge Road
Rapid City, South Dakota 57702

Dear Sir:

Enclosed is receipt No. 410919 in the amount of \$ 2.50 which you
paid for transfer of Water Right No. 1209-2.

Clarence Werner

Our records now show ~~you~~ as the owner of this Water Right.

Sincerely,

Maxine Stirling
Secretary

ms/
Enc.

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

September 21, 1988

NOTICE

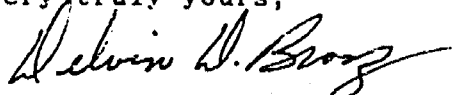
Clarence L. Werner
Rt 4, Box 15B
Hermosa SD 57744

Dear Mr. Werner:

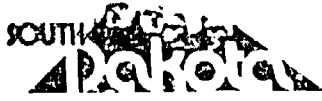
I am writing to notify you that pursuant to the Notice of Intent to Validate Vested Water Right Claims dated June 20, 1988 that I intend to oppose validation of your water right claim No(s). 1209-2 until a field inspection has been completed. The claim has either never been inspected or an inspection 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 
JOHN HATCH, Chief Engineer
Water Rights Division
605 773-3352





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

SUBJECT: Order 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 2.70, 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 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
Johr & 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
528 East Capitol
Pierre, South Dakota 57501-3181

209-2

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.

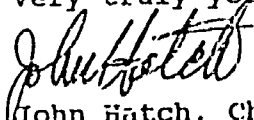
On April 18th, Battle Creek was flowing all the way to the Cheyenne River with an estimated flow into the Cheyenne River approximately the same as at the gaging station. It appears that on this day the 3.0 cfs standard was more than sufficient. Depending on the time of year and existing weather conditions,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



February 16, 1994

CLARENCE L WERNER
PO BOX 2380
RAPID CITY SD 57709-2830

1209-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-2181

NOTICE

RE: Violation of Requirement to Submit 1993 Irrigation Questionnaire

Our records indicate that the 1993 Irrigation Questionnaire has not been submitted for Permit No(s) 1209-2. The request for the Questionnaire was dated October 18, 1993. The Water Management Board has directed that owners of water permits who have not submitted the 1993 Irrigation Questionnaire be given notice of hearing to determine if any Board action is to be taken concerning the violation.

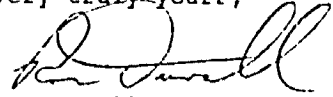
The hearing will be held at 8:45 am, April 6, 1994, at the Golden Hills Resort, 900 Miners Ave, Lead, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to SDCL 1-26. Following the hearing, the Water Management Board can:

1. Amend Permit No(s) 1209-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action; or
3. Take no action.

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

If the questionnaire(s) is(are) received in this office on/or before April 1, 1994, your name will be deleted from the Board agenda.

Very truly yours,


Ron Duvall, Natural Resources Engineer IV
Water Rights Division
605 773-3352

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☒ Addressee's Address
2. ☐ Restricted Delivery
- Consult postmaster for fee.

3. Article Addressed to:

1209-2

CLARENCE L WERNER
PO BOX 2380 2830
RAPID CITY SD 57709-2830

4a. Article Number

P837 692 453

4b. Service Type

- ☐ Registered ☐ Insured
- ☒ Certified ☐ COD
- ☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

5. Signature (Addressee)

6. Signature (Agent)

Barclay H. Johnson

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1991 * U.S.G.P.O. : 1992-307-539

DOMESTIC RETURN RECEIPT

Thank you for using Return Receipt Service.



1209-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 24, 1994

1209-2

Ed Kanesky
Box 52
Capute, SD 57725

Dear Mr. Kanesky:

On March 8, 1994, you contacted our office concerning ownership of Water Right No. 1209-2 listed in the name of Clarence Werner. Enclosed, as we discussed, is a copy of Water Right No. 1209-2. You may keep this for your records. The water right authorizes diversion of water from Battle Creek for irrigation of 75 acres in the NW¼ Section 4, T4S, R10E.

Also enclosed, is a partially completed "Notice of Transfer of Ownership" form for use in filing an ownership change. Please review the form for accuracy and complete where necessary. Upon completion, please sign the form in the presence of a notary public, and return the form and a filing fee of \$2.50 to our office.

A "Notice of Violation of the Requirement to Submit the 1993 Irrigation Questionnaire" was sent to Mr. Werner on February 16th. You indicated that Bryce Nelson had picked up the notice for Mr. Werner and then contacted you regarding ownership of the land. Since Mr. Werner was not the proper person to contact concerning the 1993 Irrigation Questionnaire, the hearing before the Water Management Board to consider the violation has been canceled.

Thank you for notifying us of the ownership change. If you have any questions concerning the enclosed transfer form and copy of Water Right No. 1209-2, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Division
(605) 773-3352

enclosures

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and 2 for registered mail services.
- Complete items 3, 4, and 5 for insured mail.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the package. Do not place it in the back of space.
- Write "Return to Sender" on the front of the package. Do not place it in the back of space.
- The Return Receipt must be signed by the addressee or agent. It must show the article number, the date of delivery, and the date of return.

3. Article Addressed to: **Ed Kanasky** 1209-2

Ed Kanasky
Box 52
Caputa, SD 57725

5. Signature (Addressee)
Ed Kanasky

6. Signature (Agent)

I also wish to receive the following services (for an extra fee):

- 1. ☐ Addressee's Address
- 2. ☐ Restricted Delivery

Consult postmaster for fee.

4a. Article Number
P 318 052 663

- 4b. Service Type
- ☐ Registered ☐ Insured
 - ☒ Certified ☐ COD
 - ☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
6/19/94

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1991

U.S. GPO: 1992-323-402

DOMESTIC RETURN RECEIPT

Thank you for using Return Receipt Service.



1209-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

June 9, 1994

SECOND NOTICE
Permit No. 1209-2

Ed Kanesky
Box 52
Caputa, SD 57725

Dear Mr. Kanesky:

On March 24, 1994, notice was sent to you concerning the transfer of Water Right No. 1209-2 in the name of Clarence L. Werner. To date, we have not heard from you on this matter.

A transfer form was previously sent to you, enclosed is an additional form. Please sign, have notarized and return the form to this office with the required filing fee of \$2.50. The water right can then be transferred to your name. If you are not the present owner of the land covered under this water right, please notify this office. It is very important that ownership records be kept current. South Dakota Water Law 46-5-30.3 requires Notice of any sale, grant, lease, conveyance or other transfer of a Water Permit or Water Right to appropriate water to be filed with this office within ninety days.

If you have any questions, please contact Genny McMath, (605) 773-3352.

Very truly yours,

RON DUVAL
Natural Resources Engineer
for John Hatch, Chief Engineer
Water Rights Division

enclosure

NOTICE OF TRANSFER OF OWNERSHIP

To: Chief Engineer
Water Rights Division, DENR
523 E. Capitol
Pierre, SD 57501-3181



No. 1209-2

Date: June 6 1994

I/We request that Water Right No. 1209-2

formerly owned by: Clarence L Werner

be transferred to: (name & address) Edward + Betty A. Kanesky
Bdx 52 CAPOTA S.D 57725 (Telephone No) (605) 393-0266

Title to the following described land(s)/property has been transferred as described above:

75 acres - NW¼ NW¼, E½ NW¼ Section 4, T4S, R10E

I/We understand that the validity of Water Right No. 1209-2 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

You are requested to file this "Notice of Transfer" in the appropriate file at the Division of Water Rights, as evidence of the change of ownership.

A fee of Two Dollars and Fifty Cents (\$2.50) is attached to cover the filing fees as required under SDCL 46-2-13.

STATE OF SOUTH DAKOTA)

County of Pennings)

I/We Edward Kanesky
Betty Kanesky being first duly sworn on my oath depose and say that my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and that I know of my own personal knowledge that the information herein stated is true.

Edward Kanesky
Betty A Kanesky
(Signed)

Subscribed and sworn to before me this 6 day of June, 1994.

Suzanne Nelson
(Notary Public)

1994 (com) EXP March 23 2000

NOTE: Water permits may be cancelled for nonconstruction within the five year construction period. Once a water permit is developed and the water used, the permit becomes a right. A water right may be lost for three reasons:

1. Abandonment - no intent to use water and use is abandoned.
2. Forfeiture - no use of water for three year period without legal excuse.
3. For a third violation of a condition of a water permit/right.

RECEIPT

414203

Division of Water Rights

South Dakota Department of Environment and Natural Resources

Pierre, June 17, 19 94

RECEIVED OF Edward & Betty A. Kanasky, Box 52, Caputa, SD 57725

the following amount, fees for services rendered as provided for by law:

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use _____		
Fee for Application for Permit No. _____ to Appropriate Water, for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>Water Right No. 1209-2</u>		50
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	50

By John A. Kotel
Chief Engineer



1209-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

June 22, 1994

No. 1209-2

Edward & Betty A. Kanesky
Box 52
Caputa, SD 57725

Dear Mr. & Ms. Kanesky:

Enclosed is a receipt in the amount of \$2.50 which you paid for the transfer of Water Right No. 1209-2.

Our records now show you as the owner of Water Right No. 1209-2.

Sincerely,

Cheryl F. Frost
Secretary
Water Rights Division
(605) 773-3352

enclosure

1209-2

Existing Water Rights/Permits on Battie 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	<u>0.86</u>	9/11/1912
	Total	18.53 cfs	

Vested Right Claim No. 1209-2
Battle Creek - Water District

Report Of Examination Of Works And/Or Application of Water To Beneficial Use

TO: Chief Engineer, Water Rights Program, DENR, Foss Bldg., Pierre, SD 57501

I have this day, June 6, 1996, made a thorough examination of the water use system operated by Edward & Betty Kanesky of PO Box 52 Caputa, SD 57725 holder of Vested Right Claim No. 1209-2, bearing the priority of September 29, 1900 authorizing the diversion of 1.07 cu. ft. per second of the waters of Battle Creek for irrigation purposes, in Custer County.

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

- A. Works used to divert the water:
 6 inch Noro Centrifugal pump with 60 HP LeRoi gas engine
 4 inch Gorman-Rupp Centrifugal, Serial No. 16839 with Wisconsin gas engine
- B. Works used to transport water to place of use:
 several hundred feet of ditch and aluminum pipe
- C. Works used to apply water to beneficial use:
 gravity irrigation and 4 inch sprinkler heads

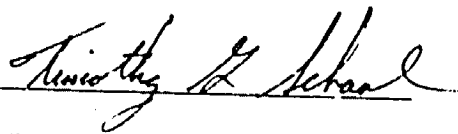
The system is in the following condition Good. The point of diversion is located Between a point 1100 feet south & 500 feet east (NW 1/4 NW 1/4) and a point 2200 feet south & 2475 feet east (SE 1/4 NW 1/4) from the NW corner of Section 4-T4S-R10E. The works are capable of diverting and conveying to the place of use 1.07 cu. ft. per second of water which is to be used for irrigation. Water has been put to beneficial use to the maximum extent as follows:

NW 1/4 NW 1/4 Sec. 4-T4S-R10E--	18 Acres	SW 1/4 SW 1/4 Sec. 33-T3S-R10E--	1 Acre
NE 1/4 NW 1/4 " "	-- 31	SE 1/4 SW 1/4 " "	- 1
SE 1/4 NW 1/4 " "	-- 21		
SW 1/4 NW 1/4 " "	-- 3		

comprising a total of 75 acres of land and the license should be issued for 1.07 cfs.

Applicable permit qualifications have been complied with: Yes ☒ X

Exceptions to compliance are: acres outside permitted area Date Report Completed: June 21, 1996



Timothy G. Schaal, P.E.
 Natural Resources Engineer
 DENR, Water Rights Program

REPORT ON INSPECTION OF VESTED RIGHT CLAIM No. 1209-2

Other permit(s) associated with the project: 1221-2, both based on Water Right Filing No. 0345-2

DATE OF INSPECTION: June 6, 1996

NAME & ADDRESS OF INSPECTION CONTACT/ Edward Kanesky

RELATIONSHIP TO PERMIT HOLDER, IF APPLICABLE: owner

NAME & ADDRESS OF PERMIT HOLDER: Edward & Betty Kanesky, PO Box 52, Caputa, SD.
57725

DIVERSION POINT LEGAL LOCATION: Between a point located 1100 feet south & 500 feet
east (NW 1/4 NW 1/4) and a point 2200 feet south & 2475 feet east (SE 1/4 NW 1/4) from the NW
corner of Section 4-T4S-R10E.

Pump:

1) Make 6 inch Noro and 4 inch Gorman-Rupp Centrifugal pumps

Motor:

1) Make 60 Hp Leroi and Wisconsin gas engines

DISTRIBUTION LINES OR CANALS:

gravity irrigation with ditches and 4 inch aluminum pipe with sprinkler heads

CHEMIGATION EQUIPMENT:

1) Does chemigate No

PERMIT QUALIFICATIONS AND REGULATIONS:

1) Soil and water permit lands agree with lands being irrigated and lands listed on permit N/A

2) Special qualifications to permit being abided by yes

3) All structures, wells and lands on map yes

4) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of
construction period N/A (Vested Right Claim)

File No. 1209-2

Water Rights Division -DENR
Conversation or File Documentation

NAME OF PERSON OR FILE: Edward & Betty Kanasky

ADDRESS: PO Box 52 Caputa, SD 57725

COUNTY: Custer

DATE: July 16, 1995

TELEPHONE: 293-0266

RE: Readvertising to correct legal description of lands irrigated

On July 8, 1996, I talked to Ed Kanasky about Vested Right Claim No. 1209-2. There are 5 acres irrigated outside of the originally permitted area; however, they were always part of the original project. The original application and license describe 75 acres being irrigated in the NW 1/4 NW 1/4 and R 1/2 NW 1/4 of Section 4-T4S-R10E. My investigation revealed 3 of the 75 acres located in the SW 1/4 NW 1/4 of Section 4-T4S-R10E and 2 of the 75 acres in the SW 1/4 of Section 33-T3S-R10E. It appears that some of the error is due to the fact that the property line dividing the N 1/2 of Section 4 is not on the one-half mile line but is moved over about 175 feet west. Vested Right Claim No. 1209-2 should be readvertised to correct to the legal description of the lands irrigated.



Timothy G. Schaal, P.E.
Natural Resources Engineer III
Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 26, 1996

Edward and Betty Kanesky
PO Box 52
Caputa SD 57725

Dear Mr. & Mrs. Kanesky:

A Notice of Intent to validate Claim No. 1209-2 was published on June 22 and 29, 1988 in the Custer County Chronicle. The Water Rights Program opposed validation of No. 1209-2 for purposes of completing an on-site investigation of the claim. The investigation of Claim No. 1209-2 was completed on June 6, 1996, by Tim Schaal, staff engineer. The investigation found no change in the number of acres being irrigated and amount of water claimed.

The 1988 Notice was published with an error in the legal description of the lands irrigated. The notice did not include the acreage located in the S 1/2 SW 1/4 Section 33. Therefore, the notice needs to be readvertised to correct the error. The Readvertisement of the Notice of Intent to Validate Vested Water Right Claims has been sent to the Publisher of the Custer County Chronicle printed at Custer SD. For your information, a copy of the notice is enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

The cost of publication of this notice will be paid by the Water Rights Program. Please contact us if you have any questions.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 19, 1996

NOTICE

TO: Edward and Betty Kanasky
PO Box 52
Caputa, SD 57725

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

SUBJECT: Delay of Hearing on Recognized Vested Water Right Claim No. 1209-2

Recognized Vested Water Right Claim No. 1209-2 is being readvertised to correct an error in the legal description of the lands irrigated. A hearing on the validation of this claim was scheduled for October 2, 1996. However, consideration of Vested Water Right Claim No. 1209-2 is being continued until the next regular board meeting.

The Water Management Board will now consider validation of Vested Water Right Claim No. 1209-2 at 10:30 am, December 4, 1996, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD.

Vested water right applications and a water permit application dealing with Battle Creek were also scheduled for the October meeting. Marvin Truhe, representing the Borgmeyer family, requested a continuance of these applications. In order to allow all Battle Creek issues to be addressed at the same hearing, the Water Rights Program is continuing all Battle Creek issues, including your vested water right claim until the December 4, 1996, hearing time.

The applicable provisions of the September 5 and 12, 1996, notice published in the Custer County Chronicle entitled, "READVERTISEMENT OF NOTICE OF INTENT TO VALIDATE VESTED WATER RIGHT CLAIMS" will apply at the hearing.

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

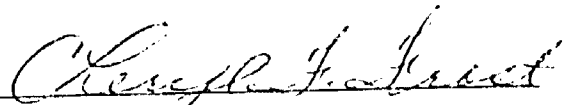
c: Diane Best, Assistant Attorney General

CERTIFICATION

I hereby certify that on September 19, 1996, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 19, 1996, regarding Delay of Hearing on Recognized Vested Water Right Claim Nos. 1209-2 and 1221-2, addressed as stated below:

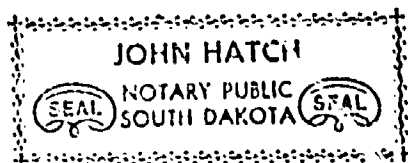
Recognized Vested Water Right claim No. 1209-2: Edward and Betty Kanesky
P.O. Box 52
Caputa, SD 57725

Recognized Vested Water Right Claim No. 1221-2: Bob Rittberger
Rittberger Brothers
HC 56, Box 19
Buffalo Gap, SD 57722


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 23rd day of September, 1996




Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001

Affidavit of Publication

STATE OF SOUTH DAKOTA

COUNTY OF CUSTER

)
)SS.
)

James Anderson

of said county, being duly sworn, on oath says that she is publisher or _____ of the CUSTER COUNTY CHRONICLE, a weekly newspaper printed and published in Custer City, said County of Custer and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein mentioned, and was and is printed wholly or in part in an office maintained at said place of

publication: that the Dept. of Environment

and Natural Resources

Readvertisement of Notice

of Intent

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for 2 successive week(s), on which said newspaper was regularly published, to wit:

9-5, 1996; _____, 19____;

9-12, 1996; _____, 19____;

_____, 19____; _____, 19____;

_____, 19____; _____, 19____;

_____, 19____; _____, 19____;

the full amount of the fees for the publication of the annexed notice is \$ 68.69

Subscribed and sworn to me before this 25th

of September, 1996;

Dore Zwick

Notary Public

My commission expires: May 14, 2000

READVERTISEMENT OF NOTICE OF INTENT

TO VALIDATE VESTED WATER RIGHT CLAIMS

Notice is given that the following vested water right claims in Custer County are eligible for validation by the Water Management Board. Readvertisement of the notice of intent to validate these claims, as published on June 22 and 29, 1988 in the Custer County Chronicle is necessary to correct errors in the previously published notice.

Vested Water Right No. 491-2, Wesley Harrison, LLC 83, Hermosa SD 57744 appropriates 2.53 cubic feet of water per second (cfs) from a dry draw dam located in the SW1/4 SE1/4 Section 26-T2S-R9E to irrigate 177 acres. The lands irrigated are located in the SE1/4 Section 26; SW1/4, NE1/2 SE1/4, SE1/4 NW1/4, S1/2 NE1/4 Section 25; all in T2S-R9E. The priority date is August 24, 1935.

Vested Water Right No. 1209-2, Edward and Betty Kanesky, PO Box 52, Caputa SD 57725 appropriates 1.07 cubic feet of water per second from Battle Creek located between points located in the NW1/4 NW1/4 and the SE1/4 NW1/4 Section 4-T4S-R10E. The 75 irrigated acres are located in the NW1/4 Section 4-T4S-R10E and S1/2 SW1/4 Section 33-T3S-R10E. The priority date is September 29, 1900.

Vested Water Right No. 1221-2, Rinberger Brothers, LLC 56 Box 19, Buffalo Gap, SD 57722 appropriates 0.94 cfs from Battle Creek located between points located in the SW1/4 NE1/4 and the SE1/4 NE1/4 Section 4-T4S-R10E. The 66 irrigated acres are located in the S1/2 NE1/4, NE1/4 SE1/4, SE1/4 NW1/4, NW1/4 NE1/4 Section 4-T4S-R10E. The priority date is September 29, 1900.

Any person who wishes to oppose validation of the readvertised vested right claim shall file a petition of intent to oppose the validation by September 20, 1996 with the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol Pierre, SD 57501-3181 (605 773-3332) and with the vested water right holder at the listed address. The petition may be informal, but it must include a statement describing the petitioner's interest in the vested water right claim, the reasons for the petitioner's opposition to the claim, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained.

Affidavit of Publication

STATE OF SOUTH DAKOTA

COUNTY OF CUSTER

) SS.

James Anderson

of said county, being duly sworn, on oath says that she is publisher or of the CUSTER COUNTY CHRONICLE, a weekly newspaper printed and published in Custer City, said County of Custer and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein, mentioned, and was and is printed wholly or in part in an office maintained at said place of

publication: that the Dept. of Environment

and Natural Resources

Readvertisement of Notice

of Intent

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for 2 successive week(s), on which said newspaper was regularly published, to wit:

9-5, 1996; _____, 19____;
9-12, 1996; _____, 19____;
 _____, 19____; _____, 19____;
 _____, 19____; _____, 19____;
 _____, 19____; _____, 19____;

the full amount of the fees for the publication of the annexed notice is \$ 68.69

Subscribed and sworn to me before this 25th

of September, 1996;

Dore Zwieler

Notary Public

My commission expires: May 14, 2000

The Water Management Board will consider this vested water right claim at 10:00 am, October 2, 1996, Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) validate the claim as recommended; 2) validate the claim as licensed prior to the on-site investigation; 3) validate the claim based on evidence presented at the public hearing; or 4) defer validation of the claim. The October 2, 1996, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by September 20, 1996.

This validation is made pursuant to the provisions of S.D.A.C. 16-1-1 thru 16-1-9, 46-1-14, 46-2-3.1, 46-2-11, 46-2-17, 46-2A, 16 thru 46-8, 46-2A-22, 46-5-1 thru 46-5-6.1, 46-13, 46-5-30.2 thru 46-5-37.1, 46-5-46, 46-5-49, 46-6-1 thru 46-6-6, 46-6-6.1, 46-6-10, 46-6-13, 46-6-21, 46-7-1 thru 46-7-5.3, 46-7-14, 46-7-15 and Board Rules 4:02:01:01 thru 74:02:01:05, 74:02:01:20 thru 74:02:01:21.

Concluded by September 20, 1996, the Water Rights Program address to the copies of information pertaining to claim or a copy of the vested claim list for another (or in a summary of South Dakota and Water Rights Informal hearing and access to the hearing or 4) obtain an impaired. Notice Department of Resources. 8/15/96, 9/12



PAYMENT REQUEST FORM

PAYEE: Custer County Chronicle
P.O. Box 551
Custer, SD 57730

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

DESCRIPTION OF SERVICE, PRODUCE OR TRANSFER

Account Number: SOU16

Publication of Readvertisement of Notice of Intent to Validate Vested Water Right Claim Nos. 491-2, 1209-2 and 1221-2, and publication of Notice of Cancellation Consideration of Water Right Filing No. 0237-2, John H. Jewett and Harry C. Jewett.

AMOUNT: \$106.78

FUNDING SOURCE:

GENERAL: X

FEDERAL:

COMMENTS:

AUTHORIZATION:

John H. Jewett

10-9-96

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

November 21, 1996

NOTICE

TO: Edward and Betty Kanesky
PO Box 52
Capota, SD 57725

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

SUBJECT: Delay of Hearing on Recognized Vested Water Right Claim No. 1209-2

Recognized Vested Water Right Claim No. 1209-2 was readvertised and scheduled for validation before the Water Management Board on December 4, 1996. However, consideration of Vested Water Right Claim No. 1209-2 before the Board is again being continued.

The reason for the continuance is that a vested water right application from Battle Creek also scheduled for December 4, 1996, has been continued. In order to allow all Battle Creek issues to be addressed at the same hearing, the Water Rights Program is continuing these Battle Creek issues including your vested water right claim.

The Water Management Board will now consider the Battle Creek applications at their March 5 and 6, 1997, meeting. Future notice will be provided on the exact date, time and location of the meeting.

Please contact Eric Gronlund, staff engineer at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General

CERTIFICATION

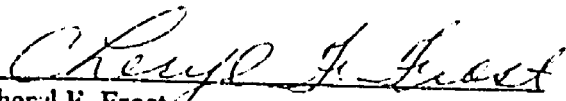
I hereby certify that on November 21, 1996, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated November 21, 1996, regarding Delay of Hearing on Recognized Vested Water Right Claim Nos. 1209-2 and 1221-2, addressed as stated below:

Recognized Vested Water Right Claim No. 1209-2: Edward and Betty Kanesky
P.O. Box 52
Caputa, SD 57725

Recognized Vested Water Right Claim No. 1221-2: Bob Rittberger
Rittberger Brothers
HC 56, Box 19
Buffalo Gap, SD 57722

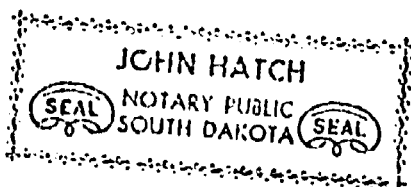
Copies of the above described Notices were sent inter-office to:

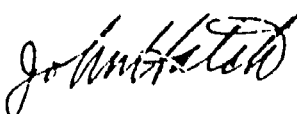
Diane Best, Assistant Attorney General, Capitol Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 25th day of November, 1996




Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 13, 1997

NOTICE

TO: Edward and Betty Kanasky
PO Box 52
Caputa, SD 57725

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

SUBJECT: Delay of Hearing on Recognized Vested Water Right Claim No. 1209-2, Edward and Betty Kanasky

The hearing for validation of your recognized Vested Water Right Claim No. 1209-2 for irrigation from Battle Creek is again being continued and will not be heard before the Water Management Board on March 5 and 6, 1997.

The reason for the continuance is that an amended vested water right application from Battle Creek scheduled for the March meeting has been continued. In order to allow all Battle Creek issues to be addressed at the same hearing, the Water Rights Program is continuing these Battle Creek issues including your vested water right claim.

The hearing before the Water Management Board on these Battle Creek applications is now tentatively scheduled for a July 9 and 10, 1997, Board meeting. Future notice will be provided on the exact date, time and location of the meeting.

Please contact Eric Gronlund, staff engineer at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General

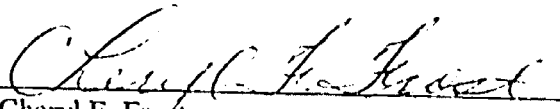
CERTIFICATION

I hereby certify that on February 13, 1997, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated February 13, 1997, regarding Delay of Hearing on Recognized Vested Water Right Claim No. 1209-2, Edward and Betty Kanesky, addressed as stated below:

Edward and Betty Kanesky, P.O. Box 52, Caputa, SD 57725.

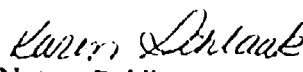
A copy of the above described Notice was sent inter-office to:

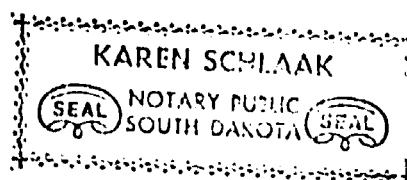
Diane Best, Assistant Attorney General, Capitol Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 18th day of February, 1997


Notary Public



KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 22, 1997

NOTICE

TO: Edward and Betty Kanesky
PO Box 52
Caputa, SD 57725

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

SUBJECT: Scheduling of Hearing on Recognized Vested Water Right Claim No. 1209-2, Edward and Betty Kanesky

The Water Management Board will consider validation of your recognized Vested Water Right Claim No. 1209-2 for irrigation from Battle Creek at 10:00 AM (CDT), July 10, 1997, in the Conference Room, Floyd Mathew Training Center, Joes Foss Building, 523 E. Capitol Ave., Pierre, SD. The agenda time is an estimate and may be delayed due to prior agenda items.

The hearing will be held in conjunction with other Battle Creek issues, including several vested water right applications, a water permit application and cancellation of a number of water right filings.

Please contact Eric Gronlund, staff engineer at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General

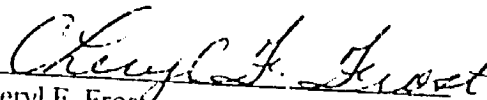
CERTIFICATION

I hereby certify that on May 22, 1997, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 22, 1997, regarding Scheduling of Hearing on Recognized Vested Water Right Claim No. 1209-2, Edward and Betty Kanesky, addressed as stated below:

Edward and Betty Kanesky, P.O. Box 52, Caputa, SD 57725.

A copy of the above described Notice was sent Inter-office to:

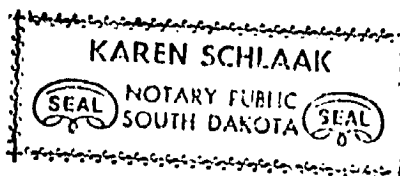
Diane Best, Assistant Attorney General, Capitol Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 22nd day of May, 1997


Notary Public



KAREN SCHLAACK, Notary Public
My Commission Expires
April 1, 2001



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

AUG 8 1997

Edward and Betty Kanesky
PO Box 52
Caputa SD 57725

Dear Mr. & Mrs. Kanesky:

The Water Management Board has validated the enclosed Vested Water Right No. 1209-2. This validation gives legal status to the claim and is the final document for your vested right. Enclosed is the reissued water license which reflects the correct location of the acreage as validated by the Board.

As long as you use the water beneficially, as stated in the validation, 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

enclosure

SOUTH DAKOTA

VESTED WATER RIGHT NO. 1209-2 FOR IRRIGATION

Date of Receipt of Claim September 4, 1974.

Date of Validation July 10, 1997.

The Water Management Board validated Vested Water Right Claim No. 1209-2 for irrigation purposes for Edward and Betty Kanesky, PO Box 52, Caputa SD. 57725 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 1209-2 appropriates 1.07 cubic feet of water per second from Battle Creek located between points located in the NW 1/4 NW 1/4 and the SE 1/4 NW 1/4 Section 4 -T4S-R10E. The 75 acres irrigated are located in the NW 1/4 Section 4-T4S-R10E and S 1/2 SW 1/4 Section 33-T3S-R10E.
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 September 29, 1900.
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 must not be unlawfully impaired by this appropriation.

WATER MANAGEMENT BOARD

By: _____

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

AUG 8 1997

date



STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 1209-2 FOR IRRIGATION

(1) Milo Harrington and Milton Tiltum, Hermosa SD were issued Vested Water Right License No. 1209-2, for a right to appropriate 1.07 cubic feet of water per second from Battle Creek, Custer County, South Dakota, for irrigation purposes. Vested Water Right No. 1209-2 with a priority date of September 29, 1900 was issued for diversion with construction of the described water supply system completed and application of water to beneficial use completed.

On June 17, 1994, Vested Right No. 1209-2 was transferred to Edward and Betty Kanesky.

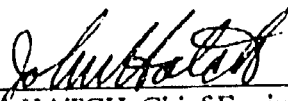
On July 10, 1997, the Water Management Board validated Vested Water Right No. 1209-2. Vested Right No. 1209-2 is being reissued to list the actual lands irrigated, based on a June 6, 1996 investigation of the system. The investigation also found a portion of the acreage irrigated was incorrectly listed on the original permit.

(2) The vested right owner is entitled to divert 1.07 cubic feet of water per second for beneficial use. The location of the diversion point is between a point 1,100 feet south and 500 feet east (NW 1/4 NW 1/4) and a point 2,200 feet south and 2,475 feet east (SE 1/4 NW 1/4) from the northwest corner of Section 4-T4S-R10E.

The location of the irrigated acreage is:

Sec 4-T4S-R10E	NW 1/4 NW 1/4	18 acres	Sec 33-T3S-R10E	SW 1/4 SW 1/4	1 acre
	NE 1/4 NW 1/4	31 acres		SE 1/4 SW 1/4	1 acre
	SE 1/4 NW 1/4	21 acres			
	SW 1/4 NW 1/4	3 acres			
Total					75 acres

(3) Pursuant to Section 46-5-30.1 Edward and Betty Kanesky, PO Box 52, Caputa SD 57725 the holders and/or owners of Vested Water Right No. 1209-2 are issued a license to appropriate 1.07 cubic feet of water per second from Battle Creek with a priority date of September 29, 1900 from the location specified in (2) of this license. The water is to be used for the purpose of irrigation. This license is subject to any limitations, conditions or qualifications listed in Vested Water Right No. 1209-2 and subject to South Dakota State Law.


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

AUG 8 1997
date





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 29, 1997

1209-2

Edward & Betty Kanesky
Box 52
Caputa, SD 57725

Dear Mr. & Mrs. Kanesky:

Thank you for the prompt return of your 1997 irrigation questionnaire pertaining to Vested Right No. 1209-2. Upon reviewing the form, I noticed that you had not completed the back side of the form.

In order to figure out how much water is used from a particular source each year, we need to have the pump rate, days per month and average hours per day each system is used. Enclosed is your 1997 irrigation questionnaire. Please complete the highlighted areas and return it to our office by December 1, 1997.

If you have any questions or need assistance in completing the questionnaire, please give me a call. Thank you in advance for your assistance.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352



1209-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 5. 501-3181

January 9, 1998

NOTICE

TO: EDWARD & BETTY A KANESKY, BOX 52, CAPUTA, SD 57125

FROM: Ron Duvall, Natural Resources Engineer
for John Hatch, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 1997 Irrigation Questionnaire(s)

Our records indicate that the 1997 Irrigation Questionnaire has not been submitted for Permit No(s) 1209-2. The request for the Questionnaire was dated October 17, 1997. The Water Management Board has directed that owners of water permits who have not submitted the 1997 Irrigation Questionnaire be given notice of hearing to determine if any Board action is to be taken concerning this issue.

The hearing will be held at 9:45 am, February 25, 1998, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. Following the hearing, the Water Management Board can:

1. Amend Permit No(s) 1209-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action; or
3. Take no action.

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

If the questionnaire(s) is(are) received in this office on/or before February 20, 1998, your name will be deleted from the Board agenda. If you have any questions or need assistance with completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

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

Is your RETURN ADDRESS completed on the reverse side?

REMARKS:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

1269-2

EDWARD & BETTY A KANESKY
BOX 52
CAPUTA SD 57725

4a. Article Number

2179157238

4b. Service Type

- | | |
|---|---|
| ☐ Registered | ☒ Certified |
| ☐ Express Mail | ☐ Insured |
| ☐ Return Receipt for Merchandise | ☐ COD |

7. Date of Delivery

1/16/98

5. Received By: (Print Name)

8. Addressee's Address (Only if requested
and fee is paid)

6. Signature: (Addressee or Agent)

X *E. Kanisky*

P3 Form 3811, December 1994

102595-97-B-0179

Domestic Return Receipt

Thank you for using Return Receipt Service.

1209-2



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 17, 1998

1209-2

Ed & Betty Kanasky
Box 52
Caputa, SD 57725

Dear Mr. & Mrs. Kanasky:

I am writing to acknowledge receipt of your 1997 irrigation questionnaire. You may disregard the January 9, 1998, "Notice" concerning reporting requirements for Water Permit No. 1209-2.

I completed a questionnaire for you based on our February 17th telephone conversation. The information was received in our office prior to the Water Management Board meeting and your names have been deleted from the agenda.

Your concern over submission of the forms and the necessity for having to complete them is understandable. The information we gather from irrigators through the irrigation questionnaire process is an important tool we use to manage the water resources of the state. The information provided is used to help determine water availability from specific water sources.

Thank you for calling and if you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352



1209-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

www.state.sd.us/denr

January 14, 2000

NOTICE

TO: EDWARD & BETTY A KANESKY, BOX 52, CAPUTA, SD 57725

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 1999 Irrigation Questionnaire(s)

Our records indicate that the 1999 Irrigation Questionnaire has not been submitted for Permit No(s) 1209-2. The request for the Questionnaire was dated October 7, 1999. The Water Management Board has directed that owners of water permits who have not submitted the 1999 Irrigation Questionnaire be given notice of hearing to determine if any Board action is to be taken concerning this issue.

The hearing will be held at 1:30 pm, March 1, 2000, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. Following the hearing, the Water Management Board can:

1. Amend Permit No(s) 1209-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action; or
3. Take no action.

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

If the questionnaire(s) is(are) received in this office on/or before February 28, 2000, your name will be deleted from the Board agenda. If you have any questions or need assistance with completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

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

1209-2

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Received by (Please Print Clearly) <u>Ed KANESKY</u> B. Date of Delivery <u>1/18/00</u>	
1. Article Addressed to: EDWARD & BETTY A KANESKY BOX 52 CAPUTA SD 57725		C. Signature <u>X Ed Kanesky</u> ☐ Agent ☐ Addressee	
		D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
2. Article Number (Copy from service label) <u>2227 670 363</u>		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☐ Yes	

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181
www.state.sd.us/denr

January 28, 2000

1209-2

Ed & Betty Kanesky
Box 52
Caputa, SD 57725

Dear Mr. & Mrs. Kanesky:

Thank you for calling about your 1999 irrigation questionnaire. I completed a questionnaire for you based on our phone conversation. You may disregard the January 14, 2000, "Notice" concerning reporting requirements for Water Right No. 1209-2.

The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352



1209-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 14, 2004

NOTICE

TO: EDWARD & BETTY A KANESKY, BOX 52, CAPUTA, SD 57725

FROM: Ron Duvall, Natural Resources Engineer
for Garland Erbele, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2003 Irrigation Questionnaire(s)

Our records indicate that the 2003 Irrigation Questionnaire has not been submitted for Permit No(s) 1209-2. The request for the Questionnaire was dated October 17, 2003. The Water Management Board has directed that owners of water permits who have not submitted the 2003 Irrigation Questionnaire be given notice of hearing to determine if any Board action is to be taken concerning this issue.

The hearing will be held at 8:30 am, March 3, 2004, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. Following the hearing, the Water Management Board can:

1. Amend Permit No(s) 1209-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action; or
3. Take no action.

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

If the questionnaire(s) is(are) received in this office on/or before February 27, 2004, your name will be deleted from the Board agenda. If you have any questions or need assistance with completion of the irrigation questionnaire(s), please contact Genny McMath at (605) 773-3352.

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



1209-2

Track & Confirm

Current Status

You entered 2301 3460 0000 8515 8534

Your item was delivered at 9:56 am on January 16, 2004 in CAPUTA, SD 57725. The item was signed for by E KANESKY.

[Shipment Details >](#)

Notification Options

▶ Track & Confirm by email

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▶ Request Proof of Delivery

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Track & Confirm

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SIGNATURE CONFIRMATION NUMBER:
2301 3460 0000 8515 8534

EDWARD & BETTY A KANESKY
BOX 52
CAPUTA SD 57725

Waiver of Signature ☐ YES ☐ NO

Postmark
Here

POSTAL CUSTOMER:
Keep this receipt. For Inquiries:
Access Internet web site at
www.usps.com
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**DEPARTMENT of ENVIRONMENT
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PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

January 26, 2004

1209-2

Edward & Betty Kanesky
Box 52
Caputa SD 57725

Dear Mr. & Ms. Kanesky:

I am writing to acknowledge receipt of your 2003 irrigation questionnaire. You may disregard the January 14, 2004, "Notice" concerning reporting requirements for Water Right No. 1209-2.

The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352



**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: EDWARD/BETTY S KANESKY
BOX 52
CAPUTA SD 57725

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

SUBJECT: Shutoff Order for Battle Creek Water Rights

Shutoff Order for Water Right Nos. 1209-2

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.



1209-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 04, 2005

NOTICE OF ORDER

TO: Edward Kanesky
Box 52
Caputa, SD 57725-0052

FROM: Garland Erbele, Chief Engineer
DENR Water Rights Program

On April 13, 2005 Water Rights staff conducted an on-site survey of irrigators from Battle Creek in response to complaints of a low flow rate of water on the lower portion of the stream. The U.S. Geological Survey (USGS) gaging station on the lower reach of Battle Creek at the Highway 40 Bridge east of Hermosa, SD had recorded a flow rate below 1.0 cubic feet per second (cfs) for several days before the on-site survey. Staff observed that a dam with a gated culvert had been constructed on your property to impound and divert Battle Creek water directly into an irrigation ditch.

You hold Water Right No. 1209-2 with a priority date of September 29, 1900 authorizing the appropriation of 1.07-cfs of Battle Creek for irrigating 75-acres. The water right authorizes you to pump water from Battle Creek between the two points set in the license for irrigation purposes. This water right does not authorize the impoundment of Battle Creek water for irrigation purposes or the interference with the stage, level, or flow of public water per SDCL 46-5-1.1. It also limits your diversion of water from Battle Creek to a rate no greater than 1.07-cfs as authorized by your water right

Pursuant to SDCL 46-2-17 and 46-2-18, this notice is an order to remove the boards in the culvert so that the stage, level, and flow of Battle Creek are not obstructed. The culvert is sufficiently sized and set on the channel bottom of Battle Creek, therefore, the dam and culvert do not have to be removed. This order also serves notice that your maximum diversion rate from Battle Creek as authorized by Water Right No. 1209-2 may not exceed 1.07-cfs (480 gallons per minute). Failure to comply with this order is a violation of SDCL 46-1-11 and will result in the water right being brought before the Water Management Board.

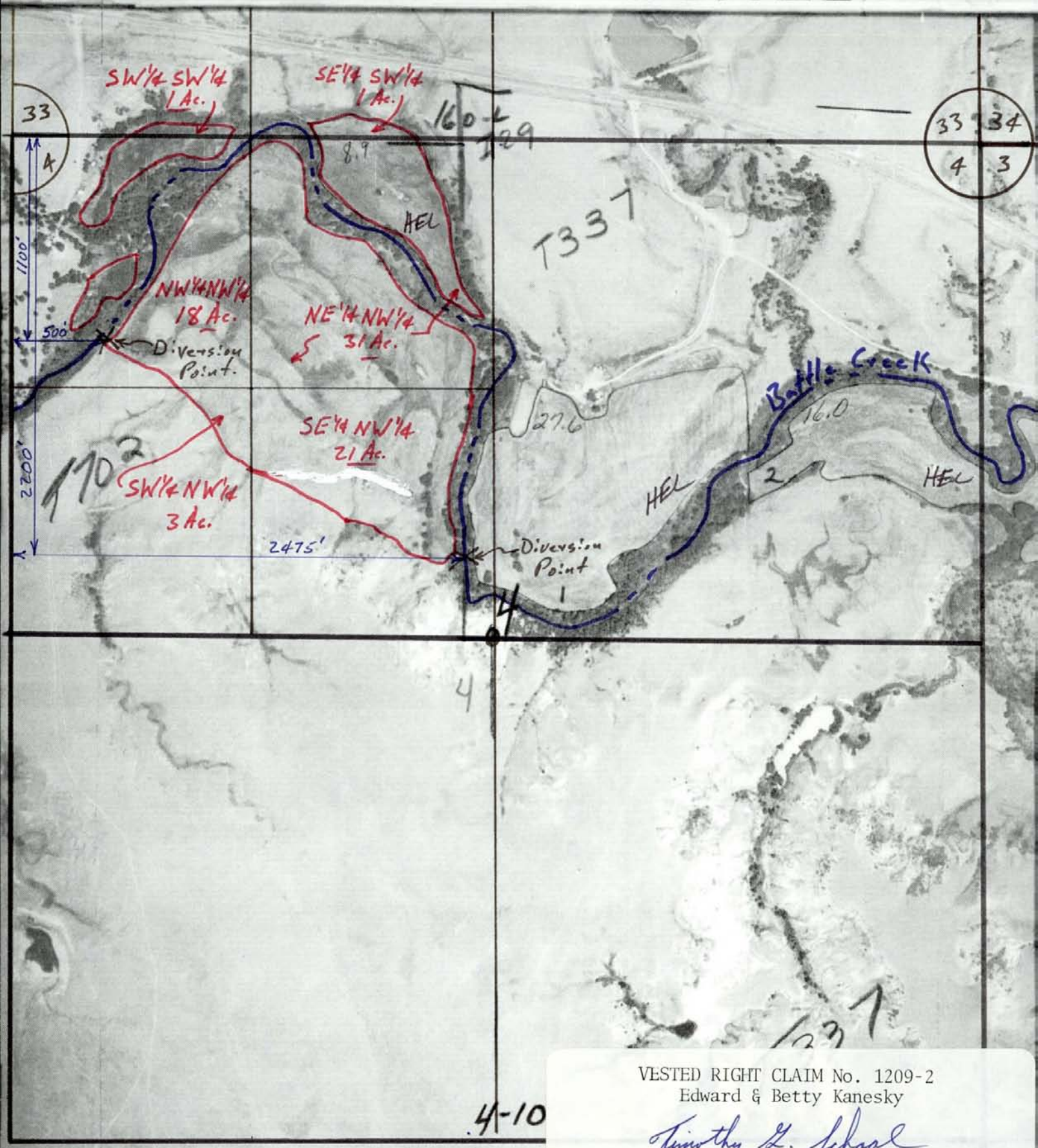
If you have any questions, please contact Mark Rath or Don Stroup at (605)773-3352.

Attachments:

SDCL 46-5-1.1
SDCL 46-1-11
SDCL 46-2-17 & 18
Water Right No. 1209-2

1209-2

NOT TO SCALE



VESTED RIGHT CLAIM No. 1209-2
Edward & Betty Kanasky

Timothy G. Schaal

Timothy G. Schaal
Natural Resources Engineer III
June 21, 1996



1209-2
**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 Kanasky, 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.



1209-2

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:

1209-2

PERMIT NO	PTL_PRIOR1	PTL_PRIOR2	PRIORDATE	COUNTY	ST/USE	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	RAPID CITY	SD	57702	9066
1209-2			09/29/1900	CU	LC	IRR	EDWARD/BETTY S	BOX 52	CAPUTA	SD	57725	
1221-2			09/29/1900	CU	LC	IRR	RITBERGER BROTHERS	15663 SD HWY 40	HERMOSA	SD	57744	
2367-2			01/01/1905	CU	LC	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
2367A-2			01/01/1905	CU	PE	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 PETE	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

EDWARD AND BETTY KANESKY
BOX 52
CAPUTA, SD 57725

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	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



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: EDWARD AND BETTY KANESKY
BOX 52
CAPUTA SD 57725

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

SUBJECT: Battle Creek Water Rights Shutoff Order

Shutoff Order for Water Right Nos. 1209-2

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: EDWARD AND BETTY KANESKY
BOX 52
CAPUTA SD 57725

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. (1209-2)

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:

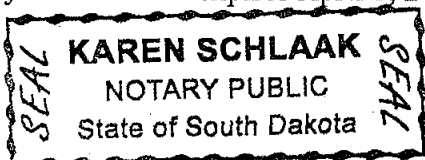
NEUGEBAUER BROTHERS DAIRY	STANLEY NEUGEBAUER	14197 SD HWY 40	HERMOSA	SD	57744
WYOMING DAKOTA RAILROAD PROPERTIES INC	DAVID S DRACH	120 S 6TH ST - 9TH FLOOR	MINNEAPOLIS	MN	55402
TRAVIS BIES		25813 SOUTH FOR ROAD	FAIRBURN	SD	57738
JD RANCH REAL ESTATE LLC		HCR 89 BOX 298	HERMOSA	SD	57744
RUSHMORE VIEW 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

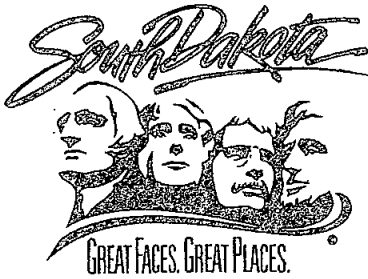

 Gail Jacobson
 Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
 COUNTY OF HUGHES)

Sworn to, before me, this 26th day of June, 2013.


 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

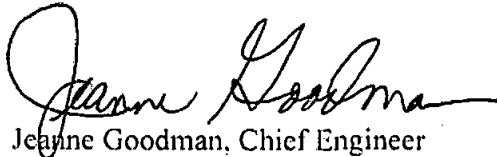
South Dakota water law gives the highest priority to domestic use, which includes livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses, including irrigation, will

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 AGRICULTURE
and NATURAL RESOURCES**

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

August 16, 2022

EDWARD/BETTY S KANESKY
BOX 52
CAPUTA, SD 57725

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

EDWARD/BETTY S KANESKY

1209-2

BOX 52

CAPUTA, SD 57725

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: EDWARD/BETTY S KANESKY
BOX 52
CAPUTA, SD 57725

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

Adam Mathiowetz

Subject: Shutoff Order for Water Right No. 1209-2

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).