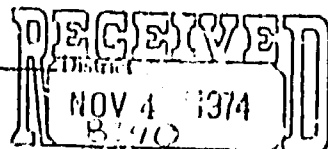


Map No. _____ Water Division No. 2 BATTLE CREEK
(Blanks to be Filled by the Engineer for the W. R. C.)APPLICATION FOR PERMIT
"VESTED RIGHT CLAIM"STATE WATER RIGHTS COMMISSION
PIERRE, SOUTH DAKOTA

To Appropriate Water within the State of South Dakota

(NOTE: Draw a line through items not applicable)

1. Name of Applicant Raymond A. and Dorothy M. Boyce
Postoffice address R.R. #4, Box 967, Rapid City, S.D. 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 Lower Irrigation System
4. Amount of water claimed (cubic feet per second) 1.14
5. Source of water supply Battle Creek
6. Location of point of diversion Between a point South 47° West, 3600 feet and a point due South 1800 ft. of the NE Corner of 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 80

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.
SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 4, T4S, R10E	35
SE $\frac{1}{4}$ NE $\frac{1}{4}$ & NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4, T4S, R10E	45

Land Description	No. Acres Irr.

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.
Centrifugal pump, 8 inch
Gasoline industrial engine

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

500 feet of 6 inch aluminum pipe
Old existing ditches

C. Works proposed to apply water to beneficial use.

Gravity irrigation through existing laterals

Estimated Total Cost \$ _____

Attachments: Attach Form 2A if diversion from a well or dugout, or to storage of water, is proposed. Attach map.
(See instructions concerning preparation.)

STATE OF SOUTH DAKOTA

County of PenningtonI, Raymond A. and Dorothy M. Boyce

the applicant, certify that I have read the foregoing application and have examined the attached map and that the matters therein stated are true and that I intend, and am able to complete the necessary construction.

Signed Raymond A. Boyce Dorothy M. BoyceSubscribed and sworn to before me this 29 day of October 1974

Notary Public (or other qualified officer)

WATER RIGHT APPLICATION APPROVAL

The Water Rights Commission hereby approves Water Right Application No. 1221-2
RAYMOND A. & DOROTHY M. BOYCE - R.R. #4, Box 967, RAPID CITY
 (Applicant) (Post Office Address)
SOUTH DAKOTA 57701 4350 Cliff Ave.
 (State) With the following modifications:

"VESTED RIGHT" CLAIMED

PRIORITY FOR THIS PERMIT IS ESTABLISHED FROM
 WATER RIGHT FILING NO 0345-2.

Date of first receipt of application NOVEMBER 4 19 74
 Date of return to applicant for correction, amendments or changes required --- 19 ---
 Date of receipt of corrected application --- 19 ---
 Approved NOVEMBER 13 19 74 Recorded in Book 13 Page 125

WATER RIGHT PERMIT NO. 1221-2

The Water Rights Commission hereby grants and issues this Water Right Permit No. 1221-2 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 ~~to be~~ completed ~~on or before~~ ---
3. The whole of said work is ~~to be~~ completed ~~on or before~~ ---
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is COMPLETED 19 ---
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 1.14 cubic feet per second; neither shall it exceed the capacity of the above described water supply system, nor shall it exceed the amount of water needed for beneficial uses served, and if for the irrigation purposes said appropriation must be limited to not more than 3 acre feet per acre per year and be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before JUNE 30 19 55; said water to be used during the following described annual period: APRIL THRU OCTOBER

Witness my hand this 27TH day of NOVEMBER 19 74

WATER RIGHTS COMMISSION

By:

Dorrell D. Dineen
 Chief Engineer, Executive Officer

Certificate of Construction Issued NOVEMBER 27 19 74

Water License Issued NOVEMBER 27 19 74

Permit No. 1221-2

Water Diversion No. 2 BATTLE CREEK Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That Raymond A. and Dorothy M. Boyce

Vested Right the holder _____ of
Permit No. 1221-2, issued upon Application No. 1221-2, bearing date of priority of September 29,
1900 authorizing the diversion of 1.14 cu. ft. per second of the waters of _____
Battle Creek County of Custer, State of South Dakota xx
between a point South 47° West, 3600 feet, and a point due South, 1800 feet of
the NE Corner, Section 4, T8S, R10E

_____, for irrigation

purposes, has _____ complied with the provisions of the laws of the State of South Dakota relating to proof of
completion of the works of diversion set out and described in said Permit; that said works are recognized satisfactory
~~xxxxxxx~~ for diverting and conveying to the place of intended use 1.14 cu. ft. per second of water.

Date November 27, 1974

By: WATER RIGHTS COMMISSION

DONALD DRISCOLL, Chief Engineer

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 1221-2

(1) WHEREAS, On the 4th day of November, A. D. 19 74
Raymond A. and Dorothy M. Boyce

made Water Right Application No. 1221-2 Vested Right
 for a permit to use 1.14 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 27th day of November, A. D. 19 74
Vested Right
 Permit No. 1221-2, with a date of priority of September 29, 1900

was issued to said applicant a for the diversion of said water, and recognizing completion of construction of the water
 supply system therein described ~~xxxxxx~~ ~~xxxxxx~~ ~~xxxxxx~~ and ~~for~~ the
 application to beneficial use of said water ~~xxxxxx~~ ~~xxxxxx~~ ~~xxxxxx~~

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 1.14 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

SW $\frac{1}{4}$ NE $\frac{1}{4}$ 35 acres

SE $\frac{1}{4}$ NE $\frac{1}{4}$ 45 acres

Total 80 Acres

(5) NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota, We hereby grant and confirm to Raymond A. and Dorothy M. Boyce

_____ of Rapid City, S.D.

the holder _____ and owner _____ of said Vested Right permit No. 1221-2 a water right, dating from September 29, 1900

_____ to use of 1.14 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 47° West, 3600 feet, and a point due South, 1800 feet of the NE Corner, Section 4, T4S, R10E

and conduct to and upon portions 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. 1221-2 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 27th day of November A.D.

Nineteen Hundred and Seventy-four

WATER RIGHTS COMMISSION

By:

Chief Engineer, Executive Officer **DONALD DRISCOLL**

This Water License No. 1221-2 is based on a "vested right" claim recorded and filed by the Water Rights Commission.

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) Raymond A. and Dorothy M. Boyle

Post Office Address R.R. #4, Box 967, Rapid City, 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 and Israel Bower

17. Amount of water originally applied to beneficial use Ten plus c. f. s.

18. Present Use of Water

Amount of water now being used 3.35 c. f. s.

Date that this amount of water was first used 1963

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)

County of Pickens) ss.

I, Raymond A. & Dorothy M. Boyle, the applicant, certify that I have read the foregoing and that the matters therein stated are true.

Signed Raymond A. Boyle
Dorothy M. Boyle

Subscribed and sworn to before me this 29 day of October, 19 74

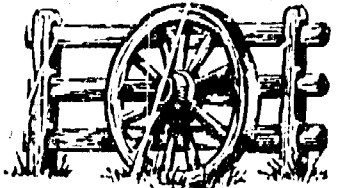
John Doyle
(Notary Public - ~~other qualified officer~~)

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

L. Mary E. Phelps

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

1221-2
BRYCE D. NELSON
REAL ESTATE



October 8, 1987

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

Attention: Water Rights Division
Timothy G. Schaal

Dear Mr. Schaal;

Raymond and Dorothy Boyce have sold their ranch property in Custer County to
Clarence L. Werner.

I have enclosed a copy of the deed for your files.

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

Sincerely,

Bryce D. Nelson

Bryce D. Nelson
BDN/bls

1221-2

Raymond A. Boyce and Dorothy M. Boyce, husband and wife

grantor(s), of Pennington County,State of South Dakota for and in consideration of One Dollarand other good and valuable consideration DOLLARSGRANTS, CONVEYS AND WARRANTS TO Clarence L. Werner, a married persongrantee, of Route 4, Box 15B, Hermosa, SD 57744 P. O. the following describedreal estate in the County of Custer in the State of South Dakota:

See attached Exhibit A

Dated this 1st day of October, 1982

Raymond A. Boyce
Dorothy M. Boyce
 Raymond A. Boyce
 Dorothy M. Boyce

 STATE OF SOUTH DAKOTA, } ss.
 County of _____

Filed for record this _____ day of

_____, 19____ at

____ o'clock ____ M., and recorded in

Book _____, Page _____

Register of Deeds.

By _____ Deputy.

Fees, \$ _____

 STATE OF SOUTH DAKOTA, } ss.
 County of Pennington

 On this the 1st day of October, 1982, before
 me, Scott D. Nelson
 the undersigned officer, personally appeared
Raymond A. Boyce and Dorothy M. Boyce,
husband and wife

 known to me or satisfactorily proven to be the person(s) whose
 name(s) _____ subscribed to the within instrument and acknowl-
 edged that _____ the _____ executed the same for the purposes therein
 contained.

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

Scott D. Nelson
 Notary Public

My commission expires February 16, 1992.

South Half of the Southeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$) of Section Twenty-Eight (28); and the East Half (E $\frac{1}{2}$) and the East Half of the Northwest Quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$) and the East Half of the East Half of the Northeast Quarter of the Southwest Quarter (E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Thirty-Three (33); and the East Half (E $\frac{1}{2}$) of Section Thirty-Six (36); all in Township Three (3) South, Range Ten (10) East of the Black Hills Meridian, Custer County, South Dakota; and

Government Lot Four (4) and the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) and the West Half of the Southwest Quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Three (3); and Government Lots One (1) and Two (2) and the South Half of the Northeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$) and the Southeast Quarter (SE $\frac{1}{4}$), East Half of the East Half of the East Half (E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$) of Government Lot Three (3) (also referred to as the East Half of the East Half of the East Half of the Northeast Quarter of the Northwest Quarter (E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$)) and the East Half of the East Half of the East Half of the Southeast Quarter of the Northwest Quarter (E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Four (4); and the East Half (E $\frac{1}{2}$) of Section Nine (9); and the West Half of the West Half (W $\frac{1}{2}$ W $\frac{1}{2}$) of Section Ten (10); and the West Half of the Northwest Quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$) of Section Fifteen (15); and the South Half of the Northeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$) of Section Sixteen (16); and Government Lots Three (3) and Four (4), and the Southwest Quarter of the Southwest Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Twenty-Seven (27); and Government Lots One (1) and Two (2) and the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) and the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Thirty-Three (33); and Government Lots One (1) and Two (2) and the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Thirty-Four (34); all in Township Four (4) South, Range Ten (10) East of the Black Hills Meridian, Custer County, South Dakota; and

Government Lots One (1) and Two (2) and the East Half of the Northwest Quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$) and the East Half (E $\frac{1}{2}$) of Section Thirty-One (31); and the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) and the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) and the South Half of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$) and the North Half of the Southwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Thirty-Two (32); all in Township Three (3) South, Range Eleven (11) East of the Black Hills Meridian, Custer County, South Dakota; and

Government Lots One (1) and Two (2) and the South Half of the Northeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$) and the North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$) of Section Six (6); all in Township Four (4) South, Range Eleven (11) East of the Black Hills Meridian, Custer County, South Dakota;

EXCEPTING from the E $\frac{1}{2}$ of Sec. 36, T3S, R10E BHM and from the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Sec. 16, T4S, R10E BHM deposits of coal, ores, metals and other minerals, asphaltum, oil, gas and other like substances, and rights relating thereto, as reserved by the State of South Dakota in Patents recorded March 28, 1958, in Deed Book 24, Page 111, and April 2, 1963, in Deed Book 25, Page 48, Custer County records;

Exhibit A Page 2

AND ALSO EXCEPTING from the S $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 33, T3S, R10E BHM, and from Govt. Lots 1 and 2 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 33 and Govt. Lots 1 and 2 of Sec. 34, T4S, R10E BHM, and from the SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Sec. 32, T3S, R11E BHM, and the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Sec. 6, T4S, R11E BHM, all the coal and other minerals in said land, together with the right to prospect for, mine and remove the same, pursuant to the provisions and limitations of the Act of December 29, 1916 (39 Stat., 852), as reserved by the United States in Patents recorded October 23, 1924, in Patent Book 6, Page 218, and May 14, 1927, in Patent Book 6 Page 374, and December 27, 1930, in Patent Book 7, Page 42, Custer County Records;

AND ALSO EXCEPTING from the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Sec. 33, T3S, R10E BHM, and E $\frac{1}{2}$ of Sec. 9 and W $\frac{1}{2}$ W $\frac{1}{2}$ of Sec. 10 and W $\frac{1}{2}$ NW $\frac{1}{4}$ of Sec. 15, T4S, R10E BHM, all coal, oil, gas, and other minerals, including all uranium, thorium, and all other materials determined pursuant to Section 5 (b) (1) of the Atomic Energy Act of 1946 (60 Stat. 761), to be peculiarly essential to the production of fissionable material; also including sand, gravel, stone, clay, and similar materials, together with the usual mining right, powers, and privileges, including the right at any and all times, to enter upon the land and use such parts of the surface as may be necessary in prospecting for, mining, saving, and removing said minerals or materials, as reserved by the United States of America in Deed recorded July 29, 1952, in Deed Book 20, Page 643, Custer County records;

AND ALSO EXCEPTING from all of the land in R11E BHM fifty percent of all oil, gas and other minerals in said land, as reserved by Harry R. Morris and Betty Morris in Deed recorded March 9, 1963, in Deed Book 25, Page 39, Custer County records.

South Dakota
Department of
Water & Natural Resources

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

October 19, 1987

827-2A

1024-2

1221-2

Bryce Nelson Real Estate
PO Box 2211
4820 Riva Ridge Rd
Rapid City, SD 57709

Dear Mr. Nelson:

This letter will acknowledge receipt of the warranty deeds you forwarded to our office concerning land purchased by Clarence Werner. Portions of the legal descriptions specified in the deeds are covered under Water Right Nos. 827-2A, 1024-2, and 1221-2.

In order for these water rights to be transferred from Raymond and Dorothy Boyce to Clarence Werner, a "Notice of Transfer" will need to be filed for each one. Enclosed are partially completed transfer forms. These should be signed by the new owner in the presence of a Notary Public. A \$2.50 filing fee is required for filing a "Notice of Transfer". Please return the completed transfer forms and a total of \$7.50 in filing fees to our office.

Part of the legal descriptions listed in the warranty deeds were for property owned by the Boyce's in Shannon County. One of the enclosed transfer forms is for this water right as I assumed it should be transferred also.

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 concerning the transfers, please contact me.

Sincerely,

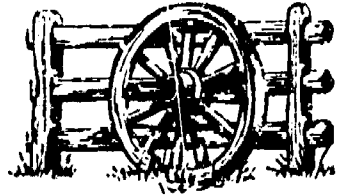
Genny McMATH

GENNY MCMATH
Natural Resources Analyst

encl

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

1221-2
BRYCE D. NELSON
REAL ESTATE



November 9, 1987

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



Dear Ms. McMath;

Enclosed please find check for \$7.50 and notice of transfer for water Right nos. 827-2A, 1024-2 and 1221-2.

Mr. Werner has purchased two other properties that involved water rights and we have a receipt from your office for water right no. 1209-2.

About a year ago we requested a transfer of water right filing no. 0422-2, water right filing no. 0421-2 and a claim on 54 acres in SE $\frac{1}{4}$ Section 31, Township 3 South, Range 9 East. So far we have not received transfer papers on these. Would you mind checking to see what the status of these water rights are.

Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Bryce D. Nelson".

Bryce D. Nelson

Bryce D. Nelson, Broker • Scott Nelson, Craig Nelson & Associates

NOTICE OF TRANSFER OF WATER PERMIT

TO: Water Rights
Foss Building
Pierre, SD 57501

Date: October 26, 1987

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

S1/2NE1/4 Section 4, T4S, R10E

formerly owned by Raymond & Dorothy Boyce

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

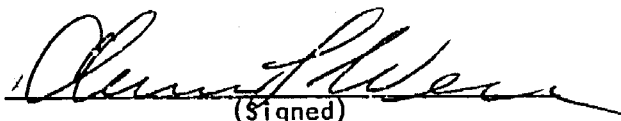
Water Right Permit No. 1221-2 as provided for in SDCL 46-5-32 and 46-5-33.

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.

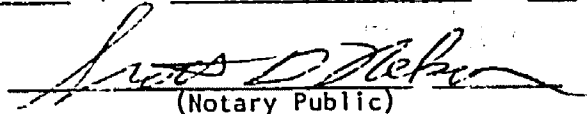
A fee of Two Dollars and Fifty Cents (\$2.50) is hereto attached to cover filing fees as required under SDCL 46-2-13.

STATE OF SOUTH DAKOTA)
County of Pennington) ss.

I, Clarence L. Werner being first duly sworn on my oath despose 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 26th Day of October, 1987.


(Notary Public)

My commission expires Feb. 6, 1992

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

411045

Pierre, November 12, 19 87

RECEIVED OF Bryce Nelson Real Estate, 4820 Reva Ridge Rd., RAPID CITY, SD 57702
the following amount in fees for services rendered as provided for by law: (for Clarence Werner)

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 1221-2 _____	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 (MS)

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

Joe Foss Building
523 East Capitol

Pierre, South Dakota 57501-3181

WATER RIGHTS DIVISION
(605) 773-3352

February 24, 1988

Clarence Werner
RR 4, Box 15B
Hermosa, South Dakota 57744

Dear Mr. Werner:

I am contacting you in regard to the ownership status of Water Right Nos. 827-2A, 1024-2 and 1221-2. The completed transfer forms and filing fees were received in our office November 12, 1987. The water rights were then transferred to your name.

By copy of this letter, I am sending Receipts for the filing fees to Bryce Nelson Real Estate. I apologize for not notifying you sooner that the transfers were completed.

If you have any questions, please contact me.

Sincerely,

Genny McNath
Natural Resources Analyst

GM:ms
cc: Bryce Nelson Real Estate

South Dakota
Department of
Water & Natural Resources

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

January 29, 1988

RAYMOND A BOYCE
4350 CLIFF DR
RAPID CITY, SD 57702

NOTICE

Re: Violation of Requirement To Submit 1987 Irrigation Questionnaire

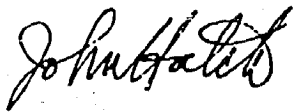
Our records indicate that the 1987 Irrigation Questionnaire has not been submitted for Permit No(s). 827-2A, 221-2. The request for the Questionnaire was dated October 8, 1987. The Water Management Board has directed that owners of water permits who have not submitted 1987 Irrigation Questionnaires be given notice of hearing(s) to be held by the Board to determine if any action is to be taken concerning the violation.

The hearings will be held at 9:00 am, March 2, 1988 in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD.

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

1. Amend Permit No(s). 827-2A, 1221-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action;
3. Take no action.

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



JOHN HAMER, Chief Engineer
Water Resources Division
605 523-52

NOTE: If the questionnaire(s) is received in this office before the March 2 hearing date, your name will be deleted from the agenda for the hearing.



Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3131

February 5, 1988

827-2A
1024-2
221-2

Raymond & Dorothy Boyce
4350 Cliff Dr.
Rapid City SD 57701

Dear Mr. & Mrs. Boyce:

I am writing to acknowledge receipt of your 1987 Irrigation Questionnaire(s). A notice was sent to you January 29, 1988 regarding the the requirement to submit the Irrigation Questionnaire(s) for Water Permit Nos. 827-2A, 1024-2, 1221-2 and the hearing date before the Water Management Board.

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

Very truly yours,

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

NOTE: Clarence Werner has been contacted about transfer of these water permits.

 **Department of
Water & Natural Resources**

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

September 21, 1988

NOTICE

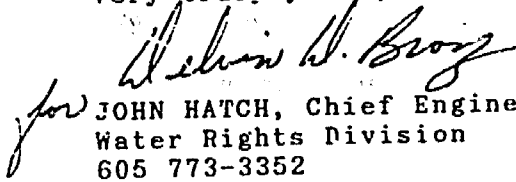
Raymond & Dorothy Boyce
4350 Cliff Dr.
Rapid City SD 57701

Dear Mr. & Mrs. Boyce:

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). 1221-2 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



1227-2



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



Department of Water & Natural Resources

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

July 30, 1990

827-2A

1024-2

1221-2

Fred Rittberger
Rittberger Beef & Dairy Inc
HCR 83 Box 13
Hermosa, SD 57744

Dear Mr. Rittberger:

Enclosed, as you requested, are partially completed "Notice of Transfer of Ownership" forms. The forms are for use in filing ownership changes on Vested Water Right Claim No. 1221-2 and Water Right Nos. 827-2A and 1024-2. These are currently listed in the name of Clarence Werner.

Please complete the forms and then sign them in the presence of a notary public. Upon completion, return the forms to our office with a required filing fee of \$2.50 each (total of \$7.50).

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 me.

Sincerely,

Genny McMath
Natural Resources Analyst
(605) 773-3352

enclosure

NOTICE OF TRANSFER OF OWNERSHIP



1221-2

No. _____

TO: Chief Engineer
Water Rights Division, DWNH
523 East Capitol
Pierre, SD 57501-3181

Date: Dec 10 1990

I/We request that Vested Water Right Claim No. 1221-2
~~Water Permit/Right No.~~

formerly owned by: Clarence Werner

be transferred to: (name & address) Pittenger Brothers 110 56 Box 19
Buffalo Gro SD 57722 (telephone No.) 605-833-6524

Title to the following described land(s)/property has been transferred as described above:
S 1 NE 1/4 Section 4, T4S, R10E

I/We understand that the validity of Vested Water Right Claim 1221-2
~~Water Permit/Right No.~~ has not been deter-
mined 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 Custer)

I/We Robert Pittenger 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.

Pittenger Brothers
by Robert Pittenger
(Signed)

Subscribed and sworn to before me this 20 day of December, 19 90.

Albert M. Lehman
(Notary Public)

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 water 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

Division of Water Rights

South Dakota Department of Water and Natural Resources

Pierre, _____, 19__

RECEIVED OF _____

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

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 _____		
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	

By _____
Chief Engineer



DEPARTMENT OF WATER & NATURAL RESOURCES
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3131

January 8, 1991

No. 1221-2
1024-2
827-2A

Rittberger Brothers
HC 56 Box 19
Buffalo Gap SD 57722

Dear Mr. Rittberger:

Enclosed is are three receipts in the amount of \$2.50 each which you paid for the transfer of Vested Water Right No. 1221-2, Water Right No. 1024-2, and Water Right No. 827-2A.

Our records now show you as the owner of Vested Water Right No. 1221-2, Water Right No. 1024-2, and Water Right No. 827-2A.

Sincerely,

JACI KONOP
Senior Secretary
Water Rights Division
605 773-3352

enclosure



DEPARTMENT OF WATER & NATURAL RESOURCES

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

1067-2

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.

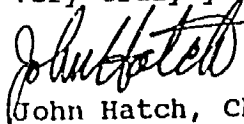
On April 18th, Battle Creek was flowing all the way to the Cheyenne River with an estimated flow into the Cheyenne River approximately the same as at the gaging station. It appears that on this day the 3.0 cfs standard was more than sufficient. Depending on the time of year and existing weather conditions,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

1221-2

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

Number	Name	Diversion Rate (cfs)	Priority Date
Water Right No. 969-2	Neugebauer Bros.	1.73	5/1/1881 & 6/11/1968
Water Right No. 2153-2	Neugebauer Bros.	0.33	5/1/1881
Water Permit No. 2054-2	Neugebauer Bros.	1.71	3/15/1988
Water Right No. 1170-2	John Stovall	3.00	1/28/1974
Water Permit No. 319-2	Gene Baker	2.90	7/17/1948
WR Filing No. 0359-2	Keith Robertson & Dr. Borgmeyer	1.47	3/3/1895
WR Filing No. 0422-2	Spanish 5 Ranch	1.82	10/14/1886
WR Filing No. 0421-2	Spanish 5 Ranch	1.90	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

L

REPORT ON INSPECTION OF VESTED RIGHT CLAIM NO. 1221-2

Other permit(s) associated with the project: 1209-2, both based on Water Right Filing No. 0345-2

DATE OF INSPECTION: July 9, 1996

NAME & ADDRESS OF INSPECTION CONTACT/ Fred Rittberger

RELATIONSHIP TO PERMIT HOLDER, IF APPLICABLE: owner

NAME & ADDRESS OF PERMIT HOLDER: Rittberger Brothers, HC 56, Box 19, Buffalo Gap, SD 57722

DIVERSION POINT LEGAL LOCATION: Between a point 2400 feet south & 2500 west (SW 1/4 NE 1/4) and 1800 feet south (SE 1/4 NE 1/4) of the NE corner of Section 4-T4S-R10E.

Pump:

- 1) Make Berkeley Centrifugal
- 2) Model B6ZRH CW, Serial No. 6240795
- 3) Size 9 inch
- 4) Capacity XXX GPM

Motor:

- 1) Make 4 cyl. Datsun pickup
- 2) Model No. XXX
- 3) Horsepower rating XXX hp

DISTRIBUTION LINES OR CANALS:

gated 10 inch aluminum and PVC pipe

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)

Vested Right Claim No. 1221-2
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, July 9, 1996, made a thorough examination of the water use system operated by Rittberger Brothers of HC 56, Box 19 Buffalo Gap, SD 57722 holder of Vested Right Claim No. 1221-2, bearing the priority of September 29, 1900 authorizing the diversion of 1.14 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:
9 inch Berkeley Centrifugal pump, Model B6ZRH CW, Serial No. 6240795
mounted on a 4 cyl. Datsun pickup
- B. Works used to transport water to place of use:
several hundred feet of 10 inch aluminum and PVC pipe
- C. Works used to apply water to beneficial use:
10 inch gated aluminum and PVC pipe

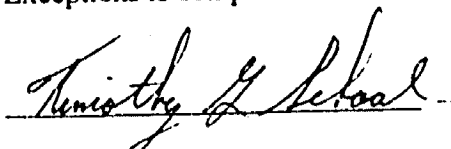
The system is in the following condition Good. The point of diversion is located Between a point 2400 feet south & 2500 feet west (SW 1/4 NE 1/4) and 1800 feet south (SE 1/4 NE 1/4) of the NE corner of Section 4-T4S-R10E. The works are capable of diverting and conveying to the place of use 0.94 cu. ft. per second of water which is to be used for irrigation. Water has been put to beneficial use to the maximum extent as follows:

SW 1/4 NE 1/4 Section 4-T4S-R10E--- 26 Acres			
SE 1/4 NE 1/4	"	"	-- 31
NE 1/4 SE 1/4	"	"	-- 5
SE 1/4 NW 1/4	"	"	-- 3
NW 1/4 NE 1/4	"	"	-- 1

comprising a total of 66 acres of land and the license should be issued for 0.94 cfs.

Applicable permit qualifications have been complied with: Yes **X**

Exceptions to compliance are: acres outside permitted area Date Report Completed: July 16, 1996



Timothy G. Schaal, P.E.

File No. 1221-2

Water Rights Division -DENR
Conversation or File Documentation

NAME OF PERSON OR FILE: Rittberger Brothers

ADDRESS: HC 56, Box 19, Buffalo Gap, SD 57722

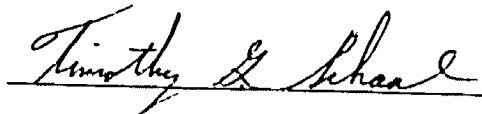
COUNTY: Custer

DATE: July 16, 1996

TELEPHONE: 833-6805

RE: Readvertising to correct legal description of lands irrigated

On July 9, 1996, I talked to Fred Rittberger about Vested Right Claim No. 1221-2. There are 9 acres irrigated outside of the originally permitted area; however, they were always part of the original project. The original application described 80 acres being irrigated in the SW 1/4 NE 1/4, SE 1/4 NE 1/4, and the NE 1/4 SE 1/4 of Section 4-T4S-R10E. The license was issued for 35 acres in the SW 1/4 NE 1/4 and 45 in the SE 1/4 NE 1/4. The license was in error listing 45 acres in the SE 1/4 NE 1/4 and should have included 5 acres in the NE 1/4 SE 1/4. There are also 4 acres in the SE 1/4 NW 1/4 and NW 1/4 NE 1/4 with some of the error probably 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. 1221-2 should be readvertised to correct 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

Rittberger Brothers
HC 56, Box 19
Buffalo Gap SD 57722

Dear Sirs:

A Notice of Intent to validate Claim No. 1221-2 was published on June 22 and 29, 1988 in the Custer County Chronicle. The Water Rights Program opposed validation of No. 1221-2 for purposes of completing an on-site investigation of the claim. The investigation of Claim No. 1221-2 was completed on June 9, 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 only included the land in the S 1/2 NE 1/4 Section 4. 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
Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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:

publication: that the Dept. of Environment and Natural Resources

Readvertisement of Notice of Intent

prints a copy of which, taken from the paper in which the same was published, is attached to this sheet, and 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 \$68.149

described and sworn to me before this 25th
September, 1996;

Dine Zweber
Notary Public

commission expires: May 14, 2001

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, N1/2 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 Kancsky, 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, HC 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 James Anderson 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

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 \$ 68.19

Subscribed and sworn to me before this 25th
of September, 1996;

Don Zuehl
Notary Public

My commission expires: May 14, 2001

REA
N

MENT OF
The Water Management Board will consider this vested water right claim at 10:00 am, October 2, 1996, Floyd Mathew 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) 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. 46-1-14, 46-2-3.1, 46-2-11, 46-2-17, 46-2-21, 46-2-22, 46-5-1, 46-5-13, 46-5-17, 46-5-18, 46-5-19, 46-5-20, 46-5-21, 46-5-22, 46-5-23, 46-5-24, 46-5-25, 46-5-26, 46-5-27, 46-5-28, 46-5-29, 46-5-30, 46-5-31, 46-6-1, 46-6-2, 46-6-3, 46-6-4, 46-6-5, 46-6-6, 46-6-7, 46-6-8, 46-6-9, 46-6-10, 46-6-11, 46-6-12, 46-6-13, 46-6-14, 46-6-15, 46-6-16, 46-6-17, 46-6-18, 46-6-19, 46-6-20, 46-6-21, 46-6-22, 46-6-23, 46-6-24, 46-6-25, 46-6-26, 46-6-27, 46-6-28, 46-6-29, 46-6-30, 46-6-31, 46-7-1, 46-7-2, 46-7-3, 46-7-4, 46-7-5, 46-7-6, 46-7-7, 46-7-8, 46-7-9, 46-7-10, 46-7-11, 46-7-12, 46-7-13, 46-7-14, 46-7-15, 46-7-16, 46-7-17, 46-7-18, 46-7-19, 46-7-20, 46-7-21, 46-7-22, 46-7-23, 46-7-24, 46-7-25, 46-7-26, 46-7-27, 46-7-28, 46-7-29, 46-7-30, 46-7-31, 46-8-1, 46-8-2, 46-8-3, 46-8-4, 46-8-5, 46-8-6, 46-8-7, 46-8-8, 46-8-9, 46-8-10, 46-8-11, 46-8-12, 46-8-13, 46-8-14, 46-8-15, 46-8-16, 46-8-17, 46-8-18, 46-8-19, 46-8-20, 46-8-21, 46-8-22, 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46-8-19, 46-8-20, 46-8-21, 46-8-22, 46-8-23, 46-8-24, 46-8-25, 46-8-26, 46-8-27, 46-8-28, 46-8-29, 46-8-30, 46-8-31, 46-9-1, 46-9-2, 46-9-3, 46-9-4, 46-9-5, 46-9-6, 46-9-7, 46-9-8, 46-9-9, 46-9-10, 46-9-11, 46-9-12, 46-9-13, 46-9-14, 46-9-15, 46-9-16, 46-9-17, 46-9-18, 46-9-19, 46-9-20, 46-9-21, 46-9-22, 46-9-23, 46-9-24, 46-9-25, 46-9-26, 46-9-27, 46-9-28, 46-9-29, 46-

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

10-9-76

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

September 19, 1996

NOTICE

TO: Bob Rittberger
Rittberger Brothers
HC 56, Box 19
Buffalo Gap, SD 57722

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

SUBJECT: Delay of Hearing on Recognized Vested Water Right Claim No. 1221-2

Recognized Vested Water Right Claim No. 1221-2 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. 1221-2 is being continued until the next regular board meeting.

The Water Management Board will now consider validation of Vested Water Right Claim No. 1221-2 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.

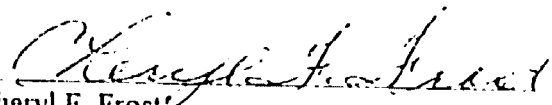
c: Diane Best, Assistant Attorney General

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:

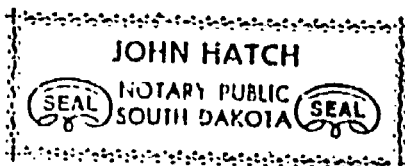
Recognized Vested Water Right claim No. 1209-2: Edward and Betty Kanasky
P.O. Box 52
Caputa, SD 57725

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

November 21, 1996

NOTICE

TO: Bob Rittberger
Rittberger Brothers
HC 56, Box 19
Buffalo Gap, SD 57722

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

SUBJECT: Delay of Hearing on Recognized Vested Water Right Claim No. 1221-2

Recognized Vested Water Right Claim No. 1221-2 was readvertised and scheduled for validation before the Water Management Board on December 4, 1996. However, consideration of Vested Water Right Claim No. 1221-2 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

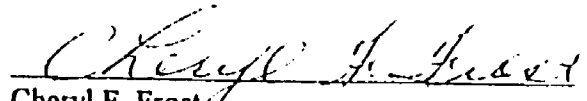
I hereby certify that on November 21, 1996, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated November 21, 1996, regarding Delay of Hearing on Recognized Vested Water Right Claim Nos. 1209-2 and 1221-2, addressed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

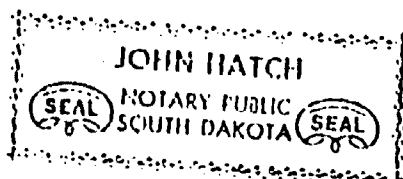
Copies of the above described Notices were sent inter-office to:

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: Bob Rittberger
Rittberger Brothers
HC 56, Box 19
Buffalo Gap, SD 57722

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

SUBJECT: Delay of Hearing on Recognized Vested Water Right Claim No. 1221-2

The hearing for validation of your recognized Vested Water Right Claim No. 1221-2 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

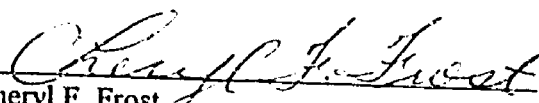
CERTIFICATION

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. 1221-2, addressed as stated below:

Bob Rittberger, Rittberger Brothers, HC 56, Box 19, Buffalo Gap, SD 57722.

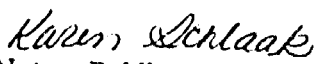
A copy of the above described Notice was sent inter-office to:

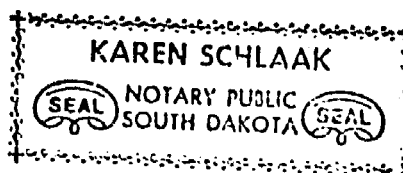
Diane Best, Assistant Attorney General, Capitol Building.


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: Bob Rittberger
Rittberger Brothers
HC 56, Box 19
Buffalo Gap, SD 57722

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

SUBJECT: Scheduling of Hearing on Recognized Vested Water Right Claim No. 1221-2,
Rittberger Brothers

The Water Management Board will consider validation of your recognized Vested Water Right Claim No. 1221-2 for irrigation from Battle Creek at 10:00 AM (CDT), July 10, 1997, in the Conference Room, Floyd Matthew 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. 1221-2, Rittberger Brothers, addressed as stated below:

Bob Rittberger, Rittberger Brothers, HC 56, Box 19, Buffalo Gap, SD 57722.

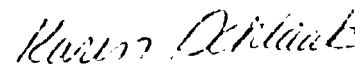
A copy of the above described Notice was sent Inter-office to:

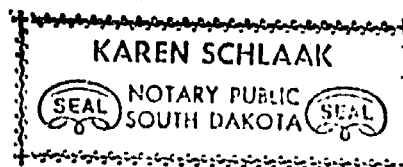
Diane Best, Assistant Attorney General, Capitol Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

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


Karen Schlaak
Notary Public



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



AUG 8 1997

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

Rittberger Brothers
HC 56 Box 19
Buffalo Gap SD 57722

Dear Sirs:

The Water Management Board has validated the enclosed Vested Water Right No. 1221-2. 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 acreage and diversion rate 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. 1221-2 FOR IRRIGATION

Date of Receipt of Claim November 4, 1974.

Date of Validation July 10, 1997.

The Water Management Board validated Vested Water Right Claim No. 1221-2 for irrigation purposes for Rittberger Brothers, HC 56 Box 19, Buffalo Gap SD 57722 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 1221-2 appropriates 0.94 cubic feet of water per second from Battle Creek located between a point 2,400 feet south and 2,500 feet west (SW 1/4 NE 1/4) and 1,800 feet south (SE 1/4 NE 1/4) of the northeast corner of Section 4 to irrigate 66 acres located in the S 1/2 NE 1/4, NE 1/4 SE 1/4, SE 1/4 NW 1/4, NW 1/4 NE 1/4 Section 4; all in T4S-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. 1221-2 FOR IRRIGATION

(1) Raymond and Dorothy Boyce, Rapid City SD were issued Vested Water Right License No. 1221-2, for a right to appropriate 1.14 cubic feet of water per second from Battle Creek, Custer County, South Dakota, for irrigation purposes. Vested Water Right No. 1221-2 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 December 24, 1990, Vested Right No. 1221-2 was transferred to Rittberger Brothers.

On July 10, 1997, the Water Management Board validated Vested Water Right No. 1221-2. Vested Right No. 1221-2 is being reissued to reduce the number of acres irrigated and reduce the amount of water claimed to the actual amount applied to beneficial use, 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 0.94 cubic feet of water per second for beneficial use. The location of the diversion point is between a point 2,400 feet south and 2,500 feet west (SW 1/4 NE 1/4) and 1,800 feet south (SE 1/4 NE 1/4) of the northeast corner of Section 4-T4S-R10E.

The location of the irrigated acreage is:

Section 4-T4S-R10E	SW 1/4 NE 1/4	26 acres
	SE 1/4 NE 1/4	31 acres
	NE 1/4 SE 1/4	5 acres
	SE 1/4 NW 1/4	3 acres
	NW 1/4 NE 1/4	1 acre
Total		66 acres

(3) Pursuant to Section 46-5-30.1 Rittberger Brothers, HC 56, Box 19, Buffalo Gap SD 57722 the holders and/or owners of Vested Water Right No. 1221-2 is issued a license to appropriate 0.94 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. 1221-2 and subject to South Dakota State Law.


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

AUG 8 1997

date





1221-2
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: RITTBERGER BEEF & DAIRY INC, ROBERT RITTBERGER, HC 82 BOX 302A,
HERMOSA, SD 57744

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) 827-2A, 1024-2, 1221-2 & 1613-2. 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) 827-2A, 1024-2, 1221-2 & 1613-2 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.



1221-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 25, 2000

Robert Rittberger
Rittberger Beef & Dairy, Inc
HC 89 Box 302A
Hermosa, SD 57744

RE: Water Permit/Right Nos. 827-2A, 1024-2, 1221-2 and 1613-2

Dear Mr. Rittberger:

I am writing to acknowledge receipt of your 1999 irrigation questionnaires. You may disregard the January 14, 2000, "Notice" concerning reporting requirements for Water Permit/Right Nos. 827-2A, 1024-2, 1221-2 and 1613-2.

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: RITTBERGER BROTHERS
HC 89 BOX 302A
HERMOSA SD 57744

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

SUBJECT: Shutoff Order for Battle Creek Water Rights

Shutoff Order for Water Right Nos. 1221-2

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.

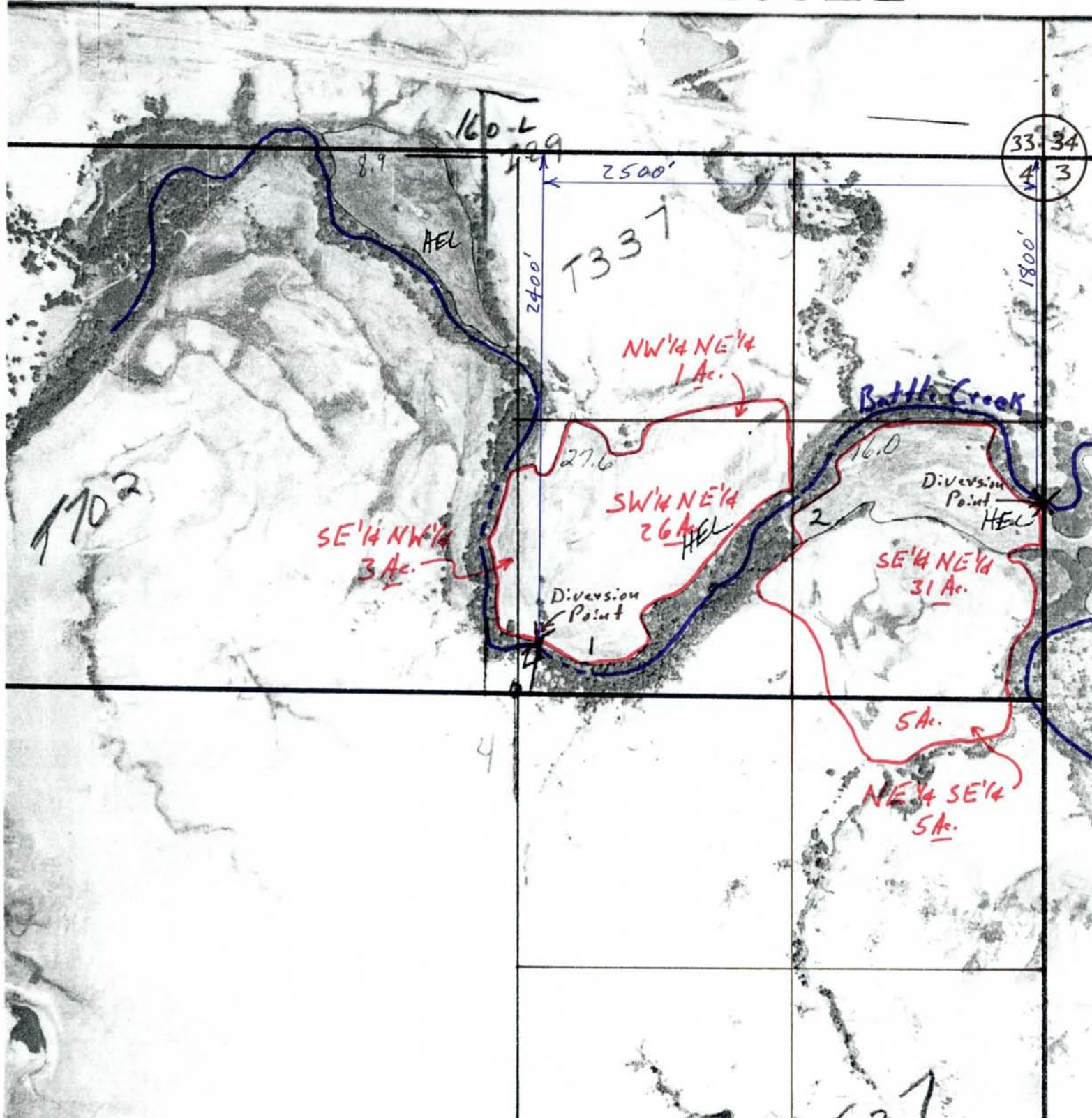
Battle Creek water users have a history of working together in scheduling their diversion from the creek to make maximum beneficial use of the limited resource while protecting domestic use. However if this cooperative use proves unworkable, shutoff orders based upon priority will be required.

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.

1221-2

NOT TO SCALE



VESTED RIGHT CLAIM No. 1221-2
Rittberger Brothers

4-10

Timothy G. Schaal

160-L

Timothy G. Schaal
Natural Resources Engineer III
July 16, 1996



1201-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

March 14, 2006

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

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

SUBJECT: Battle Creek Bypass Order

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

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

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

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



January 26, 2007

NOTICE

1221-2
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

TO: RITTBERGER BROTHERS, ROBERT RITTBERGER, 15663 SD HWY 40, HERMOSA, SD 57744

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

SUBJECT: Reporting Requirement for 2006 Irrigation Questionnaires

Our records indicate that the 2006 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 20, 2006. The Water Management Board has directed that owners of water permits who have not submitted the 2006 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 827-2A, 1024-2 & 1221-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 827B-2 & 1024A-2 qualification:

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

The hearing will be held at 10:30 am, March 7, 2007 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 827B-2 & 1024A-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 827-2A, 1024-2 & 1221-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or 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 March 1, 2007, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352. If you prefer, you can complete the questionnaire on-line at the following link:

<https://www.state.sd.us/eforms/secure/eforms/E0455V5-IQ.pdf>

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.



1221-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 9, 2007

Robert Rittberger
Rittberger Brothers
15663 SD Hwy 40
Hermosa SD 57744

Dear Mr. Rittberger:

I am writing to acknowledge receipt of your 2006 irrigation questionnaires. You may disregard the January 26, 2007, "Notice" concerning reporting requirements for Water Permit or Right Nos. 827-2A, 827B-2, 1024-2, 1024A-2 and 1221-2.

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



1221-2

**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:

1221-2

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	CLARENCE	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	KANESKY	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	CLARENCE	FOOS	PO BOX 317	HERMOSA	SD	57744	0317
1275-2			01/01/1935	CU	LC IRR	DONALD	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	JOHN/DARLENE	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	



1221-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 21, 2011

NOTICE

TO: RITTBERGER BROTHERS, ROBERT RITTBERGER, 15663 SD HWY 40, HERMOSA, SD 57744

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

SUBJECT: Reporting Requirement for 2010 Irrigation Questionnaires

Our records indicate that the 2010 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 15, 2010. The Water Management Board has directed that owners of water permits who have not submitted the 2010 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 827-2A & 1221-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 827B-2 & 1024A-2 qualification:

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

The hearing will be held at **10:00 am, March 9, 2011** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 827B-2 & 1024A-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 827-2A & 1221-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or 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 **March 4, 2011**, you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 9, 2011

Robert Rittberger
Rittberger Brothers
15633 SD Hwy 40
Hermosa SD 57744

RE: Water Right or Permit Nos. 827B-2, 1024A-2, 827-2A and 1221-2

Dear Mr. Rittberger:

I am writing to acknowledge receipt of your 2010 irrigation questionnaires.

You may disregard the January 21, 2011, "Notice" concerning reporting requirements for the above listed permits and rights. 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,

A handwritten signature in black ink that reads "Genny McMath". The signature is written in a cursive, flowing style.

Genny McMath
Environmental Scientist
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us



**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

RITTBERGER BROTHERS
15663 SD HWY 40
HERMOSA, SD 57744

Dear Water Right Holder;

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

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

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

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

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

Sincerely,

Garland Erbele, Chief Engineer
DENR, Water Rights Program

attachment

06/20/2012

Battle Creek Water Rights

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

NOTICE OF SHUTOFF ORDER
July 2, 2012

TO: RITTBERGER BROTHERS
15663 SD HWY 40
HERMOSA SD 57744

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

SUBJECT: Battle Creek Water Rights Shutoff Order

Shutoff Order for Water Right Nos. 1221-2

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: RITTBERGER BROTHERS
15663 SD HWY 40
HERMOSA SD 57744

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

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

Shutoff Order for Water Right Nos. 1221-2

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:

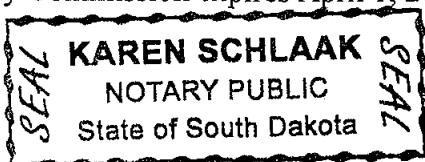
NEUGEBAUER BROTHERS DAIRY	STANLEY NEUGEBAUER	14197 SD HWY 40	HERMOSA	SD	57744
WYOMING DAKOTA RAILROAD PROPERTIES INC	DAVID S DRACH	120 S 6TH ST - 9TH FLOOR	MINNEAPOLIS	MN	55402
TRAVIS BIES		25813 SOUTH FOR ROAD	FAIRBURN	SD	57738
JD RANCH REAL ESTATE LLC		HCR 89 BOX 298	HERMOSA	SD	57744
RUSHMORE VIEW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


Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

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


Karen Schlaak
Notary Public
My Commission expires April 1, 2019





1221-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 15, 2016

NOTICE

TO: RITTBERGER BROTHERS, ROBERT RITTBERGER, 15663 SD HWY 40, HERMOSA, SD 57744

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2015 Irrigation Questionnaires

Our records indicate your 2015 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 23, 2015. The Water Management Board has directed that owners of water permits who have not submitted the 2015 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 827-2A & 1221-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 827B-2 & 1024A-2 qualification:

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

The hearing will be held at **Thursday, March 3, 2016 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 827B-2 & 1024A-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 827-2A & 1221-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaire(s) is (are) received in this office before the **March 3, 2016** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

February 3, 2016

827-2A
827-2B
1024A-2
1221-2

Rittberger Brothers
c/o Robert Rittberger
1563 SD Hwy 40
Hermosa SD 57744

Dear Mr. Rittberger:

I am writing to acknowledge receipt of your 2015 irrigation questionnaires.

You may disregard the January 15, 2016, "Notice" concerning reporting requirements for Water Permit Nos. 827-2A, 827-2B, 1024A-2 and 1221-2. 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
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us



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

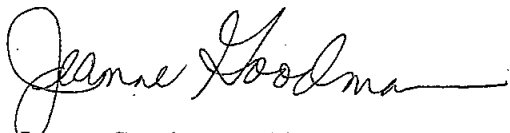
South Dakota water law gives the highest priority to domestic use, which includes livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses, including irrigation, will begin to interfere 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". The signature is written in dark ink and is positioned above the printed name and title.

Jeanne Goodman, Chief Engineer
DENR, Water Rights Program



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 20, 2017

NOTICE

TO: RITTBERGER BROTHERS, ROBERT RITTBERGER, 15663 SD HWY 40, HERMOSA, SD 57744

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2016 Irrigation Questionnaires

Our records indicate your 2016 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 21, 2016. The Water Management Board has directed that owners of water permits who have not submitted the 2016 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 827-2A & 1221-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 827B-2 & 1024A-2 qualification:

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

The hearing will be held at **Wednesday, March 1, 2017 at 11:00 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 827B-2 & 1024A-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 827-2A & 1221-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or 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 questionnaires are received in this office before the **March 1, 2017** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

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.



1221-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

February 8, 2017

Robert Rittberger
Rittberger Brothers
15663 SD Hwy 40
Hermosa SD 57744

RE: Water Right Nos. 827-2A, 827B-2, 1024A-2 and 1221-2

Dear Mr. Rittberger:

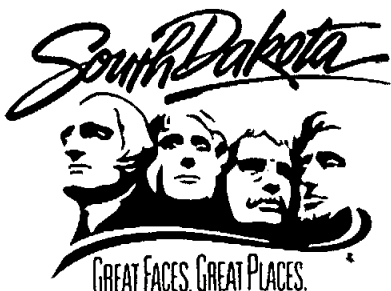
I am writing to acknowledge receipt of your 2016 irrigation questionnaires.

You may disregard the January 20, 2017, "Notice" concerning reporting requirements for Water Right Nos. 827-2A, 827B-2, 1024A-2 and 1221-2. 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
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us



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

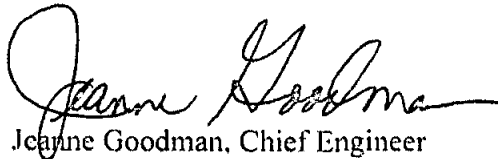
South Dakota water law gives the highest priority to domestic use, which includes livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses, including irrigation, will

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 a large initial "J" and a long, sweeping underline.

Jeanne Goodman, Chief Engineer
DENR, Water Rights Program



1221-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 26, 2018

NOTICE

TO: RITTBERGER BROTHERS, ROBERT RITTBERGER, 15663 SD HWY 40, HERMOSA, SD 57744

FROM: Ron Duvall, Natural Resources Engineer
for Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2017 Irrigation Questionnaires

Our records indicate your 2017 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 20, 2017. The Water Management Board has directed that owners of water permits who have not submitted the 2017 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 827-2A & 1221-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 827B-2 & 1024A-2 qualification:

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

The hearing will be held at **Wednesday, March 7, 2018 at 10:00 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 827B-2 & 1024A-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 827-2A & 1221-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or 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 questionnaires are received in this office before the **March 7, 2018** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

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.



1221-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 16, 2018

Robert Rittberger
Rittberger Brothers
15663 SD Hwy 40
Hermosa SD 57744

RE: Water Right Nos. 827-2A, 827B-2, 1024A-2 & 1221-2

Dear Mr. Rittberger:

I am writing to acknowledge receipt of your 2017 irrigation questionnaires.

You may disregard the January 26, 2018, "Notice" concerning reporting requirements for Water Right Nos. 827-2A, 827B-2, 1024A-2 & 1221-2. 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
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

1221-2



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182
<http://denr.sd.gov>

November 5, 2018

Robert Rittberger
13677 SD Hwy 36
Hermosa AS 57744-5426

RE: Water Right Nos. 827-2A, 827-2B, 1024A-2 & 1221-2

Dear Sir:

Enclosed is a "Notice" dated October 30, 2018 concerning the 2018 irrigation questionnaires.

The notice was originally mailed to 15663 SD Hwy 40, Hermosa SD. The post office notified us that your address has changed and I will update our records accordingly.

If you have any questions, please contact me.

Sincerely,

Genny McMath
Water Rights Program
(605) 773-3352
email: genny.mcmath@state.sd.us

enclosures



1221-2

**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

January 20, 2022

NOTICE

TO: RITTBERGER BROTHERS, ROBERT RITTBERGER, 13677 SD HWY 36, HERMOSA, SD 57744 5426

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

SUBJECT: Reporting Requirement for 2021 Irrigation Questionnaires

Our records indicate your 2021 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 22, 2021. The Water Management Board has directed that owners of water permits who have not submitted the 2021 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 827-2A & 1221-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 827B-2 & 1024A-2 qualification:

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

The hearing will be held at **Wednesday, March 2, 2022 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 827B-2 & 1024A-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 827-2A & 1221-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or 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 questionnaires are received in this office before the **March 2, 2022** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://danr.sd.gov/iq> using this password: QJCXBW**

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.

1221-2



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

February 2, 2022

827-2A
827B-2
1024A-2
1221-2

Robert Rittberger
Rittberger Brothers
13677 SD Hwy 36
Hermosa SD 57744 5426

Dear Mr. Rittberger:

I am writing to acknowledge receipt of your 2021 irrigation questionnaires.

You may disregard the January 20, 2022, "Notice" concerning reporting requirements for Water Right Nos. 827-2A, 1221-2, 827B-2 & 1024A-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
Water Rights Program
605 773-3352
Genny.mcmath@state.sd.us



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

August 16, 2022

RITTBERGER BROTHERS
13677 SD HWY 36
HERMOSA, SD 57744

Dear Battle Creek Water Right Holder:

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

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

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

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

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

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

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

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

January 14, 2025

NOTICE

TO: RITTBERGER BROTHERS, ROBERT RITTBERGER, 13677 SD HWY 36, HERMOSA, SD 57744 5426

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

SUBJECT: Reporting Requirement for 2024 Irrigation Questionnaires

Our records indicate your 2024 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 23, 2024. The Water Management Board has directed owners of water permits who have not submitted the 2024 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 827-2A & 1221-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 827B-2 & 1024A-2 qualification:

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

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

1. Suspend or cancel Permit No(s) 827B-2 & 1024A-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 827-2A & 1221-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or 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 questionnaires are received in this office before the **March 5, 2025**, hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Amanda Dewell at (605) 773-3352 or email at amanda.dewell@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://danr.sd.gov/iq> using this password: RKMWAN**

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



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

January 21, 2025

827-2A, 827B-2
1024A-2, 1221-2

Rittberger Brothers
c/o Robert Rittberger
13667 SD HWY 36
Hermosa SD 57744

Dear Mr. Rittberger:

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

You may disregard the January 14, 2025, "Notice" concerning the reporting requirements for Water Permit No(s). 827-2A, 827B-2, 1024A-2 & 1221-2. The information was received prior to the March 5, 2025, Water Management Board meeting and the above listed permit number(s) have been removed from the agenda.

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

Sincerely,

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



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

ROBERT RITTBERGER
13677 SD HWY 36
HERMOSA, SD 57744

1221-2

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: ROBERT RITTBERGER
13677 SD HWY 36
HERMOSA, SD 57744

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

Subject: Shutoff Order for Water Right No. 1221-2

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).