

Water Right Number 1283.2

1. Considered SEPTEMBER 10, 1975
2. Name of Applicant BIRDSALL SAND & GRAVEL CO.
3. Post Office Address RAPID CITY
4. Amount of Water claimed 3.34
5. Source of Water supply BATTLE CREEK & SAND & GRAVEL
6. Water to be used for COMMERCIAL (SAND & GRAVEL WASHING)

Acres to be irrigated _____

7. Water to be diverted and used in CLUSTER County
about 1 5 miles 1st of HERNIMOSA

8. Proof of Publication

Received 1st

Not Received _____

9. Application

Approved _____

Subject to _____

Not Approved _____

Action Deferred _____

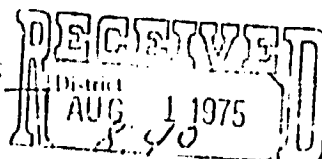
10. Remarks:

INVOLVES
CANCELLATION

No. 1283-2Map No. 577-2Water Division No. 2

Battle Creek

(Blanks to be Filled by the Engineer for the W. R. C.)



APPLICATION FOR PERMIT

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 Birdsall Sand & Gravel Company
 Post-office address P.O. Box 767, Rapid City, 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) Direct Labor
Birdsall ~~Network~~ Project #1 Heimsa
3. Name of diversion work _____
4. Amount of water claimed (cubic feet per second) 3.34 (Non-Consumptive Use)
5. Source of water supply Battle Creek (and water bearing sands and gravels)
6. Location of point of diversion 1320.4 feet N. 88° 56' 45" E. from the NW corner
Sec. 5 and 1029.3 feet S. 85° 30' 33" E. from NW corner of NE ¼
Sec. 5 all in T.3S. R.8E. B.H.M. County Custer
7. Annual period or periods during which water is to be used All year
8. Use to be made of water. (irrigation, industrial, municipal, commercial, recreation, etc.) Commercial
9. For irrigation use, _____ Total number of acres to be irrigated N/A

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

Land Description	No. Acres Irr.	Land Description	No. Acres Irr.
<u>N/A</u>			

Attach sheet if more space is needed

10. Time required to complete construction of water supply system 5 years. Additional time required to complete application of water to the proposed beneficial use 4 years.
11. Choice of newspaper for Notice of Intent to Appropriate Water publication Rapid City Journal
12. Principal Features of the Proposed Water Supply System.

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

Pumps

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

Pipe

C. Works proposed to apply water to beneficial use.

Sand Washing PlantEstimated Total Cost \$ N/A

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

STATE OF SOUTH DAKOTA)

County of Pennington)

I, Birdsall Sand & Gravel Co., 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

Birdsall Sand & Gravel Co.Subscribed and sworn to before me this 21

day of July 1975
Patricia M. Baake
 Notary Public (or other qualified officer)
 My Commission Expires April 1, 1981

WATER RIGHT APPLICATION APPROVAL

The Water Rights Commission hereby approves Water Right Application No. 1283-2

BIRDSELL SAND & GRAVEL CO.
(Applicant)

P.O. Box 767, RAPID CITY
(Post Office Address)

SOUTH DAKOTA 57701
(State)

With the following modifications:

AT NO TIME SHALL THE DIVERSIONS OF WATER FROM BATTLE CREEK UNDER THIS PERMIT TAKE ALL OF THE FLOWS OF THE CREEK. DURING THE SUMMER SEASON (JULY THRU SEPTEMBER) NORMAL LOW FLOWS SHALL BE ALLOWED TO PASS THE POINT OF DIVERSION UNDER THIS PERMIT. THE LATER RESTRICTION DOES NOT APPLY WHEN RAINFALL RUNOFF RESULTS IN SIGNIFICANTLY ABOVE AVERAGE SUMMERTIME FLOWS. RETURN FLOWS INTO BATTLE CREEK FROM THE WASHING OPERATION SHALL BE FREE OF SILT. APPROVAL OF THIS PERMIT CANCELS PERMIT NO 643-2.

Date of first receipt of application AUGUST 1 19 75

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

Date of receipt of corrected application _____ 19 _____

Approved SEPTEMBER 10 19 75 Recorded in Book 14 Page 28

WATER RIGHT PERMIT NO. 1283-2

The Water Rights Commission hereby grants and issues this Water Right Permit No. 1283-2 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 a claimant may claim right is AUGUST 1 19 75
2. The equivalent of at least one-fifth of the work above specified is to be completed on or before MARCH 10 19 78
3. The whole of said work is to be completed on or before SEPTEMBER 10 19 80
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith SEPTEMBER 10 19 84
5. The water appropriated shall be used for the purpose of INDUSTRIAL - SAND & GRAVEL WASHING
6. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be injuriously affected by this appropriation.
7. The amount of the appropriation herein granted shall not exceed 3.34 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 ~~irrigation purposes~~ USED FOR INDUSTRIAL PURPOSES DESCRIBED ~~limited to not more than 2 cubic feet per acre per year~~ actually and beneficially applied for irrigation on or before SEPTEMBER 10 19 84 said water to be used during the following described annual period: CONTINUOUSLY

Witness my hand this 15TH day of SEPTEMBER 19 75

WATER RIGHTS COMMISSION

John H. Kott
Chief Engineer, Executive Officer

Certificate of Construction issued _____ 19 _____

Water License Issued _____ 19 _____

No. 1283-2

Publish first publication, on or before

September 2, 1975

NOTICE OF INTENT TO APPROPRIATE WATER

Pierre, South Dakota 57501

August 15, 1975

Notice is hereby given that Birdsall Sand and Gravel Company

whose post office address is Rapid City, South Dakota, has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use 3.34 cubic feet of water per second of time from ~~the~~ Battle Creek and ground water through the Birdsall Project #1 (Hermosa), the point of diversion of which is to be located in the _____

SW 1/4 SE 1/4

of Section 32, Twp. 26, Range 8E. Said water to be used for the purpose of ~~providing irrigation water for farming and stock raising~~ operation of a sand washing plant. Primarily, use of the water is non-consumptive.

This application No. 1283-2 will be considered by the Water Rights Commission at the Burgundy Room at the Skyline Motel, Yankton, South Dakota upon the 10th day of September, 1975 at 2:30 P. M. All interested persons may appear and be heard.

WATER RIGHTS COMMISSION

by:

BURTON F. JONES, Water Rights Specialist

BFG/bw

~~See~~ Chaulk, President, Birdsall Sand and Gravel Company, Box 767, Rapid City, S.D. 57701

Two Sept 2, 9

Form 8 - Proof of Publication - Notice of
Intent to Appropriate Water

No. _____

(L176)

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Pennington) ss.

I, George Michalov, Vice Pres. hereby
certify that the annexed printed copy of Notice of Intent to Appropriate
Water was taken from the Rapid City Journal

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

City of Rapid City
County of Pennington and State of South Dakota;
that the said notice was published in said newspaper on the following
two dates:

September 2, 1975

September 9, 1975

George Michalov
(Signature)

Vice Pres.

(Title)

September 11, 1975

(Date Signed)

Sept. 2, 9 1975
NOTICE OF INTENT
TO APPROPRIATE WATER
Pierre, South Dakota 57501
August 26, 1975
Notice is hereby given that Birdsall
Sand and Gravel Company whose post of-
fice address is Rapid City, South Dakota,
has made an application in accordance
with the provisions of the water laws of
South Dakota for a permit to appropriate
for beneficial use 3.34 cubic feet of water
per second of time from Battle Creek and
ground water through the Birdsall Pro-
ject No. 1 (Hemlock), the point of diver-
sion of which is to be located in the
SW 1/4 of section 32, Twp. 25, Range
6E. Said water to be used for the purpose
of operation of sand washing plant. Pri-
marily, use of the water is non-consump-
tive.
This application WU 1283-2 will be con-
sidered by the Water Rights Commission
at the Burgundy Room at the Skyline
Hotel, Yankton, South Dakota upon the
10th day of September, 1975 at 2:30 P.M.
All interested persons may appear and be
heard.
WATER RIGHTS COMMISSION
By: BURTON F. JONES,
Water Rights Specialist



1283-2

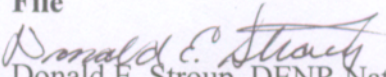
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

September 10, 2001

MEMO

To: File

From: 
Donald E. Stroup, DENR Natural Resources Project Engineer

Subject: Permit No. 1283-2

Person Contacted: Lecia Craft

On August 16, 2001 I did an examination of Permit No. 1283-2 held in the name of Birdsall Sand and Gravel for diversion of water from Battle Creek near Hermosa, SD for a rock and gravel washing operation.

The washing operation at this location hasn't been used for more than three (3) years, but Birdsall Sand and Gravel would like to keep the permit active as they intend to use this site this fall. I explained the three (3) year lack of use forfeiture of the water use permit to Ms. Craft and that I would pass the proposed use information to the Chief Engineer. Scheduling the permit for cancellation or not will be decided by the Chief Engineer according to state statutes.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

October 22, 2001

NOTICE OF CANCELLATION

TO: Lecia Craft, Birdsall Sand & Gravel, PO Box 767, Rapid City, SD 57701

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

SUBJECT: Cancellation of Water Permit No. 1283-2

On August 16, 2001, Donald Stroup, a staff engineer with our program, conducted an investigation of the sand and gravel washing operation authorized by Water Permit No. 1283-2. The permit authorizes diversion of water from Battle Creek near Hermosa for industrial use purposes. The investigation found the washing operation has not been used at this location for a period of longer than three years. Based on this information, the Chief Engineer of the Water Rights Program is recommending cancellation of Water Permit No. 1283-2 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Permit No. 1283-2 at 10:00 am, December 5, 2001, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Permit No. 1283-2 based upon facts presented at the public hearing. If you wish to oppose the cancellation and if you intend to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, you must file a written petition with the Chief Engineer by November 26, 2001. The petition may be informal, but it must include a statement describing the reasons for your opposition to the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained. The Board may consider any abandoned or forfeited water to be available for appropriation subject to the provisions of SDCL 46-1, 46-2, 46-2A and 46-5.

The hearing(s) will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

October 22, 2001
Lecia Craft
Birdsall Sand & Gravel
Page 2

These hearings are adversary proceedings. Any party 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 State Supreme Court as provided by law.

The time of the hearing will be automatically extended for at least twenty days upon your written request to the Chief Engineer after a petition has been filed to oppose the cancellation. If an extension is requested, the hearing on the cancellation will be continued until the next regular Board Meeting. Any request for extension must be filed with the Chief Engineer by November 26, 2001.

Prior to November 26, 2001, contact the Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD (605-773-3352) if assistance is needed with the following: 1) further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired.

Please note: Cancellation of the water permit/right does not prohibit a new application for this project in the future.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER
FOR WATER PERMIT NO. 1283-2, BIRDSALL SAND AND GRAVEL**

Pursuant to SDCL 46-2A-2 and 46-5-37.1, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit No. 1283-2.

The Chief Engineer is recommending cancellation of the above Water Permit due to abandonment and/or forfeiture. An August 16, 2001, investigation conducted by Donald Stroup, found the plant had not been operated at the site authorized by Water Permit No. 1283-2, for a period of longer than three years.

RON DUVALL, Natural Resources Engineer
for Garland Erbele, Chief Engineer
October 22, 2001



BIRDSALL SAND & GRAVEL

A Division of Pete Lien & Sons, Inc.

P.O. Box 767 Rapid City, SD 57709-0767 PH:605-394-7240 FX:605-394-7246

AGGREGATE PLANTS: Oral, Wasta, Creston, and Blunt, SD

READY MIX CONCRETE PLANTS: Rapid City, Sturgis, Spearfish, Lead, Ft. Pierre, SD and Gillette, WY

November 19, 2001

Mr. Garland Erbele
Chief Engineer
South Dakota Department of Environment & Nat. Resources
Joe Foss Building
523 East Capital Ave.
Pierre, SD 57501-3182



RE: Notice of Cancellation of Water Permit No. 1283-2

Dear Mr. Erbele:

With regard to the above Notice of Cancellation, Birdsall Sand & Gravel Co. wishes to oppose the cancellation of Water Permit No. 1283-2. Birdsall Sand & Gravel Co. owns and operates its Hermosa gravel pit on a "project by project" basis. The pit is manned and operated only when we are successful on quoting highway and/or large projects in the area. Although it has been some time since we have used the water permit, I foresee use of the permit due to upcoming construction projects in the area. These projects are directly related to the "Heartland Expressway" highway projects to be awarded by the State of South Dakota in 2002 and 2003. If we are successful on quoting those projects, a large amount of sand & gravel would be removed from the site, and it also could be used as a concrete plant site. Thus our reasoning on keeping the permit active.

In summary, Birdsall Sand & Gravel Co. feels that it has a very good opportunity in the upcoming years of using the water permit for construction materials. It is our intention to keep Water Permit No. 1283-2 active.

If you have any questions or concerns, please feel free to contact me at the Rapid City office. Thank you.

Sincerely,

BIRDSALL SAND & GRAVEL CO.

Kyle Frisinger
Division Sand & Gravel Superintendent

Cc: Lecia Craft, Environmental Engineer



ASSOCIATE MEMBER
ASSOCIATED GENERAL
CONTRACTORS OF
SOUTH DAKOTA & NEBRASKA





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

December 11, 2001

Kyle Frisinger
Division Sand & Gravel Superintendent
Birdsall Sand & Gravel
PO Box 767
Rapid City SD 57709-0767

Dear Mr. Frisinger:

I am writing in follow-up to the December 5th hearing before the Water Management Board on the status of Water Permit No. 1283-2. This water permit appropriates water from Battle Creek for the sand and gravel operation near Hermosa.

The hearing before the Board was to consider cancellation of the water permit for nonuse. During the hearing you testified that water has been used for dust suppression. I assume that a tanker truck was filled on occasion. Based on this information, the Board requested that Water Rights staff conduct another licensing investigation into water use.

At the hearing you were not aware of the quantity of water diverted from Battle Creek but you predicted the quantity was less than the 3.34 cubic feet of water per second authorized by the permit. In order to prepare for a new licensing investigation, I ask the following from you.

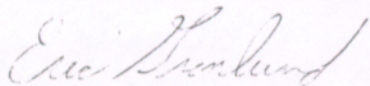
1. The times that water has been diverted from Battle Creek at the Hermosa pit site.
2. The quantity of water diverted (ie. gallons per minute).
3. Information on the works used to divert water (pump, motor, etc.). The maximum pump rate is important in determining the amount of water issued on the water license.

I understand that in some instances it may have been a Birdsall contractor that diverted the water using portable equipment. Prior to issuance of the permit we will likely conduct an onsite visit to view the equipment and verify water use.

Finally, one last issue regarding Birdsall's use of water raises concern. You testified that the water use in recent years has been for dust suppression purposes. However, the original public notice stated "Primarily, use of water is non-consumptive". I believe the intent of this permit is for water to be diverted, used in the operation and held in a settling pond prior to discharge back to the creek. This authorized use is non-consumptive except for incidental losses such as evaporation. Water for dust suppression is a consumptive use which is not currently authorized by the permit.

I ask that you provide us any information on past water use from Battle Creek. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eric Gronlund".

Eric Gronlund
Water Rights Program
605 773-3352
eric.gronlund@state.sd.us



BIRDSALL SAND & GRAVEL

A Division of Pete Lien & Sons, Inc.

P.O. Box 767 Rapid City, SD 57709-0767 PH:605-394-7240 FX:605-394-7246

AGGREGATE PLANTS: Oral, Wasta, Creston, and Blunt, SD

READY MIX CONCRETE PLANTS: Rapid City, Sturgis, Spearfish, Lead, Ft. Pierre, SD and Gillette, WY

January 22, 2002

Mr. Eric Gronlund
South Dakota Department of Environment & Nat. Resources
Joe Foss Building
523 East Capital Ave
Pierre, SD 57501-3182



RE: Water Permit 1283-2

Dear Mr. Gronlund:

I am attaching the requested information in your December 11th letter. Again, I apologize for not getting you this information sooner. Due to the holidays and end of the year auditing, I am running 2 weeks behind.

As I stated on December 5th, we would like to keep the above water permit active on the project-by-project basis. We feel very good about oncoming projects in the area that we will be using this pit again in 2002 & 2003. It is extremely hard for us to bid work out of this gravel pit, not knowing whether or not we will have water to use. I do realize that 3.34 cfs is a lot of water, and we are willing to lower that amount of water in order to keep the permit active.

Please review the attached information, and let me know if you have any questions. I can be reached at the Rapid City office. Thank you.

Sincerely,

BIRDSALL SAND & GRAVEL CO.

Kyle Frisinger
Division Sand & Gravel Superintendent

Cc: Lecia Craft, Pete Lien & Sons Inc
File



NATIONAL STONE, SAND & GRAVEL ASSOCIATION



605 773 4068

Mining Activity

Fall 2001

Start 10/17/01

Stop 12/15/01

Project – Hwy 36 in Custer County

Zandstra Construction – Rapid City – General Contractor

Aggregate Construction – Crushing Contractor

Appr. 100,000 Tons mined

Summer 1997

Start 4/01/97

Stop 5/15/97

Start 7/04/97

Stop 8/15/97

Project – Hwy 79 in Custer / Pennington County

Zandstra Construction – Rapid City – General Contractor

Aggregate Construction – Crushing Contractor

Appr. 94,000 Tons mined

Fall 1989

Start – unknown

Stop – unknown

Project – Hwy 40 in Custer County

Border States Paving Co. – Fargo ND - General Contractor

Aggregate Construction – Crushing Contractor

Appr. 44,000 Tons mined

-
- 1) Times water has been diverted from Battle Creek
 - Fall 2001 – Appr. 33 days
 - Summer 1997 – appr. 60 days
 - Fall 1989 – Appr. 15 days (based upon tons mined)
 - 2) Quantity of water diverted (i.e. gallons per minute)
 - Fall 2001 – Based upon 50 gal/min. pump – 990,000 gallons or 0.99 MGAL.
 - Summer 1997 – Based upon 50 gal/min pump – 1,800,000 gallons Or 1.8 MGAL
 - Fall 1989 – Based upon 50 gal/pump – 450,000 gallons or .45 MGAL
 - 3) Water Pump Information

Speaking with Aggregate Construction – he stated that uses a 2" water pump driven by a gasoline motor. He rated the pump at a 50 gal/min capacity.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 14, 2002

Kyle Frisinger
Birdsall Sand & Gravel
P.O. Box 767
Rapid City SD 57709-0767

RE: Water Permit No. 1283-2

Dear Mr. Frisinger:

I am writing concerning the Birdsall Sand & Gravel water permit to divert water from Battle Creek for a sand and gravel operation. The issue of whether the water permit is subject to cancellation due to nonuse came into question following a licensing investigation conducted last summer.

A hearing before the Water Management Board was held December 5th to consider cancellation of the water permit. You testified that water had been used on occasion for dust suppression. In addition, we also received your letter documenting use of water from Battle Creek at the Hermosa gravel pit. Based on your Board testimony and the documentation recently provided, we do not intend to proceed with cancellation of the water permit at this time.

I want to emphasize that South Dakota is a "use it or lose it" state when it comes to maintaining a water permit/right. A water permit is forfeited for nonuse if the permit holder fails to beneficially use all or any part of such water for the permitted use for a period of three years unless legal excuse exists for the nonuse. There is not a provision to allow use on a project-by-project basis greater than three years apart. For highway construction projects, the Chief Engineer can issue a one-year temporary permit but issuance is on a yearly basis and subject to water availability. I encourage Birdsall to make use of water at least once every three years at all of your water permitted sites in order to maintain their water rights.

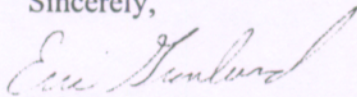
Based on the documentation you provided, the quantity of water authorized under the water permit will be reduced when the water license is issued from 3.34 cubic feet of water per second (1500 gpm) to 0.11 cfs (50 gpm). This reduction is because a water license may only be issued to the extent water is beneficially used.

Finally, I want to again inform you that water use authorized under this permit is for non-consumptive purposes. Water use under this permit may be diverted, used in the operation and held in a settling pond prior to discharge back to the creek in compliance with surface water discharge permit regulations. The existing water right permit does not authorize consumptive use of water in which water is not returned to the creek.

I checked with the Surface Water Quality Program of DENR and was informed that a discharge permit has not been obtained for the Hermosa site. I have enclosed an application to file for a surface water discharge permit. I encourage you to contact Lonnie Steinke with the Surface Water Quality Program of DENR at (605) 773-3351 to discuss discharge permitting requirements.

If you have any questions on maintaining a water right, please contact me.

Sincerely,



Eric Gronlund
Water Rights Program
(605) 773-3352
email: eric.gronlund@state.sd.us

enclosure



BIRDSALL SAND & GRAVEL

A Division of Pete Lien & Sons, Inc.

P.O. Box 767 Rapid City, SD 57709-0767 PH:605-394-7240 FX:605-394-7246

342-9250

AGGREGATE PLANTS: Oral, Wasta, Creston, and Blunt, SD

READY MIX CONCRETE PLANTS: Rapid City, Sturgis, Spearfish, Lead, Ft. Pierre, SD and Gillette, WY

March 7, 2002

Mr. Eric Gronlund
South Dakota Department of Environment & Nat. Resources
Joe Foss Building
523 East Capital Avenue
Pierre, SD 57501-3182

RECEIVED

MAR - 8 2002

WATER RIGHTS
PROGRAM

RE: Water Permit 1283-2

Dear Mr. Gronlund:

I appreciated the time you could spend with us yesterday. Again, I apologize for not contacting you sooner regarding your February 14th letter.

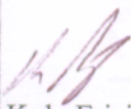
Currently, we have a con-consumptive permit. As I understand it, the issue of non-consumptive vs. consumptive uses is mute, as long as the water use is primarily for a sand & gravel washing plant and its incidentals. Incidentals may include dust control for the gravel haul road from the pit to the highway and/or dust suppression around the plant site and equipment.

Currently, we are allotted 1,500 gpm on our permit. Based upon our recent prior use, your recommendation would be a reduction to 50 gpm. Based on our experience, 300 gpm would be the minimum to operate a sand & gravel washing plant. As I stated yesterday, this water would be used for "makeup" water for the plant operation and its fresh water ponds. Therefore, we would request upon licensing of this permit that the appropriation rate not be reduced to less than 300 gpm.

If you have any questions or concerns, please feel free to contact me at the Rapid City office. Thank you.

Sincerely,

BIRDSALL SAND & GRAVEL CO.


Kyle Frisinger
Division Sand & Gravel Superintendent

Cc: Lecia Craft, Environmental Engineer
Joel Brannan, General Manager

Handwritten notes in right margin:
1283-2 3.34 PE 2200 gpm
1715-2 5.0 LC 117 "
4512-3 0.26 LC 153 "
506-2 0.34 LC 1340 "
926-2 3.0 LC
297-2 5.0 CA



ASSOCIATED GENERAL
CONTRACTORS OF
SOUTH DAKOTA & NEBRASKA



NATIONAL STONE, SAND & GRAVEL ASSOCIATION

Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit No. 1283-2, Birdsall Sand and Gravel

ADDRESS: COUNTY:

DATE: March 6, 2002 TELEPHONE:

RE: Telephone conversation with Kyle Frisinger and Lecia Craft regarding Water Permit No. 1283-2

COMMENTS:

Kyle Frisinger, the Birdsall Sand & Gravel Superintendent, and Lecia Craft called regarding my February 14, 2002, letter on Water Permit No. 1283-2. This water permit appropriates water from Battle Creek for a sand and gravel washing plant near Hermosa. The issue of whether the water permit is subject to cancellation due to nonuse came into question and a hearing was held before the Water Management Board. Based on that hearing, Mr. Frisinger sent a letter, dated January 22, 2002, which caused me to sent the February 14th letter on the water permit.

Mr. Frisinger and Ms. Craft called to get further clarification on my letter.

We first discussed the type of use (consumptive or non-consumptive use) authorized by the permit. I explained that the application originally stated "non consumptive use" and that the public notice stated the use was "primarily non-consumptive use". I believe this meant that water use was for the sand and gravel operation and was not authorized to be diverted for off-site purposes. I stated that I realized there were inherit losses in the sand and gravel washing operation including the settling pond prior to return flows to Battle Creek. In other words, no all water diverted is returned to the creek. They asked if water used for dust suppression on the haul road at the site would be acceptable. I indicated it was my opinion that if water was used for the operation of a wash plant (ie. wash plant, maintenance of the site, etc.) that I doubted Water Rights would have a problem but I didn't speak for the Water Management Board or someone's future ability to contest the permit. I said that I did not think that hauling water off-site was authorized. If this type of use is necessary it may be possible for a temporary permit be issued for these type of uses.

We then discussed the licensing of the permit and the quantity of water that could be licensed under the water right. Mr. Frisinger stated that they believe a wash plant would need approximately 300 gpm to operate instead of the 50 gpm listed in my letter. I stated the 50 gpm came from his testimony and the documentation he provided of water use (documentation was based on contractors that were filling water trucks). I believe it would be prudent not to license the water permit immediately. This would enable them to get a better handle on the water need of a wash plant. I reminded them that South Dakota is a "use it or lose it" state when it comes to water right and that they must use water at least once ever three years.

We briefly discussing the licensing process and the timeframes for licensing this permit. Currently, I can not place a timeframe on when this water right permit would be licensed. I'd like to see them utilize the site to get a good handle on the water use for the operation.

They also asked about the prospect for getting a new permit from Battle Creek for a new consumptive use. I said we currently have an application pending from Battle Creek that we are recommending denial. I stated the reason for recommending denial is unappropriated water is not available and downstream water rights could be adversely affected. I agreed to send Ms. Craft a copy of the staff report on this application.

I sent the Ms. Craft: 1) a copy of this file documentation; 2) table of water permit/rights held by Lien & Sons and Birdsall Sand and Gravel, and the report on Water Permit Application No. 2467-2.

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

NAME:

Eric Henderson



**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: BIRDSALL SAND & GRAVEL
L C MIKE VIDAL
PO BOX 767
RAPID CITY SD 57709

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

SUBJECT: Shutoff Order for Battle Creek Water Rights

Shutoff Order for Water Right Nos. 1283-2

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.

1285-2

PETE

LIEN

MAILING ADDRESS: P.O. BOX 440 RAPID CITY, SD 57709-0440 PH. 605-342-7224
PHYSICAL ADDRESS: 3401 UNIVERSAL DR. RAPID CITY, SD 57702 FX. 605-342-6979

•PETE LIEN & SONS •BIRDSALL SAND & GRAVEL •COLORADO LIEN CO.
•DAKOTA BLOCK CO. •DAKOTA STEEL & SUPPLY •TRANS COLORADO CONCRETE

PETER C. LIEN
1898 - 1969 FOUNDER

BRUCE H. LIEN
FOUNDER

CHARLES H. LIEN
FOUNDER
CHAIRMAN

PETER C. LIEN
PRESIDENT

& Sons, Inc.

February 9, 2006

Department of Environment & Nat. Resources
Attn. Water Rights Program
Joe Foss Building
523 East Capital Ave
Pierre, SD 57501-3182

RE: Water Permit – Change of name

Permit 1283-2 – Hermosa

Permit 2531-2 – Oral

Permit 1715-2 – Creston

Permit 4512-3 - Blunt

Permit 926-2 – Wasta

The Birdsall Sand & Gravel sand plants will now be operating under the name of Pete Lien & Sons Inc, effective January 1, 2006.

The operations affected by this transfer are as follows:

Blunt Sand Plant
Creston Sand Plant
Wasta Sand Plant

Blunt, SD
Rapid City, SD
Wasta, SD

Oral Sand Plant
Crook County Sand Plant
St. Barbara Sand Plant

Oral, SD
Hulett, WY
Pueblo CO

Please transfer our above-mentioned permit to the name of Pete Lien & Sons Inc, with the following address and contact information:

Pete Lien & Sons Inc.
Attn. Environment Engineer
P.O. Box 440
Rapid City, SD 57709

605-342-7224 - phone
605-342-6979 – fax

If you have any questions or concerns, please feel free to contact me at the Rapid City office or my direct line phone at 605-939-2753. Thank you.

Sincerely,

PETE LIEN & SONS INC.



Kyle Frisinger
Sand & Gravel Manager

RECEIVED

FEB 28 2006

WATER RIGHTS
PROGRAM



1283-2

**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 1, 2006

No. 506-2
926-2
1283-2
1715-2
4512-3

Pete Lien & Sons, Inc.
Shelly Erickson
PO Box 440
Rapid City SD 57709

Dear Ms. Erickson:

Thank you for returning the 2005 Water Use Questionnaires. The forms indicate ownership changes on several water permit/rights. Enclosed are partially completed "Notice of Transfer" forms for use in filing ownership changes. The water rights are currently listed in the name of Birdsall Sand & Gravel.

The transfer forms should be checked over for accuracy and **signed by the new owner**. Upon completion, return the forms to our office with a required filing fee of \$2.50 each (\$12.50 total).

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.

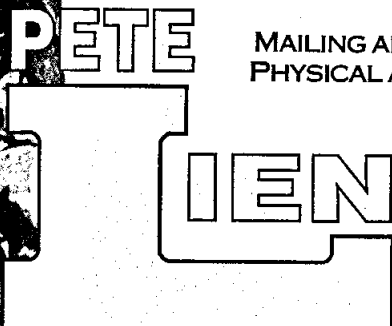
If you have any questions, please contact me.

Sincerely,

Karen Schlaak
Water Rights Program
605 773-3352
email: karen.schlaak@state.sd.us

enclosure

1282-2



MAILING ADDRESS: P.O. BOX 440 RAPID CITY, SD 57709-0440 PH. 605-342-7224
PHYSICAL ADDRESS: 3401 UNIVERSAL DR. RAPID CITY, SD 57702 FX. 605-342-6979

•PETE LIEN & SONS •BIRDSALL SAND & GRAVEL •COLORADO LIEN CO.
•DAKOTA BLOCK CO. •DAKOTA STEEL & SUPPLY •TRANS COLORADO CONCRETE

PETER C. LIEN
1898 - 1969 FOUNDER

BRUCE H. LIEN
FOUNDER

CHARLES H. LIEN
FOUNDER
CHAIRMAN

PETER C. LIEN
PRESIDENT

& Sons, Inc.

March 10, 2006

Chief Engineer
Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

RE: Notice of Transfer Forms

Dear Karen Schlaak,

Enclosed are the completed "Notice of Transfer" forms for use in filing ownership changes and the required filing fee of \$12.50. The water rights will be listed under Pete Lien & Sons, Inc instead of Birdsall Sand and Gravel.

If you have any questions, please feel free to contact me at 605-342-7224.

Thank you,
Pete Lien & Sons, Inc

Shelly Erickson

Shelly Erickson
Permitting Engineer

RECEIVED
MAR 13 2006
WATER RIGHTS
PROGRAM

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date March 13, 2005

RECEIVED OF Pete Lien & Sons Inc., PO Box 440, Rapid City SD 57709

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	2	50
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>1283-2</u>		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	2.50

No.

02255

By

Darland White
Chief Engineer

NOTICE OF TRANSFER OF OWNERSHIP

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

No. 1283-2
Date: 3-10-06

I/We request that Water Permit No. 1283-2

formerly owned by: Birdsall Sand & Gravel

be transferred to: (name & address) Pete Lien & Sons, Inc.

PO Box 440, Rapid City SD 57709

Telephone No. 605 342-7224

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

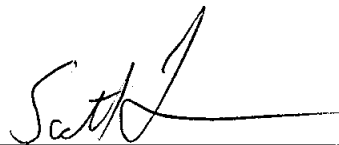
Battle Creek – SW ¼ SE ¼ Sec 32-T2S-R8E (Custer County)

I/We understand that the validity of Water Permit No. 1283-2 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

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

A fee of Two Dollars and Fifty Cents (\$2.50) is required to cover the filing fees as required under SDCL 46-2-13. This form must be signed by the new owner.

I/We Pete Lien & Sons, Inc., the new owner, certify that the above information is true and correct.



(Signed by new owner)

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

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

RECEIVED

MAR 13 2006

WATER RIGHTS
PROGRAM



1283-2

**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

Shelly Erickson
Pete Lien & Sons Inc
PO Box 440
Rapid City SD 57709-0440

RE: Ownership Changes for Water Permit or Right Nos. 506-2, 926-2, 1283-2, 1715-2, and 4512-3

Dear Ms. Erickson:

I am writing to acknowledge receipt of the ownership changes you submitted for Water Permit and Right Nos. 506-2, 926-2, 1283-2, 1715-2, and 4512-3. The transfers have been completed. The above listed water permits and rights formerly listed in the name of Birdsall Sand and Gravel are now listed in the name of "Pete Lien & Sons Inc."

Enclosed are Receipt Nos. 02350, 02351, 02352, 02353 and 02354 in the amounts of \$2.50 each. You may keep them for your records. If I can answer any questions for you, please contact me.

Sincerely,

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

enclosures



1283-2
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 14, 2006

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

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

SUBJECT: Battle Creek Bypass Order

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

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

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

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



1283-2

**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:

1283-2

PERMIT NO	PTL	PRIOR1	PTL	PRIOR2	PRIORDATE	COUNTY	STAUSE	FIRST_NAME	LAST_NAME	ADDRESS2	CITY	STATE	ZIP	PLU54
2153-2					05/01/1882	CU	LC	IRR	NEUGEBAUER BROTHERS DAIRY	14197 SD HWY 40	HERMOSA	SD	57744	
969-2					05/01/1882	CU	LC	IRR	NEUGEBAUER BROTHERS	14197 SD HWY 40	HERMOSA	SD	57744	
2368-2					10/14/1887	CU	LC	IRR	CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
2368A-2					10/14/1887	CU	PE	IRR	CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
0421-2					10/27/1894	CU	PE	IRR	JD RANCH REAL ESTATE LLC	HCR 89 BOX 298	HERMOSA	SD	57744	
0170-2					12/29/1895	CU	PE	IRR	FOOS	HCR 89 BOX 317	HERMOSA	SD	57744	
2373-2					03/02/1896	CU	LC	IRR	RODALES RANCHES, INC.	8730 SHERIDAN LAKE RD	HERMOSA	SD	57702	9066
1209-2					09/29/1900	CU	LC	IRR	KANESKY	BOX 52	CAPUTA	SD	57725	
1221-2					09/29/1900	CU	LC	IRR	RITBERGER BROTHERS	15663 SD HWY 40	HERMOSA	SD	57744	
2367-2					01/01/1905	CU	LC	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
2367A-2					01/01/1905	CU	PE	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
2367B-2		01/01/1905		07/17/1948	01/01/1905	CU	PE	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
187-2					09/11/1912	CU	LC	IRR	FOOS	PO BOX 317	HERMOSA	SD	57744	0317
1275-2					01/01/1935	CU	LC	IRR	KAISER	15745 SD HWY 40	HERMOSA	SD	57744	
319-2					07/17/1948	CU	LC	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
1170-2					01/28/1974	CU	LC	IRR	STOVALL	14829 SD HWY 40	HERMOSA	SD	57744	
1283-2					08/01/1975	CU	PE	COM	LIEN & SONS INC	PO BOX 440	RAPID CITY	SD	57709	0440
2054-2					03/15/1988	CU	LC	IRR	NEUGEBAUER BROTHERS	14197 SD HWY 40	HERMOSA	SD	57744	



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

June 20, 2012

KYLE FRISINGER
PETE LIEN & SONS INC
PO BOX 440
RAPID CITY, SD 57709

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	LC_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: KYLE FRISINGER
PETE LIEN & SONS INC
PO BOX 440
RAPID CITY SD 57709

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

SUBJECT: Battle Creek Water Rights Shutoff Order

Shutoff Order for Water Right Nos. 1283-2

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: PETE LIEN & SONS INC
KYLE FRISINGER
PO BOX 440
RAPID CITY SD 57709

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

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

Shutoff Order for Water Right Nos. 1283-2

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

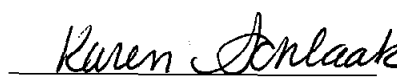
I hereby certify that on June 26, 2013 postage, prepaid envelope(s) containing a Notice dated June 26, 2013 regarding Battle Creek Shut-off Notices addressed as stated below:

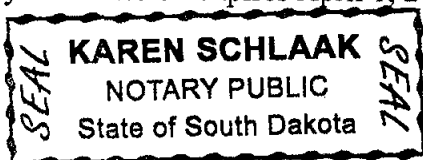
NEUGEBAUER BROTHERS DAIRY	STANLEY NEUGEBAUER	14197 SD HWY 40	HERMOSA	SD	57744
WYOMING DAKOTA RAILROAD PROPERTIES INC	DAVID S DRACH	120 S 6TH ST - 9TH FLOOR	MINNEAPOLIS	MN	55402
TRAVIS BIES		25813 SOUTH FOR ROAD	FAIRBURN	SD	57738
JD RANCH REAL ESTATE LLC		HCR 89 BOX 298	HERMOSA	SD	57744
RUSHMORE VIEW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





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 that reads "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
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

July 11, 2017

Dear Water Right Holder;

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

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

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

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

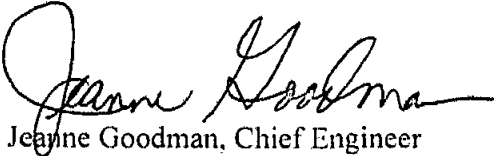
South Dakota water law gives the highest priority to domestic use, which includes livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses, including irrigation, will

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

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

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

Sincerely,

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

Jeanne Goodman, Chief Engineer
DENR, Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

August 16, 2022

PETE LIEN & SONS INC
PO BOX 440
RAPID CITY, SD 57709

Dear Battle Creek Water Right Holder:

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

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

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

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

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

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

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

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

**PETE LIEN & SONS INC
KYLE FRISINGER
PO BOX 440
RAPID CITY, SD 57709**

1283-2

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: PETE LIEN & SONS INC
KYLE FRISINGER
PO BOX 440
RAPID CITY, SD 57709

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

Subject: Shutoff Order for Water Right No. 1283-2

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).