

NO. 187-2

Office of State Engineer
DOCUMENT FILE

Division No. 2. Battle Creek water

Name of Applicant

L. G. Bingham

Waverley Garrison, Woke

J. M. Oringate & Co. Pitt.

Scale of Irish Receipt

September 11th 1912

Location of point of diversion

N. 41° 30' W. 508 ft. from shore

marked 1E 4S, 2nd 10. 1 4S

Beneficial Insect Irrigation

approved. Feb 6th 1913

Presented in B-12, page 2, 107

Remarks

This permit is not to be

continued as concerning

Authority from the state

Engineered to construct

02. Maintenance des escaliers

Work on the ground

Wiederholungen

[Handwritten signature]

STATE OF SOUTH DAKOTA,
COUNTY OF HUGHES.

I hereby certify that the within and foregoing instrument is a true, correct and complete transcript of the instrument which it purports to be, as the same was filed for record in the office of the State Engineer.

Witness my hand and official seal, done at my office in Pierre, State of South Dakota, this 19 day of May 1903.

Homer E. Merrill
State Engineer.

By L. M. Houch
Clerk Deputy.

Copy
No. 187-2

Division No. 2

Battle Creek Water District.

PERMIT

to appropriate water from

Battle Creek

Quater County, South Dakota

Name of applicant

J. B. Daugherty

Name of diversion works

T. V. Irrigating Ditch

Date of first receipt at office of State

Engineer September 11 1903

Returned to applicant for Correction

1903

Corrected application received

1903

Date of water right

September 11 1903

Recorded in Book 2, Pages 210 & 211

One-fifth of work to be completed

May 25 1913

Whole work to be completed

September 25 1913

Final proof of use of water

September 25 1913

Approved February 8, 1903

Samuel S. Lee

State Engineer.

By

Deputy

No. 187-3

Water Division No. 2 Battle Creek Water District.

(Blanks to be filled by the State Engineer.)

COPY

APPLICATION FOR A PERMIT To Appropriate Water Within the State of South Dakota

[NOTE--Draw a line through items not applicable.]

1. Name of applicant -6--Rt. Doughterty--Clarence Foos, Foos Dairy
Nisland
 Postoffice address Polson--, County Custer, State So. Dak.

I. If a corporation: -----

(a) Name of same -----

(b) Date and place of incorporation -----

(c) Amount of capital stock -----

(d) Amount paid in -----

(e) Names and addresses of directors: -----

[NOTE--A certified copy of articles of incorporation must accompany the application.]

II. Method of accomplishing the work and financial resources of the applicant:

(a) Method of accomplishing the work. (Whether by contract, employment of others, or by direct labor) Direct Labor

(b) Cash on hand, \$ ----- (c) Treasury stock, \$ -----

(d) Bonds to be issued, \$ ----- (e) Other resources, \$ -----

2. Name of diversion works T M irrigating ditch

3. Quantity of water claimed 2.28 cubic feet per second.

4. Source of water supply Battle Creek

5. Location of point of diversion N 41° 30' W. 2503 ft. from corner marked 1 E 4 S
Range 10 Township 4 S. on Left bank.
 (Right or left bank looking down stream.)

6. Annual periods during which water is to be used Jan. to Jan.

7. To be used for:

I. Irrigation ~~or domestic use~~

(a) Number of acres to be irrigated 120 acres. approx.

(b) Legal subdivisions to be irrigated -----

NOTE--A list of lands to be irrigated, giving each subdivision and fraction with acreage thereof, should be written here, or may be appended as a part of this application. Same must also be shown on accompanying map.]

(c) Statement as to domestic use (giving location, etc.) -----

II. Mining, power, manufacturing, transportation, or other purposes:

(a) Nature of use -----

(b) Amount of power to be generated ----- horse power.

(c) Location of plant -----

(d) Method of developing power -----

(e) Point where water will be returned to stream -----

8. Estimated cost of works:

(a) Head gates, \$ 50

(b) Pumping plant, \$

(c) Fluming, \$ 150

(d) Canal-earth, \$

Rock, \$

(e) Other structures

\$ 300

Total, \$ 500

9. Description of diversion works:

I. Nature of works: (Reservoir, dam, ditch, flume, pumping plant, etc.)

Water taken from Water Hole in Canal

II. Dimensions of works:

(a) Dam: Height No Dam feet; length at bottom feet; length at top feet; thickness at bottom feet; thickness at top feet; slope of front (water) face; slope of back face; material used in construction

(b) Reservoir; Capacity when filled acre feet. Surface area at highwater mark acres.

DEPTH AT OUTLET-Feet	SURFACE AREA AT EACH.....FEET OF DEPTH AT OUTLET-ACRES	CAPACITY— ACRE-Feet

(c) Head gate: Width feet; height feet

Material

(d) Canal: Total length 6433.0 ft. miles

LOCATION BELOW HEAD-GATE	DEPTH	BOTTOM WIDTH	WIDTH AT WATER LINE	GRADE PER MILE
At mile	feet	feet	feet	feet
At mile	feet	feet	feet	feet
At mile	feet	feet	feet	feet
At mile	feet	feet	feet	feet
At mile	feet	feet	feet	feet

[Give dimensions where reductions in size are made.]

10. Time required for completion of work 8 mo. years

11. Time required for complete application of water to the proposed beneficial use 8 Mo. years

12. Choice of newspaper for publication of notice of intention to appropriate

Scenic Observer

Scenic, S. D.

STATE OF SOUTH DAKOTA

County of Custer

I, C. R. Daugherty, being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of Manager, that I have read the above and foregoing statement, and examined the map accompanying the same, and that I know of my own personal knowledge that the matters therein stated and shown are true.

Signed C. R. Daugherty

Subscribed and sworn to before me this 9th day of September 1902

(SEAL)

G. H. Randall

Notary Public (or other qualified officer.)

Remarks by State Engineer:

This permit is not to be construed as conferring authority from the State Engineer to construct or maintain diversion works over the private property of other owners.

STATE OF SOUTH DAKOTA

County of Hughes

Pierre, South Dakota, February 6, 1913

This is to certify that the foregoing application was received at this office at 11 o'clock a.m. upon the 11th day of September 1902 and that after examination it was found to comply with the provisions of the Irrigation Code of South Dakota. Notice of intention to appropriate was published, proof of publication was duly filed and a hearing was held in this office on January 17, 1913.

State Engineer.

By Deputy.

Number of permit 122-2

Date of first receipt of application September 11 1902

Date of return to applicant for correction 1902

Date of receipt of corrected application 1902

Date from which applicant may claim right September 11 1902

Approved February 6, 1913, Recorded in Book 2, Pages 210 & 211

This is to certify that I have examined the foregoing application for a permit to appropriate water of the state of South Dakota, and I hereby grant the same as stated herein, subject, however, to the following limitations and conditions.

1st. The equivalent of at least one-fifth of the work above specified is to be completed on or before May 25, 1913

2d. The whole of said work is to be completed on or before September 25, 1913

3d. The limit of time for proof of beneficial use of water appropriated in accordance herewith is September 25, 1913

4th. The water appropriated shall be used for the purpose of irrigation.

5th. 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.

6th. The amount of the appropriation herein granted shall not exceed 2.28 cubic feet of water per second of time; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventh (1-70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before September 25, 1913; said water to be used during the following described annual periods.

January 1 to January

Witness my hand this 6th day of February 1913

State Engineer.

By Deputy.

Original subdivisions to be irrigated by the -TM- Ditch

Approx.	acres	along	creek	in	the	NW $\frac{1}{4}$	of	the	NW $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	Sec. 12
"	5 $\frac{1}{2}$	"	"	"	"	SW $\frac{1}{4}$	of	the	NW $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	Sec. 12
"	8 $\frac{1}{2}$	"	"	"	"	NW $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	Sec. 12
"	7 $\frac{1}{2}$	"	"	"	"	NE $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	Sec. 12
"	4	"	"	"	"	SW $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	Sec. 12
"	9 $\frac{1}{2}$	"	"	"	"	SW $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	Sec. 12
"	5 $\frac{1}{2}$	"	"	"	"	NW $\frac{1}{4}$	of	the	SE $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	Sec. 12
"	2	"	"	"	"	NE $\frac{1}{4}$	of	the	SE $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	Sec. 12
"	3	"	"	"	"	SW $\frac{1}{4}$	of	the	SE $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	Sec. 12
"	8 $\frac{1}{2}$	"	"	"	"	SE $\frac{1}{4}$	of	the	SE $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	Sec. 12
"	2	"	"	"	"	NW $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	the	SE $\frac{1}{4}$	of	Sec. 12
"	1 $\frac{1}{2}$	"	"	"	"	NE $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	the	SE $\frac{1}{4}$	of	Sec. 12
10	7 $\frac{3}{4}$	"	"	"	"	SW $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	the	SE $\frac{1}{4}$	of	Sec. 12
"	1 $\frac{1}{2}$	"	"	"	"	SE $\frac{1}{4}$	of	the	SW $\frac{1}{4}$	of	the	SE $\frac{1}{4}$	of	Sec. 12
"	1	"	"	"	"	SW $\frac{1}{4}$	of	the	SE $\frac{1}{4}$	of	the	SE $\frac{1}{4}$	of	Sec. 12
"	2 $\frac{1}{2}$	"	"	"	"	NW $\frac{1}{4}$	of	the	NW $\frac{1}{4}$	of	the	NW $\frac{1}{4}$	of	Sec. 13
"	1	"	"	"	"	NE $\frac{1}{4}$	of	the	NW $\frac{1}{4}$	of	the	NW $\frac{1}{4}$	of	Sec. 13
"	8 $\frac{1}{2}$	"	"	"	"	NW $\frac{1}{4}$	of	the	NE $\frac{1}{4}$	of	the	NW $\frac{1}{4}$	of	Sec. 13
"	8 $\frac{1}{2}$	"	"	"	"	NE $\frac{1}{4}$	of	the	NE $\frac{1}{4}$	of	the	NW $\frac{1}{4}$	of	Sec. 13
"	8 $\frac{1}{2}$	"	"	"	"	SW $\frac{1}{4}$	of	the	NE $\frac{1}{4}$	of	the	NW $\frac{1}{4}$	of	Sec. 13
10	4	"	"	"	"	SE $\frac{1}{4}$	of	the	NE $\frac{1}{4}$	of	the	NW $\frac{1}{4}$	of	Sec. 13
"	4	"	"	"	"	NW $\frac{1}{4}$	of	the	NE $\frac{1}{4}$	of	the	NE $\frac{1}{4}$	of	Sec. 13
"	8	"	"	"	"	NE $\frac{1}{4}$	of	the	NW $\frac{1}{4}$	of	the	NE $\frac{1}{4}$	of	Sec. 13
"	2 $\frac{1}{2}$	"	"	"	"	SW $\frac{1}{4}$	of	the	NW $\frac{1}{4}$	of	the	NE $\frac{1}{4}$	of	Sec. 13
"		"	"	"	"	SE $\frac{1}{4}$	of	the	NW $\frac{1}{4}$	of	the	NE $\frac{1}{4}$	of	Sec. 13.

Range 10 East Township 4 South of B.H.M.

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 187-2

(1) WHEREAS, On the 11th day of September A. D. 19 12.

C. R. Daugherty

made Water Right Application No. 187-2 for a permit to use 2.28 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 6th day of February A. D. 19 13

Permit No. 187-2 with a date of priority of September 11, 1912

was issued to said applicant for the diversion of said water, and provided for the completion of construction of the water

supply system therein described on or before the 25th day of September A. D. 19 13 and for the

application to beneficial use of said water on or before the 27th day of September A. D. 19 13

WHEREAS, on the 3rd day of August 1981, this Permit was transferred to Clarence
Foos, Foos Dairy, Nisland SD

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 .86 cubic feet per second of water for beneficial use and,

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

to irrigate the following lands

Section 13, T4S, R10E acres

A3 NW1/4 NE1/4 3

A4 NE1/4 NE1/4 18

AC SW1/4 NE1/4 2

AD SE1/4 NE1/4 25

Section 14, T4S, R11E

BC SW1/4 NW1/4 7

CB NW1/4 SW1/4 5

TOTAL 60 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 Clarence Foss, Foss Dairy

of Nisland

the holder a and owner a of said permit No. 187-2 a water right, dating from September 11, 1912

to use of .86 cubic feet per second of the waters

of Hattie Creek

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

purposes hereinbelow mentioned, to be diverted at a point 470' south & 356' east of NE corner, Section

13, T4E, R10E (PA)

and conducted to and upon portions of lands in Section 12 and 18, T4E, 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. 187-2 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota

this 17th day of August A. D.

Nineteen Hundred and Eighty-one

WATER MANAGEMENT BOARD

By:

John Patch
Chief Engineer, Executive Officer
JOHN PATCH

Permit No. 187-2

Water Diversion No. 2 Upper Cheyenne Water District

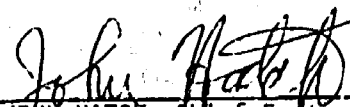
CERTIFICATE OF CONSTRUCTION

This is to Certify, That Clarence Foos, Foos Dairy

the holder s of
Permit No. 187-2, issued upon Application No. 187-2, bearing date of priority of September 11,
1912 authorizing the diversion of 2.28 cu. ft. per second of the waters of
Battle Creek County of Custer, State of South Dakota at
a point 470' south & 350' east of N $\frac{1}{2}$ corner, Section 13, T4S, R10E (BA)
for irrigation

purposes, ha ve complied with the provisions of the laws of the State of South Dakota relating to proof of
completion of the works of diversion set out and described in said Permit; that said works are found in satisfactory
condition for diverting and conveying to the place of intended use 5.0 cu. ft. per second of water.

Date August 13, 1981


JOHN HATCH, Chief Engineer
Water Rights Division

(First Publication _____ 191 _____)

APPROPRIATION OF WATER.

Office of the State Engineer,

Pierre, S. D., Sept. 27, 1912

Notice is hereby given that C. R. Daugherty

whose postoffice address is Folsom Custer County,

S. D., has made an application in accordance with the provisions of the irrigation laws of South Dakota for a permit to appropriate for beneficial

was 2.38 cubic feet of water per second of time from

Battle Creek through the T M irrigating ditch

the point of diversion of which is to be located upon the left

bank of said stream in the N. W. 1/4 of the S. E. 1/4 of section

11 township 4 S. range 10 E. B.H.M. , said water

To be used for the purpose of irrigation

upon the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of SW $\frac{1}{4}$, NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of SW $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of SW $\frac{1}{4}$ or SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of SW $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of SW $\frac{1}{4}$, SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of SW $\frac{1}{4}$, NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of SE $\frac{1}{4}$, all in Sec. 12; and NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$, NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$, NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$, SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$, SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$, SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$, all in Sec. 13, Rge. 10 East, Township 4 South, of B.H.M.

This application will be taken up by the state engineer at his office at Pierre for consideration and appropriate action upon the 28th

day of November 1912, at 9 a. m., at which time all persons

who believe that the prior rights would be injuriously affected, or that

the allowance of the permit would be detrimental to the public welfare,

and also parties making the application, and to be benefited, are notified

to be present either by sworn affidavit or in person for the purpose of presenting any relative testimony.

State Engineer.

State of South Dakota,

County of Hughes;

Office of State Engineer.

ss.

In re application of G.R. Daugherty for a permit to appropriate water within the State of South Dakota. Application No. 187-2-2.
Water Division No. 2. Battle Creek Water District.

PROTEST OF JOHN DALEY of Custer County, South Dakota.

Now comes John Daley of Hermosa, Custer County, South Dakota, and protests against the allowance of the ~~app~~ application of G.R. Daugherty of Folsom, Custer County, South Dakota, for a permit to appropriate the water within Water Division No. 2 Battle Creek Water District as set forth in his said application No. 187-2, sworn to September, 2th. 1912, and filed in the Office of the State Engineer on or about September, 11th. 1912. and assigns as the grounds of his protest the following:

- 1st. That the protestant is the owner in fee and in the actual possession of the N. 1/2 of the S.E. 1/4; the S.W. 1/4 of the N.E. 1/4; and the S.E. 1/4 of the N.W. 1/4 of section 11 all in Township 4 S.R. 10 E.B.H.M. in Custer County, South Dakota, including the water rights and appurtenances belonging thereto, and has been for more than 3 years *1st part*.
- 2d. That the said "T.M." ditch as it traverses the N. 1/2 of the S.E. 1/4 of said Section 11 T. 4 S.R. 10 E. B. H. M. is the property of this protestant and was so purchased by him at the time of the purchase of said land and was constructed by one McCleud about 15 years ago.
- 3d. That your protestant has never given the said applicant permission to take out said Water right upon said land, or construct a Headgate thereon or to use said T.M. ditch as aforesaid.
- 4th. That all of the waters of Battle Creek have long since been appropriated and there is not sufficient water in said Battle Creek to supply the present appropriators with which to irrigate their said lands for which said waters have been from time to time appropriated.
- 5th. That said applicant herein by his method of diversion of water in Battle Creek in flood season would change the natural course of said Battle Creek by the construction of a new channel thereby destroying all of the land belonging to the protestant herein lying south of the said T.M. Ditch as shown upon the Blue Print filed with said Application and North of Battle Creek on the N. 1/2 of the S.E. 1/4; of said Section 11 in T. 4 S.R. 10 E.B.H.M. and rendering the same wholly useless to this *prop* protestant.

6th. That the land so destroyed is sown to Alfalfa and is of the value of One Hundred Dollars and upwards per acre.

7th. That the Water-Hole referred to in said application at the head of the ditch is fed by Springs on ~~protestant's~~ protestant's land and that in dry seasons they furnish the only source of water for stock and other purposes on the lands of protestant below and are a part of his riparian right, which the ditch applicant has no right to take from him or deprive him of.

8th. That the protestant and his ~~predecessors~~ predecessors in interest have been the owners, in the possession and use of said both the said land and the waters of said creek both as appropriators and riparian owners since April 13th 1893.

WHEREFORE protestant prays that said application of the said C. R. Daugherty hereinbefore described and referred to be denied and for such other and further relief as to the State Engineer may seem just and proper to grant.

John Daly
Protestant.

State of South Dakota.)
County of Pennington.)

John Daly of lawful age being duly sworn upon his oath deposes and says:

That he is the protestant named in and who makes and signed the foregoing protest. That he has heard said protest read and knows the contents thereof and that the facts therein stated as the grounds of said protest are true of his own personal knowledge.

John Daly

Subscribed and sworn to before me this 13th. day of November, A.D. 1912.

Charles L. L...
County Judge of Pennington County,
South Dakota.

(seal)

RECEIPT

WATER RIGHTS COMMISSION
State of South Dakota

No 4 8408

PIERRE, August 3, 19 81

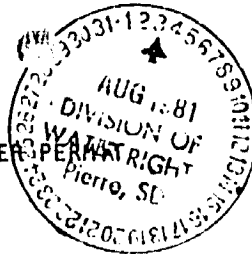
RECEIVED OF Clarence Foos, Foos Dairy, Hisland, SD
the following amount in fees for services rendered as provided for by law:

Fee for Application for Permit to Appropriate Water No. _____ (examination, processing, recording and filing) _____		
Fee for inspecting Construction, and issuing Cert. of Construction No. _____		
Fee for inspecting Beneficial Use, and issuing Water License No. _____		
Fee for issuing Location Certificate-Dry Draw, No. _____		
Fee for filing _____ transfer of WR# 137-2		2.50
Fee for certified copy of _____		
Fee for Print copy of map _____		
Fee for Certifying _____		
Fee for _____ (any other work as provided by law)		
TOTAL		2.50

WATER RIGHTS COMMISSION

By *John Hatch*
Chief Engineer, Executive Officer
JOHN HATCH / CE

NO. 187-2



NOTICE OF TRANSFER OF WATER PERMIT RIGHT

TO: Water Rights
Foss Building
Pierre, SD 57501

Date: 7-28-81

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

NE 1/4 Sec. 13, T4S, R10E; SW 1/4 NW 1/4 and NW 1/4 SW 1/4 Section 18, T4S, R11E

formerly owned by C R Daugherty

has been transferred to Clarence Foos, Misland, SD Foos Dairy-Misland
together with any rights to the beneficial use of water thereon as evidenced by

Water Right Permit No. 187-2 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 Office 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 Butte) ss.

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

Clarence Foos
(Signed)

Subscribed and sworn to before me this 29th Day of July, 1981.

Alice D. Helmer
(Notary Public)
Alice D. Helmer

My Commission Expires:
1-11-87

RECEIPT

WATER RIGHTS COMMISSION

State of South Dakota

No 4 8417

PIERRE,

August 7, 1931

RECEIVED OF Clarence Foos, Foos Dairy, Wisland, SD 57762

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

Fee for Application for Permit to Appropriate Water No. (examination, processing, recording and filing)

Fee for inspecting Construction, and issuing Cert. of Construction No. 187-2

Fee for inspecting Beneficial Use, and issuing Water License No. 187-2

Fee for issuing Location Certificate-Dry Draw, No.

Fee for filing

Fee for certified copy of

Fee for Print copy of map

Fee for Certifying

Fee for

(any other work as provided by law)

12 00

TOTAL

12 00

WATER RIGHTS COMMISSION

By *John Hatch*
Chief Engineer, Executive Officer
JOHN HATCH (lt)

Permit No.

187-2

Water Division

2

Battle Creek

Water District

Upper Cheyenne 10/20/09

REPORT OF EXAMINATION OF WORKS

AND/OR APPLICATION OF WATER TO BENEFICIAL USE

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

I have this day made a thorough examination of the water use system constructed by Clarence
Foos of Nisland S. Dak holder
 of Permit No. 187-2, bearing date of priority of September 11, 1912
 authorizing the diversion of 2.28 cu. ft. per second of the waters of Battle Creek
 for Irrigation purposes, in Custer County.

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

The Water Use System consists of,

A. Works used to divert the water:

Diversion Dam.

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

Diversion Ditch.

C. Works used to apply water to beneficial use.

Spreader Ditch for flood irrigationThe system is in the following condition: Fair.

The point of diversion is located 470' S. and 350' E. of the N $\frac{1}{4}$
Cor of sec. 13, T4S R10E.

The works are capable of diverting and conveying to the place of use 5.0 (est)
 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: The following in sec 13T4S R10E NW $\frac{1}{4}$ NE $\frac{1}{4}$ - 3 Ac., NE $\frac{1}{4}$ NE $\frac{1}{4}$ - 18 Ac.SW $\frac{1}{4}$ NE $\frac{1}{4}$ - 2 Ac., SE $\frac{1}{4}$ NE $\frac{1}{4}$ - 25 Ac.The following in sec. 18, T4S R10E.SW $\frac{1}{4}$ NW $\frac{1}{4}$ - 7 Ac., NW $\frac{1}{4}$ SW $\frac{1}{4}$ - 5 Ac.comprising a total of 60 acres of land.60 ÷ 70 = .86 cfs.Increase for 0.86 cfs.

Note: This Form 12 incorporates pertinent information
 from Permit " 0170-2. "

Date

June 23, 1980

Leroy J. McLaughlin
 (Signature)

NOT TO SCALE

R 10 E

R 11 E

12.7
13.12

11.9

NE $\frac{1}{4}$ NE $\frac{1}{4}$
18 Ac.

NW $\frac{1}{4}$ NE $\frac{1}{4}$
3 Ac.

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

SE $\frac{1}{4}$ NE $\frac{1}{4}$
25 Ac.

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

7. Ac.

5. Ac.

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

58 Ac. Total

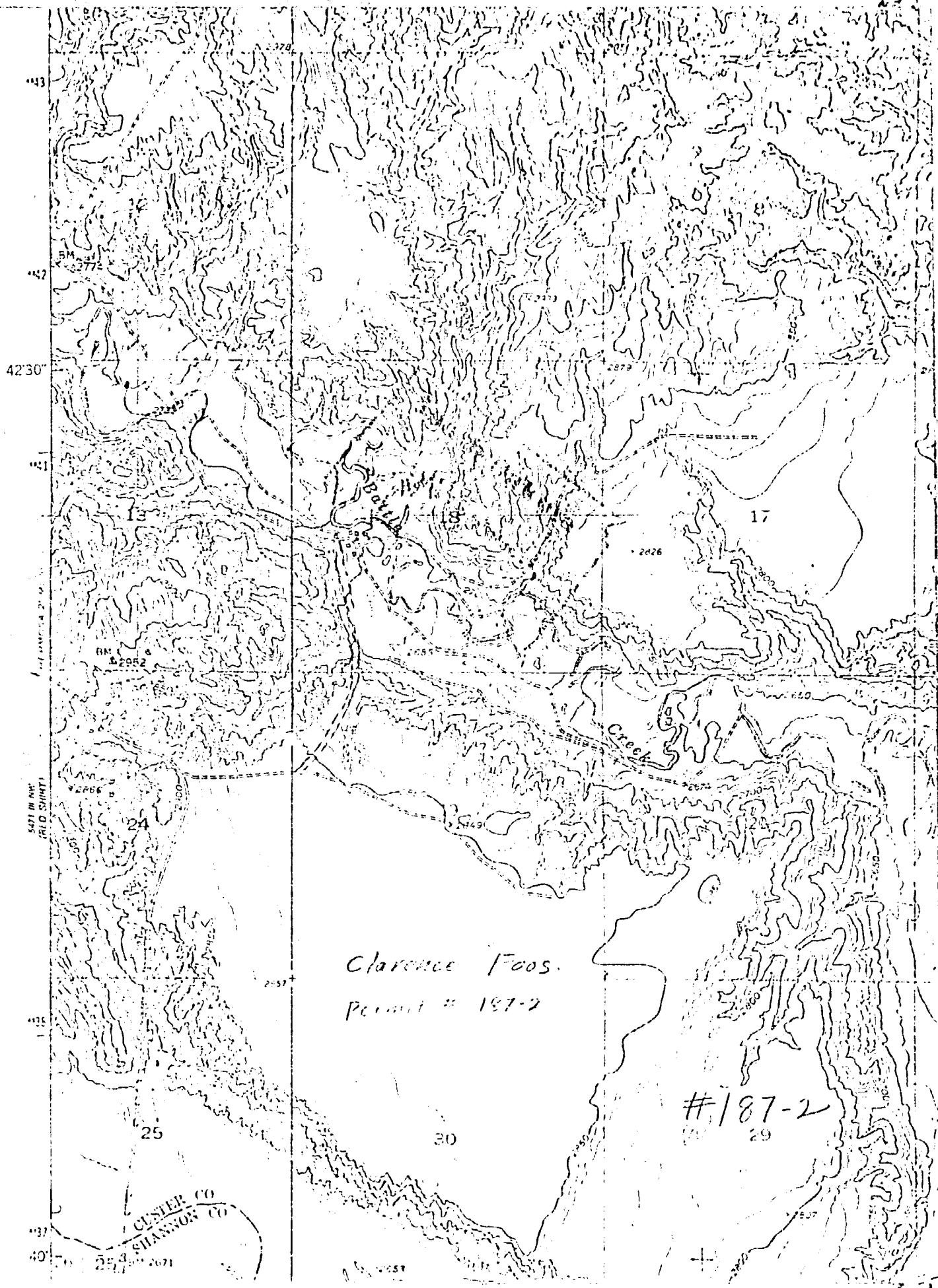
Section 10

Range # 101-2

4-10

T
H
S

Point of
Division



Clarence Foos
Permit # 187-2

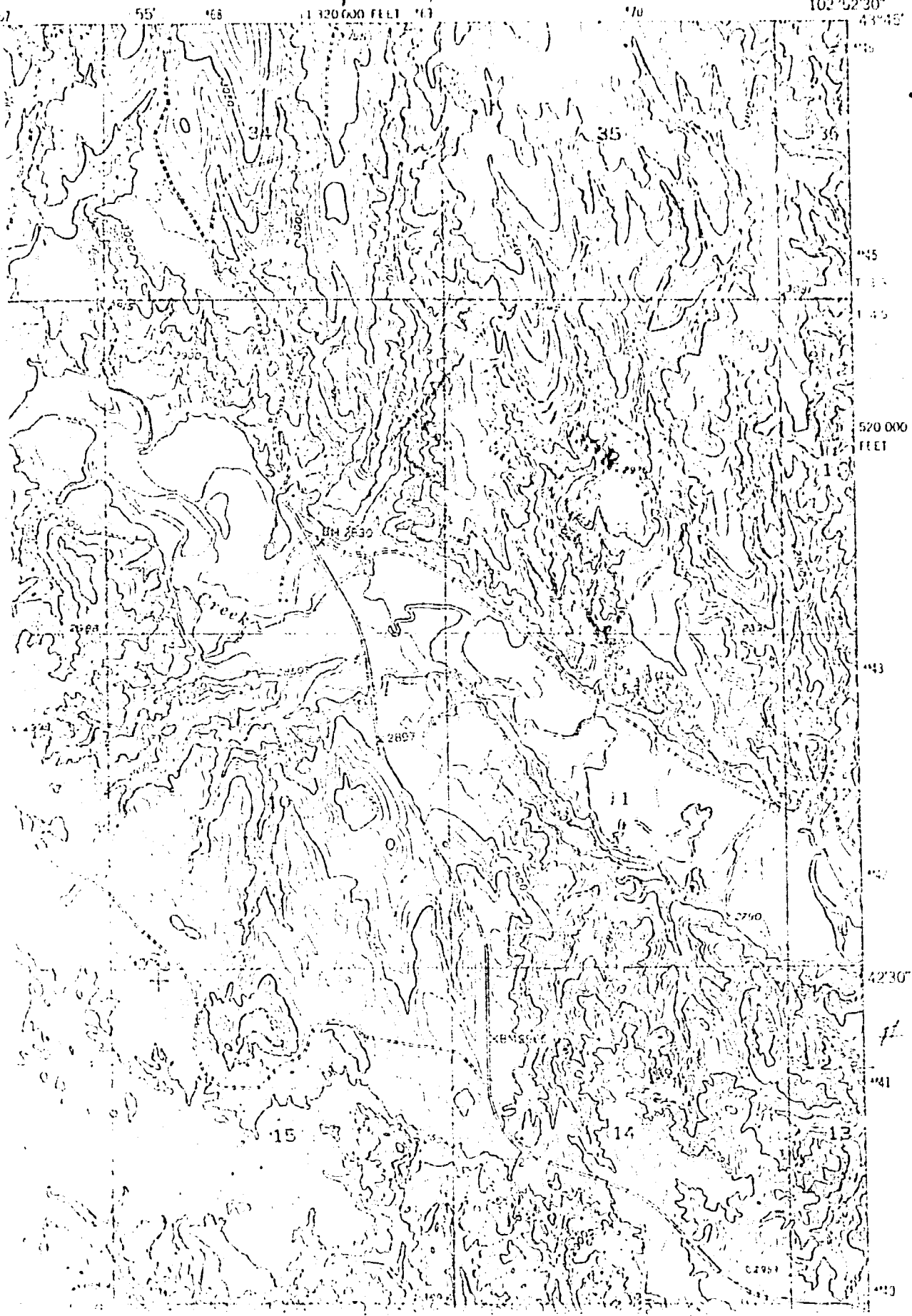
#187-2
29

RED BERRY QUADRANGLE
SOUTH DAKOTA
7.5 MINUTE SERIES (TOPOGRAPHIC)

41° 15' N
102° 00' W

J-10

J-10



187-2

187-3



Department of Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

August 15, 1990

NOTICE OF ORDER

TO: Battle Creek Water Users

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

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

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

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

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

Irrigation Water Right Owners and Domestic Users
Battle Creek

Stanley Neugebauer, Neugebauer Dairy, Inc., RR 1, Box 96, Hermosa
SD 57744
Clarence Foos, RR 4, Box 27, Hermosa SD 57744
Herb Kaiser, HCR 89, Box 303, Hermosa SD 57744
Gene Baker, RR 4, Box 11, Hermosa SD 57744
Ed Kanesky, Box 52, Caputa SD 57725
H. J. Dorgmeyer, 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

187-2

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

187-2

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

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

Water Rights Division - DMHR
Conversation or File Documentation

File No. 187-2

NAME OF PERSON OR FILE: Carol FOOS

ADDRESS: Hermosa, SD COUNTY Custer

DATE: Feb 1, 1991 TELEPHONE _____

RE: Flows in Battle Creek

COMMENTS:

Mrs Foos called to say that Marv Neugebauer had called her and asked if he could pump from Battle Creek to a dam. She said there was no flow in the creek at their place. She told Mr. Neugebauer that he could not pump.

I told her if it was ~~for~~ for pumping water into storage for irrigation this spring, he couldn't do that. If it was to pump water for livestock use, he probably could.

Water Right 969-2 allows pumping to storage beginning on April 1st.

Water Permit 2054-2 allows pumping during flood flows.

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: William H. Brong



April 19, 1991
WCR 89 Box 315-
Hermosa, S.D.
57744

John Hatch, Chief Engineer
Water Rights Division
523 East Capitol
Pierre, S. D. 57501-3181

Dear Sirs:

There are some things which have happened of which you may not be aware. As a result of over pumping by Neugebauer and dry weather conditions in August of 1990, we did not get water through our place to the Cheyenne River until late February 1991.

In November Marvin Neugebauer called to see if they could pump into their dams. He called February 1, 1991 with the same request. I reminded him pumping into dams was for flood stages. He became angry and stated that he wouldn't bother with us again. He said they would

put some cows over in the area
by their dams, but they were quite
low so cattle couldn't drink.

We called Mr. Broeg and discussed
this. He said that they could pump
into their dams for domestic use.
We reminded him that Battle Creek
was running through their place.
We asked how much water they could
pump and he couldn't answer that.
He said they could pump for domestic
use even though we did not
have any creek water for domestic
use. He finally said that they
couldn't pump.

Dr. March Tim Lohr called
to see if Neugebauer could pump.
He knew that the water reading was
2 CFS. We reminded him that
pumping into dams is when there
is flood stages. He replied "we are
working on that." He asked if
they could pump 12 hours and
shut off 12 hours. We said
that wouldn't work.

Sunday April 14, we found
Neugebauer pumping, so Monday

A.M. we called and Mr. Broez stated that he gave them permission to pump on Friday 12, because of some rain and snow. He did not check with us to see what the situation was here. The rain came in a drizzle and the snow melted slowly so there was ~~minimal~~ run off in the hills or plains.

According to your letter of August 9, 1990, there was to be communication with downstream domestic water users. Your letter of August 15, 1990 instructed that the gauge reading be maintained at 3CFS. Mr. Schaal and Mr. Broez were not following your orders.

We asked Mr. Broez why he authorized pumping last weekend and he said, "it was in anticipation of run off water."

We have visited with Ron Emerson, Rick Cleland, Ed Karsky, and Kaiser and we all agree that we need domestic water and it must be maintained by your office enforcing the law which will insure

that we have water. These are
the ranchers affected by the dry
up last fall.

We should not have to continue
to fight for domestic water, but
those who have domestic water
don't realize our problems and some
don't care. It is not possible
to place irrigators and domestic
water users without wasted
water - water running into the
Cheyenne River.

Yesterday, Mr. Schaal & Mr. Brozy
met at our place with two other
ranchers. We agreed we needed
to use the B.C.F.S. as a way
to ensure domestic use. However,
that was already decided last
summer.

Sincerely,

Clarence & Carl Zee

Water Rights Division - DWNR

File No. 9:30 a.m.

Conversation or File Documentation

NAME OF PERSON OR FILE: Mike ErkADDRESS: U.S. Forest Service - Buffalo Gap Nat. Grassland COUNTY CusterDATE: 4-23-91 TELEPHONE 745-4107RE: Grasslands lease with Mr & Mrs Clarence Foss on the lowerCOMMENTS: end of Battle Creek. Section 20 & 21, T4S, R11E.

I called Mr. Erk about the lease on this property.
The lease states that Mr & Mrs Foss can have livestock
on this property from December 16th through May 15th.
Battle Creek is the only water source for this allotment. The
Cheyenne River is fenced because it adjoins the Pine
Ridge Indian Reservation.

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: William D. Borg

Water Rights Division - DWR
Conversation or File Documentation

File No. _____

NAME OF PERSON OR FILE: DON NEGERAUER

ADDRESS: HERMOSA COUNTY CUSTER

DATE: 4/26/91 TELEPHONE 255-4462

RE: REQUEST TO PUMP

COMMENTS:

MR NEGERAUER CALLED REQUESTED TO PUMP
600 gpm (1.33 cfs) THE GAGE IS READING
2.68 OF 3.7 cfs. HE SAID WITH THE HEAVY
RAINS THAT THE CREEK IS COMING UP I TOLD
HIM TO GO AHEAD AND PUMP BUT HE WOULD
NEED TO WATCH THE GAGE IF IT GETS BELOW
2.64 HE WILL NEED TO CUT BACK OR SHUT OFF
HE SAID THAT HE WOULD CALL IN ON MONDAY

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

4/82

NAME: M. D. R. H.

Water Rights Division - DWR

File No. _____

Conversation or File Documentation

NAME OF PERSON OR FILE: Mrs FossADDRESS: HELMOSA COUNTY CLUSTERDATE: 4/26/91 TELEPHONE 255-4104RE: Informing on Mergersburgs Pumping

COMMENTS:

I CALLED Mrs Foss AND TOLD HER THAT WE
WERE GOING TO ALLOW the Mergersburgs to Pump
BECAUSE THE FLOW IS CURRENTLY 3.7 cfs and
it should be coming up due to THE PUMP. I TOLD
her that if the gage drops below 2.64 - and
the Mergersburgs would have to shut off or cut back.
She agreed.

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: Mark A. Roth

Conversation or File Documentation

NAME OF PERSON OR FILE: Mrs Foos

ADDRESS: _____ COUNTY _____

DATE: 4/26/91 TELEPHONE _____RE: After 1st call on allowing Neugebauer's to pump.

COMMENTS:

Is upset w/ NEUGEBAUER PUMPING
I TOLD HER TO CALL NEUGEBAUER IF
GAGE IS BELOW 2.64 ~~THE GAGE~~
AND HAVE THEM SHUT OFF

I TOLD HER WE ARE LETTING THEM PUMP
BASED ON THE CHIEF ENGINEER'S RECOMMENDATION

I TRIED TO CALL THE NEUGEBAUER TO TELL HER
THAT FOOS WOULD CALL IF FLOW GOT BELOW 2.64 gage
DON NEUGEBAUER AGREED THAT IF MRS FOOS CALL
AND SAID THAT THE FLOW WAS LESS THAN 2.64
HE WOULD GO TO THE GAGE AND MEET W/ MRS
NEUGEBAUER FOOS SO THEY BOTH COULD CHECK
IF FLOW WAS LESS HE SAID HE WOULD SHUT OFF
AN CUT BACK. BUT IF FLOW DROPPED AND HE
SHUT OFF IF FLOW WENT UP HE WOULD DIAL
THE GAGE W/ MRS FOOS AND TURN IT BACK ON
HIS PUMP.

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: Mark D. Holt

Water Rights Division - DWR

File No. _____

Conversation or File Documentation

NAME OF PERSON OR FILE: Mrs KAISERADDRESS: _____ COUNTY CUSTERDATE: 4/26/91 TELEPHONE _____RE: NEIGHBORS

COMMENTS:

IT IS UPSET THAT NEIGHBORS ARE CHIN
PUMP SHE SAID THEY SHOULD NOT BE
ALLOWED TO PUMP

I TOLD HER WE ARE LETTING THEM PUMP
BASED ON CHIEF ENGINEER'S RECOMMENDATION
OF 3 cfs at Below House - 9950

SHE SAID THEY CAN ONLY PUMP WHEN FLOOD
FLOW IS OCCURRING. BASE ON THE INFORMATION
THAT JOHN HATHI GAVE ME, HE TOLD HER NEIGHBORS
CAN PUMP.

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

4/82

NAME: Mark D. Keith

Water Rights Division - DWHR
Conversation or File Documentation

File No. _____

NAME OF PERSON OR FILE: Don Neugebauer

ADDRESS: Hermosa, SD COUNTY _____

DATE: 4-29-91 TELEPHONE _____

RE: Pumping into dam from Battle Creek.

COMMENTS:

Don Neugebauer called on 4-26-91 and requested that he be allowed to pump into their dam. Mark Rath took the call and with my OK (from home) Mark ~~said~~ said he could.

Mr. Neugebauer called me at about 10:30 a.m. on 4-29-91. He stated that he had stopped pumping at about 5:30 a.m. today. He started pumping at approximately 2:00 p.m. MDT on Friday 4-26-91. On Sunday at about 12:30 p.m. the staff gage at the USGS gaging station read between 2.66 & 2.68. Sunday evening Clarence Foss called Stan Neugebauer and said that the staff gage was reading 2.64 and that they should stop pumping.

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: _____



May 2, 1991
210K 89 Box 315
Harroson, S.D.
57744

John Hatch, Chief Engineer
Water Rights Division
523 East Capital
Pierre, S. D. 57501-3181

Dear Sir:

yesterday I talked with Mr. Brocz and he told me you were going to write in answer to my letter. He said that you would explain the Neugebauer water rights permits.

I believe we are all capable of understanding them as they are written. The problem we see is that they are not being enforced according to how they are written and not with the interests of other users in mind.

When Mark Roth called last Friday to report that Neugebauer were pouring into dams for storage, he stated that he wasn't familiar with Battle Creek, but was handling the matter in absence of Mr. Schaal and Mr. Brocz.

Rebecca Kauer and I both

reminded him of Water Right 969-2 part 2 which says they are to bypass sufficient water to satisfy downstream domestic use and prior water rights. He would not listen, nor would he check their water right.

Neugebauer had $2\frac{1}{4}$ " of rain Thurs. night and Friday morning. We had less than one inch. They said there was muddy water at their place, but we never had any muddy water down this way - Certainly nothing resembling flooding.

What really seems strange to us is when your staff makes these judgments they are always in favor of the Neugebauers. Domestic use and prior water rights aren't given due consideration. In August 1990 Mr. School was aware they were pumping illegally, but he let them pump many more hours. Mr. Brozy two weeks ago let them pump in anticipation. Mr. Rath let them pump into dams for

storage ahead of others with prior irrigation water rights.

These are the matters we want addressed and we want to see these things corrected.

Thank you.

Sincerely,

Clarence & Carol Zos

As of 8:45 A.M. May 2, 1991
the weir reading was 2.62
with a variance of .04 so
the CFS reading is 2.597.



**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: CLARENCE FOOS
HCR 89 BOX 315
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. 187-2

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.



187-2
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.



August 30, 2006

187-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

Clarence and Carol Foos
PO Box 317
Hermosa, SD 57744

Herbert and Rebecca Kaiser
15745 Highway 40
Hermosa, SD 57744

Dear Mr. and Mrs. Foos and Mr. and Mrs. Kaiser:

We have received your letters dated August 15, 2006, concerning Battle Creek water rights, bypass qualifications, and a formal complaint against the DENR for allowing the Baker Ranch to irrigate during a recent rainfall event. After receiving your letter, my staff and I have discussed the events that lead to DENR approval of a request by Baker Ranch to irrigate on August 11.

On August 8 and 9, 2006, a significant rainfall event occurred over much of Battle Creek. Portions of the upper watershed received five inches of rain. On August 8 at about 4:30 pm, the United States Geological Survey stream gage at Highway 79 measured a peak flow of 786 cubic feet per second (cfs). Prior to the rainfall event, flow at the gage only measured 2.1 cfs. As a result of this rainfall event, Battle Creek was at flood stage in the upper part of the drainage.

On the morning of August 9, 2006, the Water Rights program was contacted by the Baker Ranch about the possibility of irrigators being allowed to irrigate. At the time of the request, the flow at the Highway 79 gage had dropped to 14 cfs. However, the surge recorded at the Highway 79 gage that occurred on August 8 was making its way down the creek. While the flow at the Highway 40 gage was still recording zero on the morning of August 9, it is located 39 creek miles downstream of the Highway 79 gage and would take some time for the increased flow to reach the downstream gage.

Based on our information, we felt confident that adequate flow would reach the Highway 40 USGS gage to meet the 1.5 cfs bypass qualification established by the Water Management Board (WMB) at the March 2006 meeting. Therefore, we made the decision to allow irrigators to pump for a 24-hour period to take advantage of the flood flow and then reassess the flow at the Highway 40 gage to see if irrigation could continue. My staff contacted all water right holders on Battle Creek to inform them of this decision.

Later on August 9, I received a call from Clarence Foos objecting to our decision. Mr. Foos stated that flow had not yet reached the lower Highway 40 USGS gage and they did not believe anyone should be allowed to irrigate until it did. After further discussion with my staff and

further review of the Board order, we agreed with Mr. Foos that the order requires at least 1.5 cfs to be present at the Highway 40 gage before any irrigation could take place. Therefore, we again called all water right holders asking them to refrain from pumping until the required flow of 1.5 cfs reached the lower gage. At 8:45 pm on August 9 the Highway 40 gage recorded 8.1 cfs and at 9:15 pm recorded a peak flow of 86 cfs.

On the morning of August 11, I again received a call from Mr. Foos objecting to the fact that the Bakers were pumping. I explained that the WMB had established a bypass qualification of 1.5 cfs at the lower gage and once that qualification was met, Battle Creek water right holders were allowed to irrigate in accordance with their permits. At the time of this phone call, the recorded flow at the Highway 40 gage was 2.8 cfs. I asked if they had domestic flow and they responded yes but that flow had not yet reached the Cheyenne River. However, the Board order does not require flow from Battle Creek to reach the Cheyenne River prior to any diversions from Battle Creek as long as the 1.5 cfs bypass requirement is met at the Highway 40 gage.

This office kept in touch with the Baker Ranch throughout the day on August 11. At about 6:00 pm, the flow at the gage dropped to 1.5 cfs. We were told that as soon as the gage hit the bypass requirement, the Baker Ranch quit irrigating, consistent with the Board order.

Storm events similar to those of August 8 and 9 are typically high intensity, short duration events which flow through the system with little long term residual benefits. This was evidenced by the results of our onsite inspection on August 14, which showed flow at the Highway 40 gage had dropped to zero with no remaining ponded water or pools. The fact that flow never reached the Cheyenne River, 10 creek miles below the Highway 40 USGS gage demonstrates that essentially all of the flow was being recharged back to the alluvium. It is unreasonable to expect these types of events to provide for long term domestic flow. That will only happen with a significant increase in long term precipitation.

The second issue you raised concerns the use of the 1948 water right by the Bakers during this storm event. As you recall, during our May 18, 2005, meeting with all the Battle Creek water rights holders, DENR suggested that during drought conditions, with the limited number of water right holders on Battle Creek, it may work better to coordinate pumping between users rather than managing on a strict priority date basis. It is our belief this would allow more users to benefit from the limited water supply. This was agreed to by those attending the meeting and we have managed the water rights from Battle Creek on that basis since.

You are correct that we manage both the Cheyenne and James rivers differently than Battle Creek, as agreed to by the water right holders on Battle Creek. Reaching an agreement among all the permit holders on the James and Cheyenne rivers to coordinate their irrigation efforts instead of using priority dates would be very difficult. Therefore, management of those rivers is done using water right priority dates.

The final issue mentioned in your letters involves the number of acres the Baker Ranch irrigates by center pivot. The Baker Ranch, a.k.a. Battle Creek Valley Ranch Limited Partnership, holds water rights/permits for irrigation of a combined 208 acres from Battle Creek. This is done

through two center pivots. The larger pivot in Section 21T3S-R9E, which you refer to as the 10 tower pivot, covers 118 acres, which includes 80 acres covered under a 1905 water right and 38 acres covered under a 1948 water right, the second center pivot irrigates 90 acres in Section 27 T3S-R9E, all of which are covered by a 1948 priority water right.

I hope this helps clarify the concerns you have raised. Managing the water supply on Battle Creek to maximize the use of the limited water resources has been challenging. The ongoing drought has complicated matters significantly. Hopefully we will see a return to more normal precipitation patterns soon.

Sincerely,

A handwritten signature in cursive script, reading "Garland Erbele".

Garland Erbele, Chief Engineer
DENR

Cc: Governor Mike Rounds
Diane Best, Attorney General's Office



187-2

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:

187-2

PERMIT NO	PTL	PRIOR1	PTL	PRIOR2	PRORDATE	COUNTY	STATUS	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					12/29/1896	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					01/01/1936	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

CLARENCE FOOS
15810 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	RITTBERGER BROTHERS
2367B-2	LC	1.14	6	01/01/1905	BATTLE CREEK VALLEY RANCH
187-2	LC	0.86	7	09/11/1912	FOOS
2367B-2	LC	1.57	8	07/17/1948	BATTLE CREEK VALLEY RANCH
1170-2	LC	3.00	9	01/28/1974	STOVALL
1283-2	PE	3.34	10	08/01/1975	LIEN & SONS INC
2054-2	LC	0.81	11	03/15/1988	NEUGEBAUER BROTHERS



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**NOTICE OF SHUTOFF ORDER
July 2, 2012**

TO: CLARENCE FOOS
15810 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. 187-2

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: CLARENCE FOOS
15810 SD HWY 40
HERMOSA SD 57744

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

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

Shutoff Order for Water Right Nos. 187-2

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

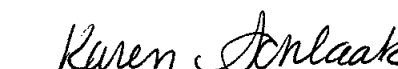
I hereby certify that on June 26, 2013 postage, prepaid envelope(s) containing a Notice dated June 26, 2013 regarding Battle Creek Shut-off Notices addressed as stated below:

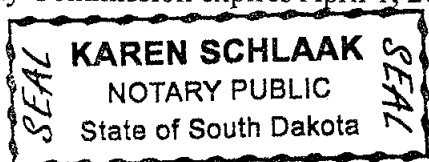
NEUGEBAUER BROTHERS DAIRY	STANLEY NEUGEBAUER	14197 SD HWY 40	HERMOSA	SD	57744
WYOMING DAKOTA RAILROAD PROPERTIES INC	DAVID S DRACH	120 S 6TH ST - 9TH FLOOR	MINNEAPOLIS	MN	55402
TRAVIS BIES		25813 SOUTH FOR ROAD	FAIRBURN	SD	57738
JD RANCH REAL ESTATE LLC		HCR 89 BOX 298	HERMOSA	SD	57744
RUSHMORE VIEW 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, appearing to read "Jeanne Goodman", followed by a horizontal line.

Jeanne Goodman, Chief Engineer
DENR, Water Rights Program



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

July 11, 2017

Dear Water Right Holder;

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

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

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

PERMIT_NO	STAT	LIC_CFS	P-Order	PRIORDATE	LAST_NAME
2153-2	LC	0.33	1	05/01/1881	NEUGEBAUER BROTHERS DAIRY
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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

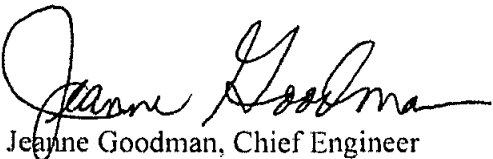
South Dakota water law gives the highest priority to domestic use, which includes livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses, including irrigation, will

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

CAROL FOOS
PO Box 317
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