

Considered: _____

WATER PERMIT NO. 2054-2

MAP No. same 255-4212

Name of Applicant Neugebauer Bros

Post Office Address RR1, Box 96, Hermosa SD 57744

Amount of Water Claimed 2.5 cfs Total Acres 120

Source of Water Supply Battle Creek

Water to be used for irrigation County Custer

About _____ miles S of Hermosa.

PROOF OF PUBLICATION: Received _____ Not Received _____

APPLICATION: Approved _____ Subject to _____

F.F. & C.L. Adopted _____ Not Approved _____ Deferred _____

PRIORITY _____ Date Received Mar 15, 1988 Fee 225⁰⁰ Remarks divert

Flood Flows for

Corrected Application Received _____ Period of Annual Use Mar 1 - Nov 30

WATER QUALITY APPROVAL RECEIVED 3/17/88 APPROVED/CONDITIONAL (Circle one)

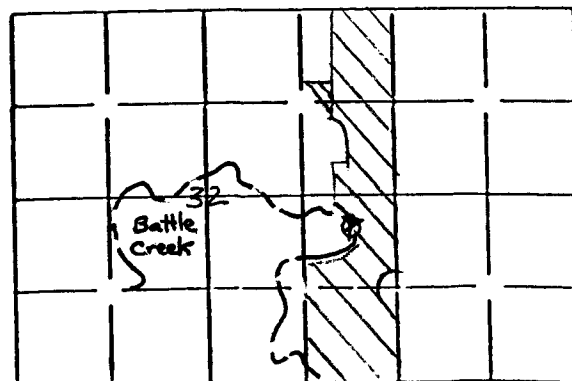
WI-1 Description same as Application YES ☒ NO _____ REMARKS _____

Diversion Point Battle Creek: NE 1/4 SE 1/4

section 32 - T2S - R8E

Land to be Irrigated E 1/2 E 1/2 section 32 - T2S -

R8E

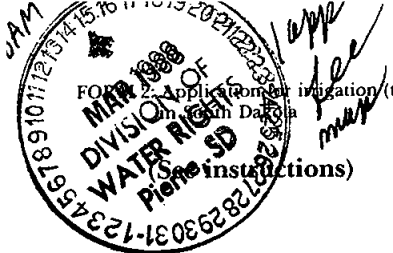


Well Log: Driller NA Licensed YES _____ NO _____

Depth of Well _____ REMARKS _____

Type of Map Plat + aerial PREPARED BY Plat Don Muckler Reviewed and the Number

assigned on March 17, 1988 By Ron Durrill



No. 2054-2 Hydrologic Unit 10120109
Basin Upper Cheyenne River
Newspaper Custer Co. Chronicle, Box 551 (Wed)
Rapid City Journal, Box 450

Mail to: Water Rights Div.
DWNR, Foss Bldg.
Pierre, SD 57501
(605) 773-3352

Application For Soil/Water Compatibility Permit and Permit To Appropriate Water

Type of Application: ☒ New ☐ Vested Right ☐ Amend Permit No. _____
☐ Change Acreage ☐ Change diversion point(s) ☐ Add diversion point(s)
☐ Add Acreage ☐ Increase diversion rate ☐ Other _____

1. Name of Applicant Neugebauer Bros Phone No. 605-255-4212
Post Office Address RR 1 Box 96 Hermosa State S.D. 57744
(Street, RR or Box) (City) Zip Code
2. Amount of water claimed (c.f.s.) 2.5 Total acres irrigated 86.3 120
3. Source of Water supply Battle Creek
4. Location of point of diversion 950 FT W 2300 N from S.E. Corner
of Section 32 T2S-R8E NE 1/4 SE 1/4
County Custer
5. Counties where water will be used Custer
6. Annual period during which water is to be used March 1 Through Nov. 30
7. 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.
<u>E 1/2 E 1/2 Section 32</u>	
<u>2 portions of</u>	<u>86.3</u>

Land Description	No. Acres Irr.
<u>NE 1/4 NE 1/4 Sec. 32 T2S R8E</u>	<u>30</u>
<u>SE 1/4 NE 1/4 Sec. 32 T2S R8E</u>	<u>25</u>
<u>NE 1/4 SE 1/4 Sec. 32 T2S R8E</u>	<u>26</u>
<u>SE 1/4 SE 1/4 Sec. 32 T2S R8E</u>	<u>39</u>

8. Type of Irrigation: Gravity: X (WATER SPREADING) Towline: _____ Center Pivot: _____ Gun: _____ Other: _____
9. Crops to be Irrigated: Alfalfa

10. Give a description of proposed project. (Attach sheet if more space is needed)
Description is shown in left hand corner of
The design map I left in your office.
Diversion Point. 950' W 2300' N from S.E. Corner of
Section 32.

Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach maps, soils information and any other technical information.

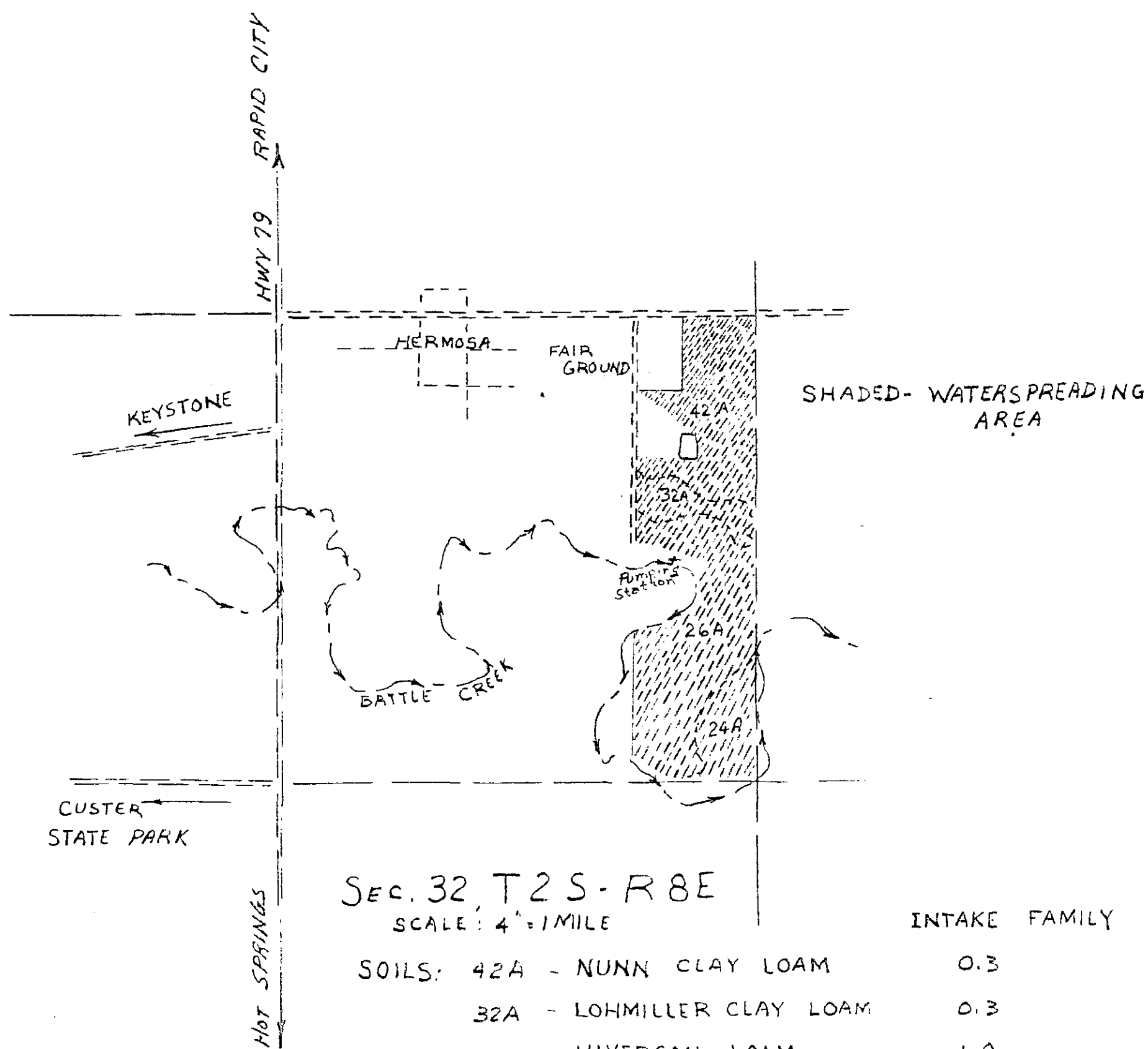
STATE OF SOUTH DAKOTA)
County of Custer)^{ss}

I, Neugebauer Bros, the applicant, certify that I have read this application and examined the attached maps, that the water sample, if needed, has been taken by the required procedures and has not been adulterated or tampered with and is truly representative of the water to be used, and that the matters stated in this application are true and correct.

Signed Neugebauer Bros Patricia A. Bechard

Subscribed and sworn to before me this 14th day of March 1988

Patricia A. Bechard
Notary Public
My Commission Expires Jan. 27 1991



SEC. 32, T2S - R8E
SCALE: 4" = 1 MILE

SOILS:	INTAKE FAMILY
42A - NUNN CLAY LOAM	0.3
32A - LOHMEYER CLAY LOAM	0.3
26A - HAVESON LOAM	1.0
24A - GLENBERG - BANKARD	1.5 & 3.0
(0-4% SLOPE)	

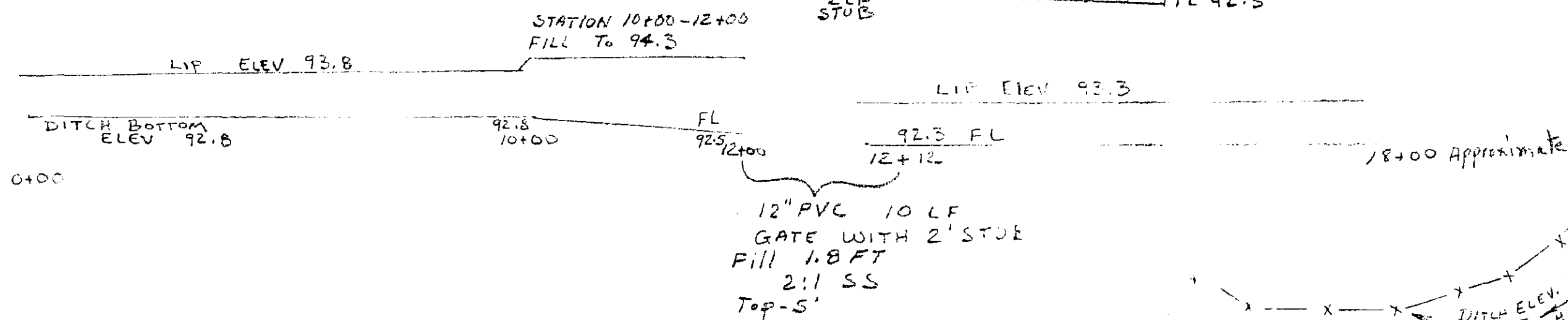
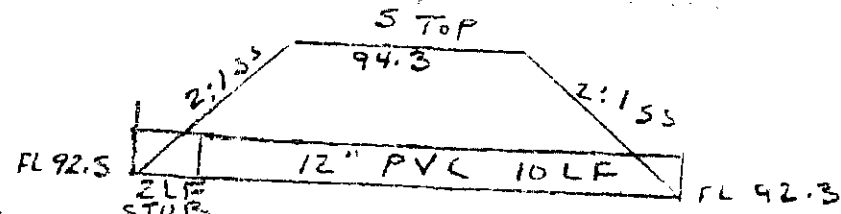
Estimated Costs

V DITCHES 6:1 SS
1.0 DEEP
12,300 LF = 3075 CY
DIKES 4:1 TOP 3:1 SS
7500 LF = 8400 CY
Total = 11,475 CY.
@ .70/CY = \$8,032.50

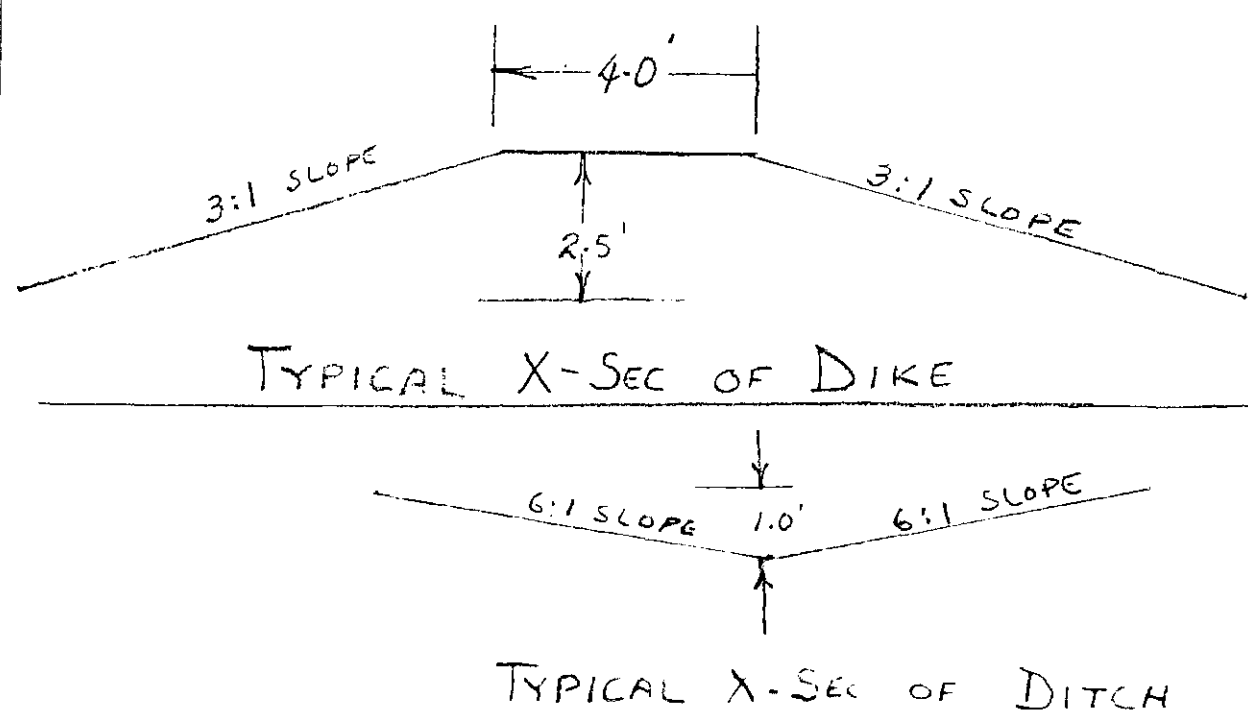
1- 12" PVC 10 FT 10 LF @ 10.50/LF = 105.00
6 15" PVC 20 FT 120 LF @ 13.13/LF = 1575.60
1 12" GATE @ 60.00 = 60.00
6 15" GATES @ 75.00 = 450.00

Total = \$10,223.10
COST SHARE 70% = 7,156.17
= \$118.46/AC

Area Covered By Dikes 31.3 ACRES
Area Benefited By Ditches 55.0 ACRES
Total 86.3 ACRES

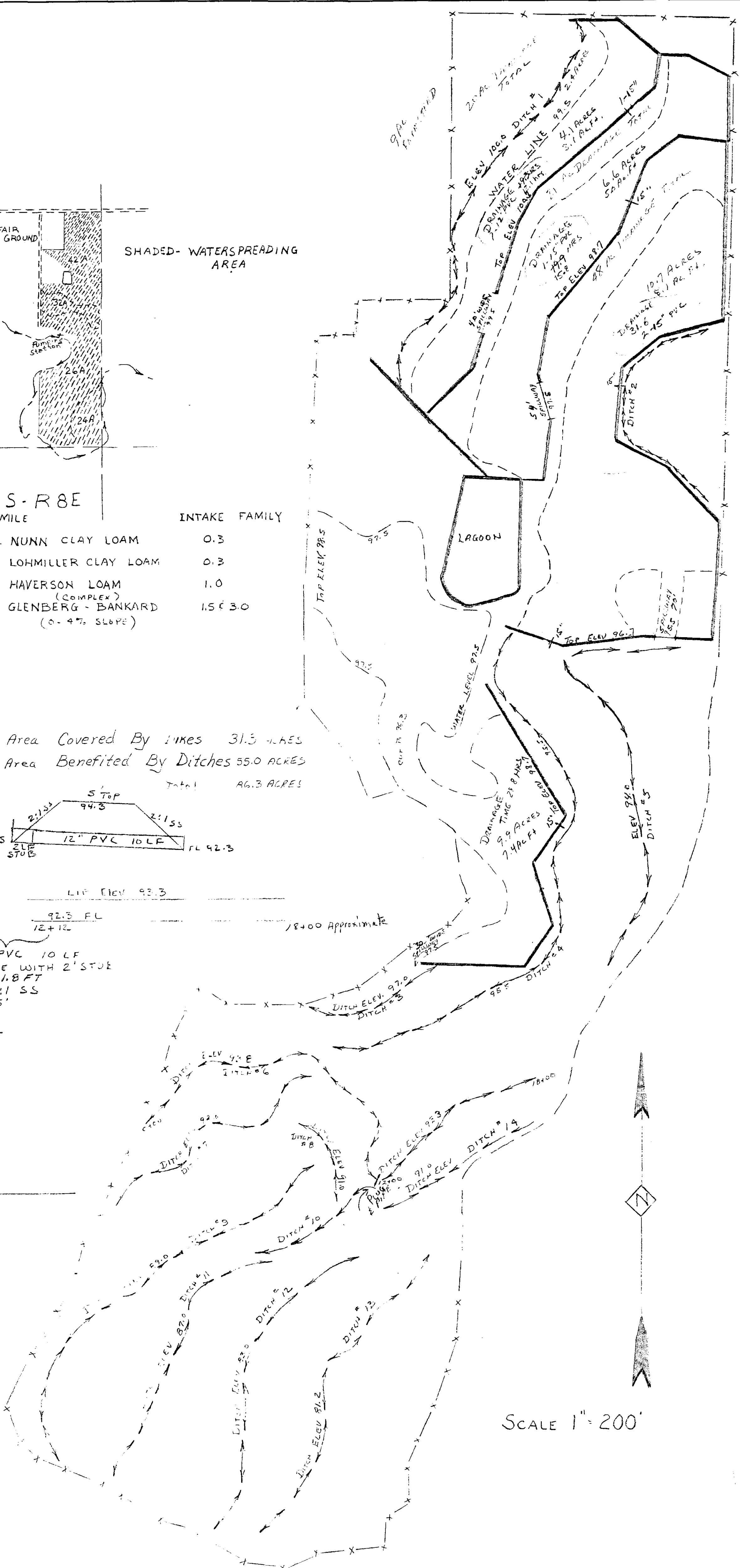


DETAILS V-DITCH #6 NOT TO SCALE



TYPICAL X-SEC OF DIKE

TYPICAL X-SEC OF DITCH



SCALE 1" = 200'

NEUGEBAUER DAIRY WATERSPREADING F ² E ² SEC. 32, T2S-R8E	
U.S. DEPARTMENT OF AGRICULTURE SOIL CONSERVATION SERVICE	
Designed by: M. J. S. S. S.	Date: 1-2-55
Drawn by: M. J. S. S. S.	Title: 1
Checked by: M. J. S. S. S.	Sheet: 1
Traced by: M. J. S. S. S.	Drawing No.:

**SOUTH DAKOTA
WATER PERMIT FOR IRRIGATION**

Date of first receipt of application March 15, 1988

Date Soil/Water Compatibility Permit received March 17, 1988

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

Date of receipt of corrected application _____

The Water Management Board approved Water Permit Application No. 2054-2

on July 27, 1988 for Neugebauer Brothers

(Applicant)

RR 1, Box 96 Hermosa South Dakota 57744
(Street, RR or Box) (City) (State) (Zip Code)

authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

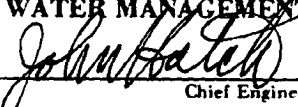
1. Water Permit No. 2054-2 authorizes 1.71 cubic feet of water per second from Battle Creek for flood irrigation of up to 120 acres. The point of diversion is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the land to be irrigated is in the E $\frac{1}{2}$ E $\frac{1}{2}$; all in Section 32, T2S, R8E. Diversions are authorized subject to the following qualifications.

2. The amount of the appropriation may not exceed 2 acre feet per acre per year or one-seventieth (1/70) cubic feet of water per second for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: March 1 - November 30
3. The date from which applicant may claim the right is March 15, 1988
4. One-fifth of the construction is to be completed on or before January 27, 1991
5. All construction is to be completed on or before July 27, 1993
6. Water is to be put to beneficial use on or before July 27, 1997
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

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 $\frac{1}{4}$ 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 approved subject to the irrigation water use questionnaire being submitted each year.

WATER MANAGEMENT BOARD

By: 
Chief Engineer

Division of Water Rights
Dept. of Water and Natural Resources

DEC 1 1988



Water & Natural Resources

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

February 1, 1988

Stanley Neugebauer
Rt. 1 Box 96
Hermosa, SD 57744

Dear Mr. Neugebauer:

Enclosed are the application forms which need to be completed and returned to our office before the end of February. As I mentioned over the phone, a Soil/Water Compatibility Permit is already on file with the Department of Agriculture which covers land to be irrigated from Battle Creek located in the E 1/2 E 1/2 of Section 32-T2S-R8E. A new Soil/Water Compatibility Permit will not be required if your proposed project still only covers land located in the E 1/2 E 1/2 of Section 32.

The map you left with me the other day is a little confusing as far as exactly what lands will be irrigated. I would suggest you get a signed aerial photo from the SCS showing the proposed land to be irrigated and the point of diversion. The amount of water claimed in No. 2 on the Application to Appropriate Water should be your proposed diversion rate. Usually, the diversion rate is limited to 1 cfs for every 70 acres irrigated. However, SDCL 46-5-6 allows for a diversion rate of more than that for flood flow situations. If land other than that in the E 1/2 E 1/2 of Section 32 is going to be irrigated a new Soil/Water Compatibility Permit will be required; however, a water sample will not be necessary.

To clarify the by-pass requirement to satisfy prior Water Rights and downstream domestic use, we will be recommending a required minimum flow at the Battle Creek gaging station at Hermosa. We may also be recommending that the portion of Water Right No. 969-2 authorizing you to divert flows from Battle Creek into a storage dam be amended to include this minimum flow by-pass.

If you have any questions, please contact me.

Sincerely

Timothy G. Schaal
Water Resources Engineer
605 773-3352

enclosures

SOIL/WATER COMPATIBILITY PERMIT APPLICATION FORM

STATE CONSERVATION COMMISSION

Office Use Only

SOUTH DAKOTA DEPARTMENT OF AGRICULTURE

OWNER NAME Haugshaven Dairy OWNERS ADDRESS Hermosa, S.D.

COUNTY LAND LOCATED IN Custer PHONE 255-4212

TENANT'S NAME AND ADDRESS _____

In accordance with State Law SDCL 46-5-6.5, if a water permit is granted with a conditional Soil/Water Compatibility permit, A COPY OF SUCH CONDITIONAL SOIL/WATER COMPATIBILITY PERMIT MUST BE FILED WITH THE COUNTY REGISTER OF DEEDS. THIS ACTION MUST BE TAKEN BY THE HOLDER OF A WATER PERMIT WITHIN 3 MONTHS OF RECEIPT OF SUCH WATER PERMIT.

LEGAL DESCRIPTION: (Show Legal Description to Nearest 10 Acres)

1. WELL LOCATION: NE 1/4 Sec 32-2-8

2. SURFACE WATER SOURCE AND DIVERSION LOCATION:

Legal Description	Acres	Legal Description	Acres
NE 1/4 NE 1/4 Sec 32-2-8	40		
SE 1/4 NE 1/4 " " " "	40		
NE 1/4 SE 1/4 " " " "	40		
SE 1/4 SE 1/4 " " " "	40		

3. SHOW ANY PORTION OF LAND THAT PRESENTLY HOLDS AN IRRIGATION PERMIT. YEAR OBTAINED _____

LEGAL DESCRIPTION: _____

IN WHAT NAME: _____

4. LOCATION OF AREA TO BE IRRIGATED NOTE: SOILS INFORMATION FOR THIS AREA MUST ACCOMPANY THE APPLICATION. (See instruction sheet)

5. TYPE OF IRRIGATION: GRAVITY ☒ TOWLINE _____ CENTER PIVOT _____ GUN _____ OTHER (Specify) _____

6. CROPS TO BE IRRIGATED: Alfalfa

WATER QUALITY: (TO BE COMPLETED BY SDSU WATER QUALITY LABORATORY)

7. WATER SAMPLE NUMBER: _____

8. SALINITY (EC X 10³): 700

9. SODIUM (SAR): 0.10

10. ADJUSTED (SAR): 0.115

I hereby certify that I personally obtained or that I personally observed that taking of a sample of the water to be used in irrigating the above-described land. I also hereby certify that the required procedures for the taking of the sample (see instruction sheet) were followed, and that the sample was taken at _____ a.m./p.m. on _____ 19____ at the following location: _____ by (individual who took sample if other than applicant). I also hereby certify that the water sample taken has NOT been adulterated or tampered with in any manner, and is TRULY REPRESENTATIVE of the water which will be used in irrigating the above-described land.

I understand that the Division of Conservation or agents thereof may obtain another water sample for the purpose of validating the water sample analysis taken at the time of application (SDCL 46-5-6.4)

SUBSCRIBED AND SWORN BEFORE ME THIS

27th DAY OF January, 1982

May Catherine Hays
(NOTARY PUBLIC)

Haugshaven Dairy
APPLICANT'S SIGNATURE
Jack W. Fipell
Director, Division of Conservation

IMPORTANT

Action by the Department of Agriculture or the State Conservation Commission is not the final action on any application. In all cases a WATER RIGHT must be obtained from the Board of Water Management, First Building, Pierre.

APPROVED

DISAPPROVED

☒ CONDITIONALLY APPROVED

3-4-82

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

Pierre, March 15, 1988

411175

RECEIVED OF Neugebauer Brothers, RR 1, Box 96, Hermosa, SD 57744

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

Fee for Application for Permit No. <u>2054-2</u> to Appropriate Water, to construct works and to put water to beneficial use	225	00
Fee for Application for Permit No. _____ to Appropriate Water for Future Use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form		
Fee for Filing Extension Request		
Fee for Certified Copy of		
Fee for Print Copy of Map		
Fee for Certifying		
Fee for _____		
(Any Other Work Provided by Law)	Total	225 00

By John Hatch
Chief Engineer

JOHN HATCH

(ms)

[illegible]

2-0 Appl. No. 2054-2

Conversation or File Documentation

NAME OF PERSON OR FILE: Neugebauer Bros.ADDRESS: RR1, Box 96, Hermosa SD 57744 COUNTY CusterDATE: 3/17/88 TELEPHONE 255-4212RE: Phone conversation with Stan Neugebauer regarding acreage

COMMENTS:

I contacted Stan Neugebauer to determine the location and total number of acres to be irrigated. I informed Mr. Neugebauer that I counted 114 acres in the area outlined in blue. Mr. Neugebauer stated that due to the area covered by dikes and some low areas that only 86.3 acres would be irrigated. I told Mr. Neugebauer that any land that water may be spread on should be included to ensure that if the permit is approved that the total irrigated acreage does not exceed 86.3 acres. Mr. Neugebauer instructed me to include the additional acreage and to also include 6 additional acres not outlined on the aerial photo.

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: Don Durrall

WARRANTY DEED

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

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

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

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

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

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

Dated this 11th day of MAY, 1987.

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

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF PENNINGTON)

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

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

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

(SEAL)

SCHEDULE C

The land referred to in this policy is situated in the State of South Dakota, Counties of Custer and Shannon, and is described as follows:

Township 3 South, Range 10 East of the Black Hills Meridian, Custer County:

Section 28: $S\frac{1}{2}SE\frac{1}{4}$
Section 33: $E\frac{1}{2}$, $E\frac{1}{2}NW\frac{1}{4}$, $E\frac{1}{2}E\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$
Section 36: $E\frac{1}{2}$

Township 4 South, Range 10 East of the Black Hills Meridian, Custer County:

Section 3: Govt. Lot 4, $SW\frac{1}{4}NW\frac{1}{4}$, $W\frac{1}{2}SW\frac{1}{4}$
Section 4: Govt. Lots 1 and 2, $S\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}$, $E\frac{1}{2}E\frac{1}{2}E\frac{1}{2}$ of Govt. Lot 3 (also referred to as $E\frac{1}{2}E\frac{1}{2}E\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$), $E\frac{1}{2}E\frac{1}{2}E\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$

Section 9: $E\frac{1}{2}$
Section 10: $W\frac{1}{2}W\frac{1}{2}$
Section 15: $W\frac{1}{2}NW\frac{1}{4}$
Section 16: $S\frac{1}{2}NE\frac{1}{4}$
Section 27: Govt. Lots 3 and 4, $SW\frac{1}{4}SW\frac{1}{4}$
Section 33: Govt. Lots 1 and 2, $NE\frac{1}{4}NE\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$
Section 34: Govt. Lots 1 and 2, $NW\frac{1}{4}NW\frac{1}{4}$

Township 3 South, Range 11 East of the Black Hills Meridian, Custer County:

Section 31: Govt. Lots 1 and 2, $E\frac{1}{2}NW\frac{1}{4}$, $E\frac{1}{2}$
Section 32: $SW\frac{1}{4}NE\frac{1}{4}$, $NW\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}$

Township 4 South, Range 11 East of the Black Hills Meridian, Custer County:

Section 6: Govt. Lots 1 and 2, $S\frac{1}{2}NE\frac{1}{4}$, $N\frac{1}{2}SE\frac{1}{4}$

Township 42 North, Range 47 West of the Sixth Principal Meridian, Shannon County:

Section 4: Govt. Lots 1, 2, 3, 4 and 5, $SE\frac{1}{4}NE\frac{1}{4}$, $E\frac{1}{2}SE\frac{1}{4}$

Township 43 North, Range 47 West of the Sixth Principal Meridian, Shannon County:

Section 33: Govt. Lots 1, 2 and 3, $SE\frac{1}{4}SE\frac{1}{4}$

See Exhibit "B" attached hereto and made a part hereof.

All Policy Form

SCHEDULE C

The land referred to in this policy is situated in the State of South Dakota, County of Custer, and is described as follows:

Township 3 South, Range 9 East of the Black Hills Meridian, Custer County, South Dakota

- Section 13: South Half of the Northeast Quarter ($S\frac{1}{2}NE\frac{1}{4}$); Southeast Quarter ($SE\frac{1}{4}$)
- Section 23: East Half of the Southeast Quarter ($E\frac{1}{2}SE\frac{1}{4}$)
- Section 24: Northeast Quarter ($NE\frac{1}{4}$); East Half of the Northwest Quarter ($E\frac{1}{2}NW\frac{1}{4}$); South Half ($S\frac{1}{2}$)
- Section 25: All, less Lot 1 of the West Half of the Southwest Quarter as shown on the plat filed in Plat Book 1, Page 122.

Township 4 South, Range 9 East of the Black Hills Meridian, Custer County, South Dakota

- Section 1: Lots 1 and 2; Southeast Quarter of the Northeast Quarter ($SE\frac{1}{4}NE\frac{1}{4}$)

Township 3 South, Range 10 East of the Black Hills Meridian, Custer County, South Dakota

- Section 7: South Half of the Southeast Quarter ($S\frac{1}{2}SE\frac{1}{4}$)
- Section 17: West Half of the Southwest Quarter ($W\frac{1}{2}SW\frac{1}{4}$)
- Section 18: Lots 1, 2, 3 and 4, East Half of the West Half ($E\frac{1}{2}W\frac{1}{2}$); East Half ($E\frac{1}{2}$)(all)
- Section 19: Lots 1, 2, 3 and 4; Northeast Quarter of the Northwest Quarter ($NE\frac{1}{4}NW\frac{1}{4}$); East Half of the Southwest Quarter ($E\frac{1}{2}SW\frac{1}{4}$)
- Section 29: North Half ($N\frac{1}{2}$); Southwest Quarter ($SW\frac{1}{4}$); West Half of the Southeast Quarter ($W\frac{1}{2}SE\frac{1}{4}$)
- Section 30: Lots 1, 2, 3 and 4, East Half of the West Half ($E\frac{1}{2}W\frac{1}{2}$); East Half ($E\frac{1}{2}$)(all)
- Section 31: Lots 1, 2, 3 and 4, East Half of the West Half ($E\frac{1}{2}W\frac{1}{2}$); East Half ($E\frac{1}{2}$)(all)
- Section 32: West Half of the Northeast Quarter ($W\frac{1}{2}NE\frac{1}{4}$), Northwest Quarter ($NW\frac{1}{4}$); South Half ($S\frac{1}{2}$)

Township 4 South, Range 10 East of the Black Hills Meridian, Custer County, South Dakota

- Section 5: Lots 1, 2, 3 and 4; South Half of the North Half ($S\frac{1}{2}N\frac{1}{2}$); South Half($S\frac{1}{2}$)(all)
- Section 6: Lots 1, 2, 3, 4 and 5; South Half of the Northeast Quarter ($S\frac{1}{2}NE\frac{1}{4}$); Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$); Southeast Quarter ($SE\frac{1}{4}$)

See Exhibit "B" attached hereto and made a part hereof.

Table No. 2

SOUTH DAKOTA DIVISION OF WATER RIGHTS

DATE 01-29-88

STATION NUMBER 06406000 BATTLE CR AT HERMOSA SD
 LATITUDE 434941 LONGITUDE 1031144 DRAINAGE AREA 178.00
 STREAM SOURCE AGENCY USGS
 DATUM 3290.00 STATE 46 COUNTY 033

FLOW DURATION, IN CUBIC FEET PER SECOND, WATER YEAR OCTOBER 1949 TO SEPTEMBER 1987
 38 YEARS OF RECORD

		OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP

HIGH	*	25	11	11	7.4	18	27	181	1520	1750	411	140	43
10%	*	8.2	8.2	7	5.9	5.4	5.7	7	49	78	33	13	8.6
20%	*	6.6	6.9	6	5.1	4.6	5.1	5.9	18	42	20	9.6	6.5
30%	*	5.6	5.8	4.8	4	3.8	4.4	5.2	10	23	12	6.7	5
40%	*	4	4.2	3.5	3.4	3.3	3.9	4.3	6.9	13	8.8	4.6	3.6
50%	*	3.2	3.5	3.2	3	2.9	3.3	3.8	5.4	7.9	6	3	2.5
60%	*	2.5	3	2.8	2.6	2.5	2.9	3.3	4.5	4.6	3.9	2.3	1.9
70%	*	2.1	2.5	2.4	2.2	2.3	2.6	2.8	3.6	3.4	2.6	1.9	1.5
80%	*	1.6	1.9	2	1.8	1.9	2.1	2.3	2.2	2.4	1.6	1.2	1.1
90%	*	1	0.6	0.8	1	1.2	1.3	1.1	1.2	1	0.6	0.3	0.2
LOW	*	0	0.1	0.1	0.1	0.2	0.4	0.2	0.2	0.1	0.08	0.1	0

TOTAL DAYS		1178	1140	1178	1178	1073	1178	1140	1178	1140	1178	1161	1110

Table No. 3

CHEYENNE RIVER BASIN

06406000 BATTLE CREEK AT HERMOSA, SD

LOCATION.--Lat 43°49'41", long 103°11'44", in NE¼SW¼ sec.32, T.2 S., R.8 E., Custer County, Hydrologic Unit 10120109, on right bank 50 ft downstream from Chicago and North Western Transportation Company bridge, 0.8 mi south of Hermosa, and 2.9 mi downstream from Grace Coolidge Creek.

DRAINAGE AREA.--178 mi².

PERIOD OF RECORD.--August to December 1903 (gage heights only), July 1949 to current year.

GAGE.--Water-stage recorder. Elevation of gage is 3,290 ft above National Geodetic Vertical Datum of 1929, from topographic map. Nonrecording gage, August to December 1903, at site 50 ft upstream, July 7, 1949, to Nov. 2, 1950, at site 0.5 mi upstream, Nov. 3, 1950, to Dec. 6, 1961, at site 170 ft downstream, all at different datum. Dec. 7, 1961, to June 10, 1972, water-stage recorder (destroyed by flood), and June 11, 1972, to Aug. 28, 1972, nonrecording gage at site 80 ft downstream at present datum.

REMARKS.--Records good. Several observations of water temperature and specific conductance were made during the year.

AVERAGE DISCHARGE.--36 years, 9.05 ft³/s (6,560 acre-ft/yr); median of yearly mean discharges, 6.2 ft³/s (4,500 acre-ft/yr).

EXTREMES FOR PERIOD OF RECORD.--Maximum discharge, 21,400 ft³/s June 10, 1972 (gage height, 17 72 ft), from floodmarks, from rating curve extended above 2,800 ft³/s on basis of contracted-opening and flow-over-railroad embankment measurement of peak flow; no flow at times in 1954-57, 1959.

EXTREMES FOR CURRENT YEAR.--Peak discharges greater than base discharge of 150 ft³/s and maximum (*):

Date	Time	Discharge (ft ³ /s)	Gage height (ft)	Date	Time	Discharge (ft ³ /s)	Gage height (ft)
July 15	2400	*593	*7.60	No other peak greater than base discharge.			

Minimum daily discharge, 0.94 ft³/s Sept. 4.

DISCHARGE, IN CUBIC FEET PER SECOND, WATER YEAR OCTOBER 1984 TO SEPTEMBER 1985
MEAN VALUES

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	9.3	9.5	8.4	6.4	4.3	5.3	5.4	4.1	4.2	2.3	2.5	1.4
2	9.3	9.5	7.5	6.4	4.3	5.1	5.4	4.1	4.2	1.6	2.4	2.1
3	9.3	9.3	6.8	6.7	4.0	4.6	5.3	4.1	4.4	1.6	2.5	1.2
4	9.3	9.1	6.8	7.1	4.0	4.5	6.1	4.1	4.6	1.6	2.7	.94
5	9.6	9.0	6.6	7.3	4.0	4.5	5.8	4.2	4.3	1.6	2.7	1.9
6	9.9	8.7	7.1	7.2	4.2	4.8	5.7	4.1	4.1	1.6	2.0	1.9
7	9.8	8.5	8.3	6.8	4.2	4.8	5.5	4.7	3.7	1.5	1.8	1.9
8	9.5	8.0	8.2	6.8	4.5	4.9	5.5	5.2	3.4	1.7	1.7	3.2
9	9.3	9.1	8.7	7.0	4.5	5.0	5.4	4.8	2.6	1.3	1.7	2.9
10	9.3	9.2	8.5	6.7	4.7	5.1	5.4	3.8	2.7	1.3	1.9	2.8
11	9.5	8.8	9.3	6.4	5.2	5.1	5.4	3.6	3.3	1.7	2.1	3.0
12	9.8	8.8	9.2	6.7	5.3	5.1	5.4	3.7	3.3	1.7	2.8	3.4
13	9.8	8.8	8.1	7.0	5.5	5.4	5.4	3.7	3.5	1.3	2.6	2.7
14	9.8	8.9	9.0	7.1	5.4	5.4	5.4	3.7	3.0	1.4	1.6	2.3
15	9.8	8.8	9.0	7.1	5.5	5.4	5.5	3.7	2.7	54	1.7	2.0
16	9.8	8.8	9.1	7.1	5.3	5.2	5.4	3.7	2.6	57	1.7	1.8
17	9.8	8.9	7.0	7.1	4.9	5.1	5.5	3.7	2.4	6.0	1.5	1.7
18	10	9.1	6.6	6.7	4.6	5.1	5.5	3.6	2.4	4.2	1.4	1.8
19	10	9.1	6.6	6.5	4.5	5.1	5.6	3.6	2.3	3.7	1.8	2.0
20	10	9.1	6.9	5.7	5.0	5.0	6.0	3.4	2.2	3.3	2.7	2.3
21	10	9.1	7.7	7.0	5.0	4.9	5.9	3.3	2.1	2.7	2.7	2.2
22	10	9.1	7.6	6.7	5.0	5.1	5.9	3.4	2.1	2.5	2.6	2.1
23	10	9.1	7.1	6.6	5.0	5.1	5.9	4.4	2.0	2.4	2.6	2.3
24	10	8.8	7.2	7.0	5.0	5.1	5.9	4.5	2.0	2.5	2.5	2.5
25	10	8.3	7.0	6.9	5.0	5.1	5.7	3.8	2.5	2.3	2.4	2.5
26	10	8.6	7.5	6.5	4.8	5.1	6.1	4.1	2.7	1.9	2.1	2.5
27	10	8.1	7.5	6.4	5.0	5.1	6.3	5.5	3.1	1.4	1.3	3.1
28	10	7.7	7.0	6.5	5.5	5.1	5.5	5.1	3.0	1.7	1.3	3.1
29	10	8.8	6.5	6.5	---	5.1	4.4	4.4	2.7	2.0	2.4	3.1
30	10	8.4	6.0	5.0	---	5.1	4.3	4.2	2.5	2.7	2.4	3.7
31	9.7	---	6.0	4.5	---	5.2	---	4.2	---	2.6	2.0	---
TOTAL	302.6	265.0	234.8	205.4	134.2	156.5	166.5	126.5	90.6	175.1	66.1	70.34
MEAN	9.76	8.83	7.57	6.63	4.79	5.05	5.55	4.08	3.02	5.65	2.13	2.34
MAX	10	9.5	9.3	7.3	5.5	5.4	6.3	5.5	4.6	57	2.8	3.7
MIN	9.3	7.7	6.0	4.5	4.0	4.5	4.3	3.3	2.0	1.3	1.3	.94
AC-FT	600	526	466	407	266	310	330	251	180	347	131	140
CAL YR 1984 TOTAL	4899.8			MEAN	13.4	MAX	143	MIN	2.6	AC-FT	9720	
WTR YR 1985 TOTAL	1993.64			MEAN	5.46	MAX	57	MIN	.94	AC-FT	3950	

REPORT ON APPLICATION NO. 2054-2
NEUGEBAUER BROTHERS
MARCH 22, 1988

Application No. 2054-2 proposes to divert 2.5 cfs of water from Battle Creek to flood irrigate up to 120 acres. The point of diversion is to be located in the NE 1/4 SE 1/4 of Section 32-T2S-R8E in Custer County. This application is for an appropriation from Battle Creek in excess of 1 cfs per 70 acres; therefore, pursuant to SDCL 46-5-6 the diversion rate may not exceed 1.71 cfs.

Discussion

Neugebauer Brothers have 2 existing water rights from Battle Creek, Water Rights No. 969-2 and 1191-2.

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 cfs from Battle Creek directly onto the land.

The portion of the right with the second priority date authorizes the Neugebauers to divert flows from Battle Creek into a 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 have a priority date of June 11, 1968. The 1968 right is subject to the qualification that sufficient water shall be bypassed to satisfy downstream domestic use and prior water rights.

Vested Water Right Claim 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 Water Rights Division has received several complaints in the past concerning the Neugebauers' irrigation. According to the complaints, there have been times when the Neugebauers have pumped water into their dam for storage when there has not been sufficient flows for downstream domestic use and prior water rights. After they were notified of the complaints, the Neugebauers complied with the qualifications on their permits.

Application No. 2054-2 proposes to irrigate land approximately 2 miles downstream of the existing Neugebauer permits. Table No. 1 lists the existing downstream water rights located on the 20 mile

stretch of Battle Creek between Hermosa and the Cheyenne River. The existing downstream water rights are for a total diversion of 14.76 cfs; therefore, at least a 15 cfs flow bypass will be necessary to protect the downstream water rights.

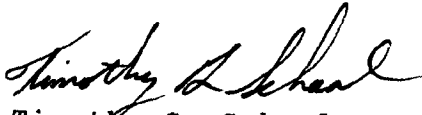
A USGS gaging station on Battle Creek is located just south of Hermosa and would be situated between the present Neugebauer irrigation and the area proposed under Application No. 2054-2. Table No.2 and Figure No.1 represent data from the Hermosa gaging station that shows there is a limited amount of unappropriated water available. Mean flow data averaged for the 38 years of record show that only 30% of the time flows in Battle Creek have equalled or exceeded 15 cfs in June, and only 20% of the time flows have equalled or exceeded 15 cfs in May, June, and July.

The gaging station at Hermosa measures flows from a drainage area of 178 square miles. There are times when the flows in Battle Creek are influenced by thunderstorms along the foot hills of the Black Hills. During these times, the flows in Battle Creek may increase substantially for only a few days. As shown on Table No.2, the flow in Battle Creek on July 15 and July 16, 1985 increased from 1.4 cfs to 54 and 57 cfs. These are the type of flows the Neugebauers have said that they are interested in using for this application. They would like to be set up so they could pump 2 to 3 cfs onto the land for a short period of time.

Conclusions and Recommendations

1. Based on 38 years of record, water is available on Battle Creek for this application only on a limited basis.
2. SDCL 46-2A-9 states "a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest." The flow probability analysis shows water will be available for use by the applicant without impairing existing rights, although it is only available 20 to 30 percent of the time. A flow bypass requirement will be necessary to protect the downstream rights.
3. If Application No. 2054-2 is approved, approval should be for 1.71 cfs with the qualification that the permit be subject to at least 15 cfs bypassing the diversion point. This can be monitored by using a bypass requirement of 16.71 cfs (15 cfs + 1.71 diversion rate) at the USGS gaging station at Hermosa. SDCL 46-5-5 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. Flood flows for this application are considered to be twice the appropriated downstream water rights (30 cfs) . If there is an excess of 30 cfs at the Hermosa gaging station, the Neugebauers could divert at a rate greater than 1.71 cfs. The Water Management Board may review and change the bypass requirement for this permit, if future information supports a change.



Timothy G. Schaal
Natural Resources Engineer

References:

U.S. Geological Survey, Water Resources Data for South Dakota,
Water Years 1985 & 1987

Division of Water Rights Records, Custer County Permits

TABLE NO 1

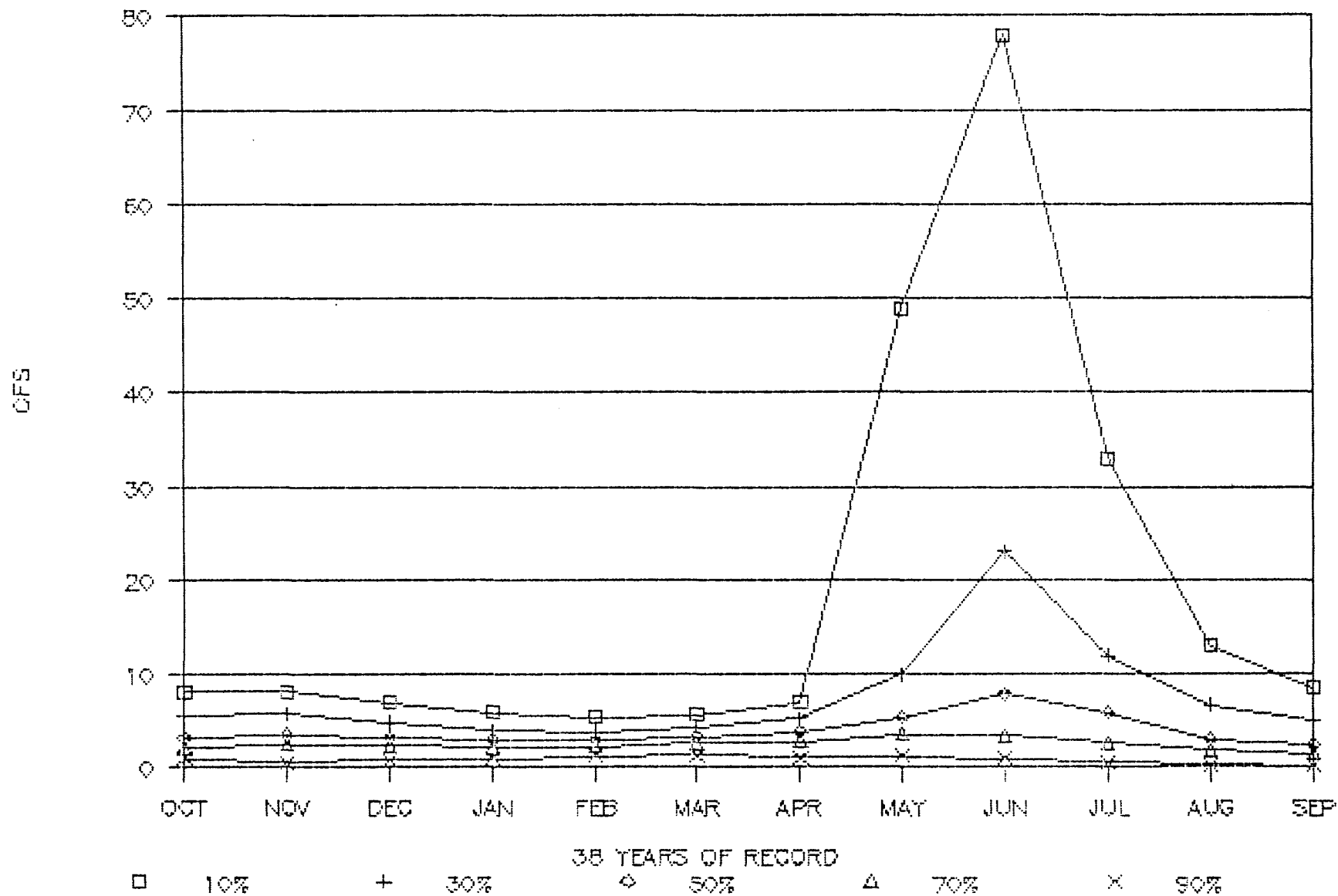
Existing Water Rights on Battle Creek
Listed In Downstream Order of Neugebauers

	<u>Permit Holder</u>	<u>Diversion Point</u> <u>(cfs)</u>	<u>Priority</u> <u>Date</u>
Permit No. 1170-2	John & Darlene Stovall	3.0 flood flows	Jan 28, 1974
Permit No. 319-2	Gene Baker	2.90	July 17, 1948
WR Filing No. 0359-2	Keith Robertson & Dr. Borgmeyer	1.47	March 3, 1895
WR Filing No. 0422-2	Clarence Werner	1.82	Oct 14, 1886
WR Filing No. 0421-2	Clarence Werner	1.80	Oct 27, 1893
Permit No. 1209-2	Clarence Werner	1.07	Sept 29, 1900
Permit No. 1221-2	Clarence Werner	1.14	Sept 29, 1900
Permit No. 1275-2	Donald Kaiser	0.70	1935
Permit No. 187-2	Clarence Foss	<u>0.86</u>	Sept 11, 1912
		Total 14.76	

Figure No. 1

BATTLE CREEK AT HERMOSA

FLOW DURATION HYDROGRAPH



RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2054-2, Neugebauer Brothers

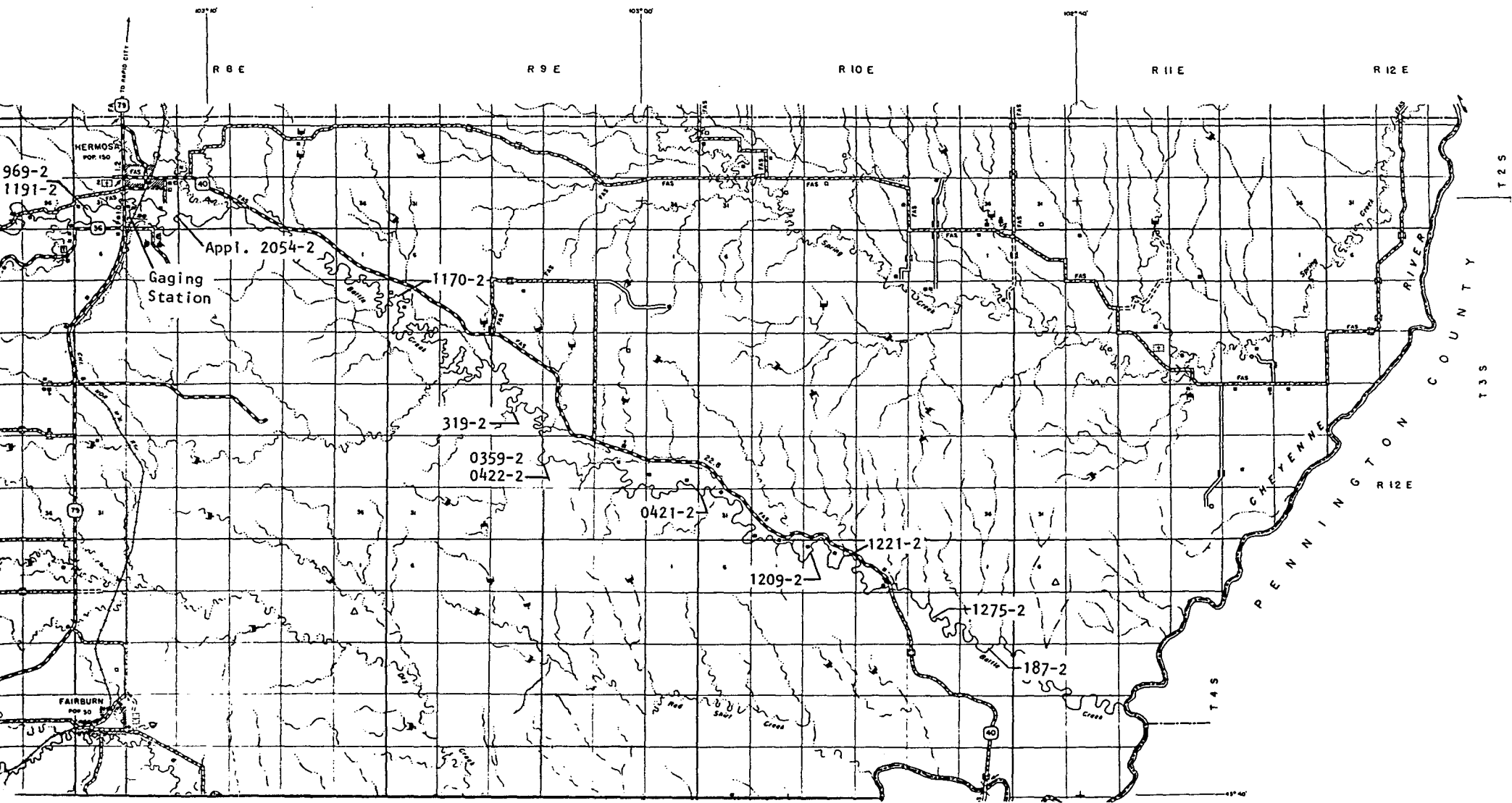
Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Water Permit Application No. 2054-2, Neugebauer Brothers, RR 1, Box 96, Hermosa SD.

The Chief Engineer is recommending DEFERRAL of Application No. 2054-2 to the Water Management Board for a determination on the question of if water is only available on an average of 20 to 30 percent of the time, if such amount of water is unappropriated water for approval of Application No. 2054-2 and if flood flows in Battle Creek at the proposed point of diversion are a flow equal to twice the total of downstream water rights.

See the attached report for additional information.



JOHN HATCH, Chief Engineer
April 6, 1988



April 13, 1988
(date)

page 1

Parties of Record before Water Management Board regarding Water Permit
Application No. 2054-2, Neugebauer Brothers

For :

Neugebauer Brothers
RR1, Box 96
Hermosa SD 57744

Against :

H.J. Borgmeyer
1721 11th Street
Rapid City SD 57701

Gene Baker
RR 4, Box 11
Hermosa SD 57744

and
Ed Hope, Ranch Manager
for C.L. Werner (see Page 2 for address)

RR 4, Box 14
Hermosa SD 57744

both represented by
Louis K. Freiberg, attorney
First Federal Plaza
909 St. Joe St., #420
Rapid City SD 57701

Clarence and Carol Foos
RR 4, Box 27
Hermosa SD 57744

Interested :

Richard Beringson, Secretary
Dept. of Game, Fish and Parks
Sigurd Anderson Building
445 East Capitol
Pierre SD 57501

(continued)

April 26, 1988
(date)

page 2

Parties of Record before Water Management Board regarding Water
Permit Application No. 2054-2, Neugebauer Brothers

Against:

Herbert Kaiser
RR 4, Box 18
Hermosa SD 57744

Donald Kaiser
RR 4, Box 18
Hermosa SD 57744

Don Knapp
Box 57
Hermosa SD 57744

Wayne S. O'Neill
RR
Hermosa SD 57744

C.L. Werner
P.O. Box 37308
Omaha NE 68137

represented by Louis K. Freiberg
(see Page 1 for address)



Department of Water & Natural Resources

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

Water Rights Division
(605) 773-3352

April 8, 1988

NOTE:

TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT THE
NEWSPAPER RIGHT AWAY.

Neugebauer Brothers
RR 1, Box 96
Hermosa, South Dakota 57744

Dear Mr. Neugebauer:

Your Application No. 2054-2 for a permit to appropriate water for

irrigation use, has been examined and found to
comply with the South Dakota Water Laws and applicable rules. A notice of
your intent to appropriate water has been sent to the Publisher of the

Rapid City Journal

printed at Rapid City, SD and

Custer County Chronicle

printed at Custer,

South Dakota. For your information, a copy of this notice, the recommendation
of the Chief Engineer and a report on the application are enclosed. Please
review this notice prior to publication and notify this office, if you have
any corrections or questions.

BE SURE TO CONTACT THE ABOVE NEWSPAPER IMMEDIATELY TO AUTHORIZE PUBLICATION
OF YOUR NOTICE OF INTENT TO APPROPRIATE WATER AND TO ARRANGE FOR PAYMENT.
Early contact with the paper can eliminate delays. The publisher has been
instructed to publish your notice once each week for two consecutive weeks
with the last publication to occur at least twenty days before the board
meeting. We must receive Proof of Publication before the application can be
considered by the Water Management Board.

Sincerely,

RON DUVALL
Natural Resources Engineer

enclosures

Instruction to Newspaper - Publish first publication of the following Notice on or before April 13, 1988 with 2nd publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 2054-2 to Appropriate Water

Notice is hereby given that Neugebauer Bros. whose mailing address is RR 1, Box 96, Hermosa, South Dakota has filed an application for a permit to appropriate 2.5 cubic feet of water per second (cfs) from Battle Creek to irrigate up to 120 acres. The Battle Creek diversion point is to be located in the NE 1/4 SE 1/4 and the land to be irrigated in the E 1/2 E 1/2; all in Section 32, T2S, R8E. This application is for an appropriation from Battle Creek in excess of 1.0 cfs per 70 acres pursuant to SDCL 46-5-6 when flood flows are much in excess of the total recorded and approved water rights.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends DEFERRAL of Application No. 2054-2 to the Water Management Board for a determination on the question of if water is only available on an average of 20 to 30 percent of the time, if such amount of water is unappropriated water for approval of Application No. 2054-2 and if flood flows in Battle Creek at the proposed point of diversion are a flow equal to twice the total of downstream water rights.

The application will be considered by the Water Management Board in Room 216, Joe Foss Bldg, 523 E Capitol, Pierre SD, on May 11, 1988 at 10:00 am.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and the Chief Engineer by April 29, 1988. The petition may be informal, but it must include a statement describing the petitioner's interest in the application, the reasons for the petitioner's opposition to or support of the application, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The applicant need not file a petition.

This application is made pursuant to the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

This hearing is an adversary proceeding. The applicant or any person, after filing a petition, 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.

Any person wishing a copy of the Chief Engineer's recommendation, further information on this application or to assure access to the hearing by the handicapped can contact the Water Rights Division, Joe Foss Bldg, Pierre SD (605 773-3352) for assistance prior to the hearing date. The time of the hearing will be automatically extended for at least twenty days upon written request of the applicant or person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by April 29, 1988.



Department of Water & Natural Resources

Joe Foss Building

523 East Capitol

Pierre, South Dakota 57501-3181

April 8, 1988

Rapid City Journal
PO Box 450
Rapid City, South Dakota 57701

Dear Sir:

Enclosed is a Notice of Hearing on Application No. 2054-2. Please publish this notice once each week for two consecutive weeks in your paper. The first publication should be on or before April 13, 1988.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make the first publication. Please BILL the APPLICANT for the cost of publication. The APPLICANT is Neugebauer Brothers, RR 1, Box 96, Hermosa, SD 57744.

A copy of BOTH publications must be SENT to the WATER RIGHTS DIVISION. IMMEDIATELY return the FIRST publication with the FIRST Transmittal form on the bottom of this page. The first copy is needed to check the publication for errors so any corrections can be made in the second publication. Publication errors can invalidate the public notice and cause the applicant costly delays.

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. The permit application cannot be considered by the Water Management Board until proof of publication has been received.

Sincerely,

Ron Duvall
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

FIRST TRANSMITTAL NOTICE
No. _____

TO: Water Rights Division
Joe Foss Building
Pierre SD 57501-3181

Date _____

We are in receipt of your letter of _____ enclosing Notice of Hearing to Appropriate Water by Application No. _____ which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper

No. _____

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) ss.
County _____)

I, Mary K. Garness 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:

April 14, 1988

April 21, 1988

Mary K. Garness
(Signature)

Bookkeeper
(Title)

April 21, 1988
(Date Signed)



Cost of Printing: Ran 9 9/16 inch legal advertising

in the Rapid City Journal on April 14 & 21 @ \$4.20
per inch = \$80.32

Ran public notice of hearing (Neugebauer)L209

APR 14, 21
NOTICE OF HEARING
ON APPLICATION NO. 28543
TO APPROPRIATE WATER

Notice is hereby given that Neugebauer Bros, whose mailing address is, R.R. 1, Box 96, Hermosa, South Dakota has filed an application for a permit to appropriate 3.5 cubic feet of water per second (cfs) from Battle Creek to irrigate up to 125 acres. The Battle Creek diversion point is to be located in the NE 1/4 SE 1/4 and the land to be irrigated in the E 1/2 E 1/4 all in Section 32, T22, R8E. This application is for an appropriation from Battle Creek in excess of 1.5 cfs per 70 acres pursuant to SDCL 46-5-6 when flood flows are much in excess of the total recorded and approved water rights.

Pursuant to SDCL 46-5A-2 the Chief Engineer of the Water Rights Division recommends DEFERRAL of Application No. 28543 to the Water Management Board for a determination on the question of if water is only available on an average of 20 to 30 percent of the time, if such amount of water is unappropriated water for approval of Application No. 28543 and if flood flows in Battle Creek at the proposed point of diversion are a flow equal to twice the total of downstream water rights.

The application will be considered by the Water Management Board at Room 314, Joe Foss Building 321 E. Capitol, Pierre, South Dakota, on May 11, 1988 at 10:00 A.M.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross examine witnesses according to SDCL 1-38, must file a written petition with BOTH the Applicant and the Chief Engineer by April 29, 1988. The petition may be informal, but it must include a statement describing the petitioner's interest in the application, the reason for the petitioner's objection to or support of the application, and the signature and mailing address of the petitioner or the legal counsel if legal counsel is obtained. The applicant must not file a petition.

This application is made pursuant to the provisions of SDCL 46-1-1 thru 46-1-5, 46-1-12 thru 46-1-15, 46-2-1, 46-2-9, 46-2-11, 46-2-12, 46-2-17, 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-3-1 thru 46-3-13 thru 46-3-15, 46-3-24, 46-3-25, 46-3-30.2, 46-3-30.4, 46-3-31, and Board Rules ARSD 74-02, 51, 51 thru 74-02, 51-15.

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

Any person wanting a copy of the Chief Engineer's recommendation, further information on this application or to assure access to the hearing by the applicant can contact the Water Rights Division, Joe Foss Bldg., Pierre, S.D., (605) 773-2322 for assistance prior to the hearing date. The time of the hearing will be automatically extended for at least twenty days upon written request of the applicant or any person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by April 29, 1988.



Department of Water & Natural Resources

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

April 8, 1988

Custer County Chronicle
Box 551
Custer, South Dakota 57730

Dear Sir:

Enclosed is a Notice of Hearing on Application No. 2054-2. Please publish this notice once each week for two consecutive weeks in your paper. The first publication should be on or before April 13, 1988.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make the first publication. Please BILL the APPLICANT for the cost of publication. The APPLICANT is Neubebauer Brothers, RR 1, Box 96, Hermosa, SD 57744.

A copy of BOTH publications must be SENT to the WATER RIGHTS DIVISION. IMMEDIATELY return the FIRST publication with the FIRST Transmittal form on the bottom of this page. The first copy is needed to check the publication for errors so any corrections can be made in the second publication. Publication errors can invalidate the public notice and cause the applicant costly delays.

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. The permit application cannot be considered by the Water Management Board until proof of publication has been received.

Sincerely,

Ron Duvall
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----

FIRST TRANSMITTAL NOTICE
No. _____

TO: Water Rights Division
Joe Foss Building
Pierre SD 57501-3181

Date _____

We are in receipt of your letter of _____ enclosing Notice of Hearing to Appropriate Water by Application No. _____ which was first published in our issue of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper

No. 2054-2

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County Custer) ss.

I, Randall O'Neill hereby

certify that the annexed printed copy of Notice of Intent to Appropriate

Water was taken from the Custer County Chronicle

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 Custer

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

April 13, 1988

April 20, 1988



[Signature]
(Signature)

[Signature]
(Title)

4/20/88
(Date Signed)

Cost of Printing: _____

April 13, 1988 - 25.58

April 20, 1988 - 20.46

Total for 4/13 & 4/20 - 46.04

NOTICE OF HEARING

on Application No. 2054-2 to
Appropriate Water

Notice is hereby given that Neugebauer Bros. whose mailing address is RR 1, Box 96, Hermosa, South Dakota has filed an application for a permit to appropriate 2.5 cubic feet of water per second (cfs) from Battle Creek to irrigate up to 120 acres. The Battle Creek diversion point is to be located in the NE 1/4 SE 1/4 and the land to be irrigated in the E 1/2 E 1/2; all in Section 32, T2S, R8E. This application is for an appropriation from Battle Creek in excess of 1.0 cfs per 70 acres pursuant to SDCL 46-5-6 when flood flows are much in excess of the total recorded and approved water rights.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends DEFERRAL of Application No. 2054-2 to the Water Management Board for a determination on the question of if water is only available on an average of 20 to 30 percent of the time, if such amount of water is unappropriated water for approval of Application No. 2054-2 and if flood flows in Battle Creek at the proposed point of diversion are a flow equal to twice the total of downstream water rights.

The application will be considered by the Water Management Board in Room 216, Joe Foss Bldg, 523 E Capitol, Pierre SD, on May 11, 1988 at 10:00 a.m.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and the Chief Engineer by April 29, 1988. The petition may be informal, but it must include a statement describing the petitioner's interest in the application, the reasons for the petitioner's opposition to or support of the application and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The applicant need not file a petition.

This application is made pursuant to the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15.

This hearing is an adversary proceeding. The applicant or any person, after filing a petition, 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.

Any person wishing a copy of the chief Engineer's recommendation, further information on this application or to assure access to the hearing by the handicapped can contact the Water Rights Division, Joe Foss Bldg, Pierre SD (605 773-3352) for assistance prior to the hearing date. The time of the hearing will be automatically extended for at least twenty days upon written request of the applicant or person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by April 29, 1988.

South Dakota Department of Water & Natural Resources
Resource, Joe Fass Building, 523 East Capitol
Pierre, S. Dak 57501-3181 12 Apr 88

Dear Sir:

Thank you for the "Notice of Hearing" about the Hearing on Application No 8054-2 to appropriate water out of Battle Creek. We are very much opposed to this as there is not enough water in Battle Creek now for us to irrigate as much as we need as our ranch is eleven miles east of Hermosa (11) and we get less rain than they get in or near the Battle Creek. Our water right dates back to 1 Mar 1899 but it won't do much good if water is taken out of Battle Creek before it gets to us.

Thank you
yours truly

H. J. Borgmeyer
H. J. Borgmeyer
1721 11th St
Rapid City, S. Dak
57701





Water & Natural Resources

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

April 14, 1988

Neugebauer Brothers
RR 1, Box 96
Hermosa SD 57744

Dear Mr. Neugebauer:

Enclosed is a copy of petition opposing Water Permit Application No. 2054-2 received from H J Borgmeyer on April 13, 1988. This letter is to inform you that Mr. Borgmeyer may appear and testify at the May 11, 1988 Board meeting.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ron Duvall".

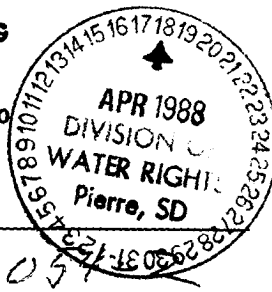
Ron Duvall
Natural Resources Engineer
605 773-3352

enc.

TO

Water Rights Division

LOUIS K. FREIBERG
ATTORNEY AT LAW
FIRST FEDERAL PLAZA
909 ST. JOE ST., #420
RAPID CITY, SD 57701
605-343-5767



Date

4-15-88

Re

Battle Creek

app no - 2051

Please send me list
of water rights - date - amounts
on Battle Creek - Snow Creek
and other tributaries -

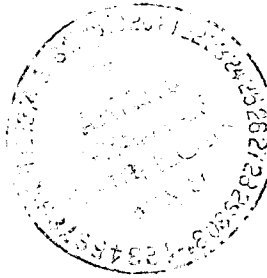
also Map -

Gene Baker + C. L. Kerner
owner of water rights have
obtained me as Neophron Bears
applications

Sincerely

OBJECTIONS
TO
APPLICATION NO. 2054-2

NEUGEBAUR BROS. TO APPROPRIATE WATER
APPLICATION



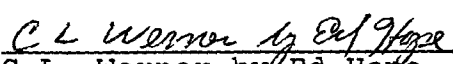
TO: Water Management Board, Water Rights Division
and the Chief Engineer,
Joe Foss Building
Pierre, SD 57501
and
Neugebauer Bros.
RR 1, Box 96
Hermosa, SD 57744

You are notified that the undersigned object to the application for a permit of Neugebauer Bros., Hermosa, S.D. to appropriate 2.5 cubic feet of water per second (cfs) from Battle Creek to irrigate up to 120 acres which was filed with the South Dakota Board and Commission as Application No. 2054-2 for the following reasons.

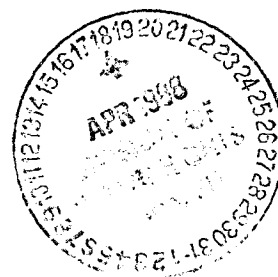
- (1) There is not water enough in Battle Creek for prior water rights held by the C.L. Werner, Gene Baker, H. J. Borgmeyer and others.
- (2) Livestock water and domestic water have a prior right and the application would interfere with those rights in the stream and its flow for these purposes also.
- (3) Neugebauer Bros. have violated in the past their water right for flood water and have pumped water into dams and water belonging to prior holders of water rights and have in the past pumped so livestock below have had no water.
- (4) Other objections will be presented at or prior to the hearing.

Gene Baker, owner of water rights and real estate adjacent to Battle Creek, Ed Hope, Manager of C. L. Werner Ranch, owners of water rights and real estate adjacent to Battle Creek, will testify at the hearing an extension of date of hearing for at least 20 days is requested.

Dated April 15, 1988.


Gene Baker RR # 4 Box 11, Hermosa, SD 57744

C.L. Werner by Ed Hope, Ranch Manager
RR # 4 Box 14, Hermosa, SD 57744

Water Rights Division
Department of Water and
Natural Resources
Joe Foss Building
523 E. Capital
Pierre, SD 57501



RE: Objection to Application No. 2054-2
of Neugebauer Bros. to appropriate water.

Dear Sirs:

Enclosed is objections to above application. I request an extension of at least 20 days to oppose the application in which to gather additional data. I am a holder of water rights on Battle Creek and real estate .

Our attorney is Louis K. Freiberg, 909 St. Joe St., #420, Rapid City, SD 57701 (605-343-5767) to oppose and he will be contacting you.

Advise as to continued date of hearing.

Sincerely.

Gene Baker
RR 4, Box 11
Hermosa, SD 57744

cc: Louis K.Freiberg
Attorney at Law

Ed Hope, Manager
C. L.Werner Ranch



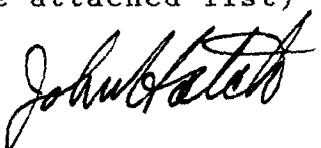
Department of Water & Natural Resources

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

April 20, 1988

NOTICE

TO: Neugebauer Brothers
RR 1, Box 96
Hermosa SD 57744
and Parties of Record (see attached list)

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

SUBJECT: Automatic Continuance of Hearing on Water Permit
Application No. 2054-2

A petition in opposition to Water Permit Application No. 2054-2 has been received from Gene Baker and Ed Hope (for C.L. Werner) represented by Louis K Freiberg, attorney. The petition also requests an automatic continuance of the hearing. Therefore, the hearing on Application No. 2054-2 is automatically continued pursuant to SDCL 46-2A-4 and 46-2A-5 and will NOT be held on May 11, 1988.

The Water Management Board will now consider Application No. 2054-2 on July 27, 1988 at 10:30 am, in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD. The agenda time is an estimate. The actual time of hearing may be later than 10:30 am due to prior agenda items. Applicable provisions of the Notice of Hearing published on April 13 & 14 and April 20 & 21, 1988 will still apply at the hearing.

cc: Water Management Board
John Guhin, Assistant Attorney General
Harold Deering, Assistant Attorney General

CERTIFICATION

I hereby certify that on April 20, 1988 I have personally deposited with the U.S. Mail, postage prepaid envelopes containing Notice of Automatic Continuance of Hearing on Water Permit Application No. 2054-2 addressed as stated on the Parties of Record Sheet

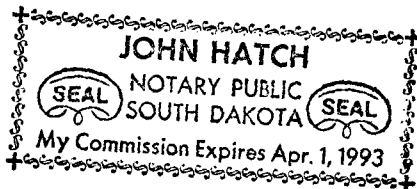
Karen Schlaak

KAREN SCHLAAK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 21st day of April, 1988.

John Hatch
Notary Public



Water Rights Division
Department of Water and
Natural Resources
Joe Foss Building
523 E. Capital
Pierre, SD 57501



RE: Objection to Application No. 2054-2
of Neugebauer Bros. to appropriate water.

Dear Sirs:

Enclosed are objections to above application. I request
an extension of at least 20 days to oppose the application
in which
to gather additional data. I am a landowner and a holder
of water
rights on Battle Creek.
Advise as to continued date of hearing.

Sincerely,

Clarence and Carol Foos
RR 4 Box 27
Hermosa, SD 57744

OBJECTIONS TO
APPLICATION NO. 2054-2

NEUGEBAUER BROS. TO APPROPRIATE
WATER APPLICATION



TO: Water Management Board, Water Rights Division
and the Chief Engineer,
Joe Foss Building
Pierre, SD 57501
and
Neugebauer Bros.
RR 1 Box 96
Hermosa, SD 57744

You are notified that the undersigned object to the application for a permit of Neugebauer Bros., Hermosa, SD to appropriate 2.5 feet of water per second (cfs) from Battle Creek to irrigate up to 120 acres which was filed with the South Dakota Board and Commission as Application No. 2054-2 for the following reasons:

- (1) There is not water enough in Battle Creek for prior water rights held by Clarence Foos, Herbert Kaiser, Donald Kaiser, and others.
- (2) Livestock water and domestic water have a prior right and the application would interfere with those rights in the stream and its flow for these purposes also.
- (3) Neugebauer Bros. have violated in the past their water rights for flood water and have pumped water into dams and water belonging to prior holders of water rights had have in the past pumped so livestock below have had no water.
- (4) Other objections will be presented at or prior to the hearing.


Clarence Foos



Department of Water & Natural Resources

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

April 22, 1988

Don Knapp
Box 57
Hermosa SD 57744

Dear Mr. Knapp:

This letter is in response to our phone conversation on April 22, 1988 regarding Water Permit Application No. 2054-2 for Neugebauer Brothers. Enclosed are copies of the following:

- 1) The report and Chief Engineer's recommendation.
- 2) Application No. 2054-2 with a map.
- 3) A notice dated April 20, 1988 that states the hearing has been rescheduled for July 27, 1988.

The enclosed notice dated April 20, 1988 also has an attached Parties of Record sheet which are people that have submitted petitions to intervene in the hearing. You will also be a party of record if you submit a written petition by April 29, 1988 according to the notice of hearing which we discussed.

Please contact me if you have any further questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ron Duvall".

Ron Duvall
Natural Resources Engineer
605 773-3352

enc.

Water Rights Division
Department of Water and
Natural Resources
Joe Foss Building
523 E. Capital
Pierre, SD 57501

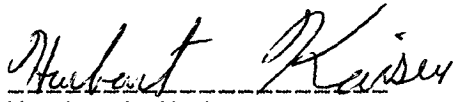


RE: Objection to Application No. 2054-2
of Neugebauer Bros. to appropriate water.

Dear Sirs:

Enclosed are objections to above application. I request
an extension of at least 20 days to oppose the application
in which to gather additional data. I am a landowner
and a holder of water rights on Battle Creek.
Advise as to continued date of hearing.

Sincerely,


Herbert Kaiser
RR 4 Box 18
Hermosa, SD 57744



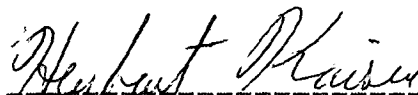
OBJECTIONS TO
APPLICATION NO. 2054-2

NEUGEBAUER BROS. TO APPROPRIATE
WATER APPLICATION

TO: Water Management Board, Water Rights Division
and the Chief Engineer,
Joe Foss Building
Pierre, SD 57501
and
Neugebauer Bros.
RR 1 Box 96
Hermosa, SD 57744

You are notified that the undersigned object to the application for a permit of Neugebauer Bros., Hermosa, SD to appropriate 2.5 feet of water per second (cfs) from Battle Creek to irrigate up to 120 acres which was filed with the South Dakota Board and Commission as Application No. 2054-2 for the following reasons:

- (1) There is not water enough in Battle Creek for prior water rights held by Clarence Foos, Herbert Kaiser, Donald Kaiser, and others.
- (2) Livestock water and domestic water have a prior right and the application would interfere with those rights in the stream and its flow for these purposes also.
- (3) Neugebauer Bros. have violated in the past their water rights for flood water and have pumped water into dams and water belonging to prior holders of water rights had have in the past pumped so livestock below have had no water.
- (4) Other objections will be presented at or prior to the hearing.



Herbert Kaiser

Water Rights Division
Department of Water and
Natural Resources
Joe Foss Building
523 E. Capital
Pierre, SD 57501



RE: Objection to Application No. 2054-2
of Neugebauer Bros. to appropriate water.

Dear Sirs:

Enclosed are objections to above application. I request
an extension of at least 20 days to oppose the application
in which to gather additional data. I am a landowner
and a holder of water rights on Battle Creek.
Advise as to continued date of hearing.

Sincerely,

Donald Kaiser
Donald Kaiser
RR 4 Box 18
Hermosa, SD 57744

OBJECTIONS TO
APPLICATION NO. 2054-2

NEUGEBAUER BROS. TO APPROPRIATE
WATER APPLICATION



TO: Water Management Board, Water Rights Division
and the Chief Engineer,
Joe Foss Building
Pierre, SD 57501
and
Neugebauer Bros.
RR 1 Box 96
Hermosa, SD 57744

You are notified that the undersigned object to the application for a permit of Neugebauer Bros., Hermosa, SD to appropriate 2.5 feet of water per second (cfs) from Battle Creek to irrigate up to 120 acres which was filed with the South Dakota Board and Commission as Application No. 2054-2 for the following reasons:

- (1) There is not water enough in Battle Creek for prior water rights held by Clarence Foss, Herbert Kaiser, Donald Kaiser, and others.
- (2) Livestock water and domestic water have a prior right and the application would interfere with those rights in the stream and its flow for these purposes also.
- (3) Neugebauer Bros. have violated in the past their water rights for flood water and have pumped water into dams and water belonging to prior holders of water rights had have in the past pumped so livestock below have had no water.
- (4) Other objections will be presented at or prior to the hearing.

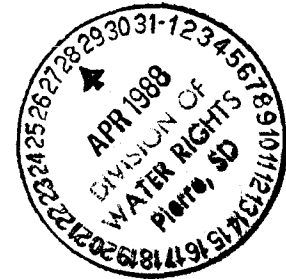
Donald Kaiser

Donald Kaiser

HERMOSA, S.D.

4-26-88

JOHN HATCH
CHIEF ENGINEER
WATER RIGHTS DIVISION
PIERRE, S.D.



DEAR SIR:

WE AM WRITING TO OBJECT TO THE ISSUANCE OF WATER RIGHT NO.
2054-2 TO THE NEUGEBAUER BROTHERS OF HERMOSA, S.D. FOR THE
FOLLOWING REASONS.

1. USE OF THIER PRESENT RIGHT SHOWS LITTLE REGUARD FOR PEOPLE
DOWN STREAM THAT NEED THE WATER FOR DOMESTIC AND
IRRIGATION PURPOSES.
2. FLOOD RIGHT PERMITS ARE HARD TO POLICE AND ARE ABUSED.
3. IT IS QUESTIONABLE THAT THE DURATION OF HIGH WATER DURING
FLOOD STAGE WOULD PROVIDE BENEFICAL IRRIGATION AND WOULD
ENCOURAGE WATER RIGHT ABUSE.
4. WHO WHAT AND HOW IS THE DETERMINER OF FLOOD STAGE?
5. DURING FLOOD STAGES WE FEEL THE UNDER GROUND AQUIFERS ARE
REPLENISHED AND IF THIS NOT ALLOWED TO HAPPEN OUR WATER
FOR DOMESTIC NEEDS WILL BE JEOPORDIZED.

THANK YOU FOR CONCIDERING THIS PETITION OF OBJECTION TO THE
ISSUANCE OF WATER RIGHT 2054-2.

RESPECTFULLY YOURS

Wayne S. O'Neill
WAYNE S. O'NEILL

Don Knapp
DON KNAPP

SOUTH Dakota Department of
Water & Natural Resources

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

April 26, 1988

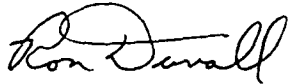
Donald Kaiser
RR 4, Box 18
Hermosa SD 57744

Dear Mr. Kaiser:

This letter is in response to your petition opposing Application No. 2054-2, Neugebauer Brothers, received on April 26, 1988. A petition requesting an extension of the hearing date has already been received from Gene Baker and Ed Hope. Enclosed is a copy of the Notice dated April 20, 1988 that was sent in response to the earlier request for an extension. The hearing date has been delayed until July 27, 1988.

Please contact me if you have any questions.

Sincerely,



Ron Duvall
Natural Resources Engineer
605 773-3352

enc.

SOUTH Dakota Department of
Water & Natural Resources

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

April 26, 1988

Herbert Kaiser
RR 4, Box 18
Hermosa SD 57744

Dear Mr. Kaiser:

This letter is in response to your petition opposing Application No. 2054-2, Neugebauer Brothers, received on April 26, 1988. A petition requesting an extension of the hearing date has already been received from Gene Baker and Ed Hope. Enclosed is a copy of the Notice dated April 20, 1988 that was sent in response to the earlier request for an extension. The hearing date has been delayed until July 27, 1988.

Please contact me if you have any questions.

Sincerely,



Ron Duvall
Natural Resources Engineer
605 773-3352

enc.



Department of Water & Natural Resources

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

April 26, 1988

Clarence and Carol Foos
RR 4, Box 27
Hermosa SD 57744

Dear Mr. and Mrs. Foos:

This letter is in response to your petition opposing Application No. 2054-2, Neugebauer Brothers, received on April 21, 1988. A petition requesting an extension of the hearing date has already been received from Gene Baker and Ed Hope. Enclosed is a copy of the Notice dated April 20, 1988 that was sent in response to the earlier request for an extension. The hearing date has been delayed until July 27, 1988.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Ron Duvall".

Ron Duvall
Natural Resources Engineer
605 773-3352

enc.

**South Dakota
Department of
Game, Fish and Parks**

Office of the Secretary
Sigurd Anderson Building
445 East Capitol
Pierre, South Dakota 57501
(605) 773-3387

April 28, 1988

Mr. John Hatch, Chief Engineer
Division of Water Rights
S.D. Department of Water & Natural Resources
Joe Foss Building
Pierre, SD 57501



Dear Mr. Hatch:

Pursuant to the notice provided by the Chief Engineer under SDCL 46-2A-4, the South Dakota Department of Game, Fish and Parks intends to be a party to water right claim 2054-2 on Battle Creek, Custer County.

GF&P is an interested and potentially affected party by virtue of statutory authority to manage fish and wildlife resources of the state (SDCL Chapter 41). The pending water right claim could affect the quantity of water available for natural resource management.

Thank you for the opportunity to comment on this pending water right application.

Sincerely,

Richard Beringson
Secretary

RJB/sl

cc: Neugebauer Bros.
RR 1, Box 96
Hermosa, SD 57744



Water & Natural Resources

Joe Foss Building

523 East Capitol

Pierre, South Dakota 57501-3181

April 28, 1988

Wayne S O'Neill
RR
Hermosa SD 57744

Dear Mr. O'Neill:

This letter is in response to your petition opposing Application No. 2054-2, Neugebauer Brothers, received on April 28, 1988. A petition requesting an extension of the hearing date has already been received from Gene Baker and Ed Hope. Enclosed is a copy of the Notice dated April 20, 1988 that was sent in response to the earlier request for an extension. The hearing date has been delayed until July 27, 1988.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Ron Duvall".

Ron Duvall
Natural Resources Engineer
605 773-3352

enc.



Department of Water & Natural Resources

Joe Foss Building

523 East Capitol

Pierre, South Dakota 57501-3181

April 28, 1988

Neugebauer Brothers
RR 1, Box 96
Hermosa SD 57744

Dear Mr. Neugebauer:

Enclosed is a copy of a petition in opposition to Application No. 2054-2 received on April 28, 1988 from Don Knapp and Wayne S O'Neill. The copy is being supplied to you to inform you of the parties opposing the water permit application.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Ron Duvall".

Ron Duvall
Natural Resources Engineer
605 773-3352

enc.

SOUTH Dakota Department of
Water & Natural Resources

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181
April 29, 1988

Richard Beringson, Secretary
Dept. of Game, Fish and Parks
445 E Capitol
Pierre SD 57501

Dear Sir:

This letter is in response to your petition opposing Application No. 2054-2, Neugebauer Brothers, received on April 29, 1988. A petition requesting an extension of the hearing date has already been received from Gene Baker and Ed Hope. Enclosed is a copy of the Notice dated April 20, 1988 that was sent in response to the earlier request for an extension. The hearing date has been delayed until July 27, 1988.

Please contact me if you have any questions.

Sincerely,



Ron Duvall
Natural Resources Engineer
605 773-3352

enc.

Rapid City, South Dakota
4 May 1988

John Holch, Chief Engineer
South Dakota Water Natural Resources
Joe Foss Bldg.
523 Capital
Pierre, South Dakota 577501-3181



Dear Sir:

I am writing you regarding the Neuegebauer Bros. petition for Water Rights on Battle Creek in Custer County. Application #20542.

I am the landowner of a ranch one and on-half miles East of Hermosa, South Dakota. Battle Creek runs through my property and as of right now there is just a small stream running thru my property and not even enough to water the cattle. I am very much opposed to the granting of this application. I now have this land leased to the Shorb Bros. of Hermosa, South Dakota.

Very truly yours,
Edna Marie Larsen
Edna Marie Larsen
502 East Omaha St.
Rapid City, So. Dak. 57701

Edna Marie Larsen
502 East Omaha St.
Rapid City, So. Dakota
57701



John Holch, Chief Engineer
South Dakota Water Natural Resources
Joe Foss Bldg.
523 Capital
Pierre, South Dakota 577501-3181



Department of Water & Natural Resources

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

May 6, 1988

Edna Marie Larsen
502 East Omaha Street
Rapid City SD 57701

Dear Ms. Larsen:

This letter is in response to your petition opposing Water Permit Application No. 2054-2 submitted by Neugebauer Brothers.

According to the public notice of hearing published in the Rapid City and Custer newspapers, petitions to intervene in the hearing for Application No. 2054-2 need to have been received by April 29, 1988. The petition which you submitted was received on May 6, 1988. Therefore, you do not qualify as a party to the hearing; however, you may attend the hearing and be called as a witness if you do wish to testify. To be called as a witness, you will need to have someone that is a party to the hearing call you as a witness. Enclosed is a list of persons that are parties to the hearing.

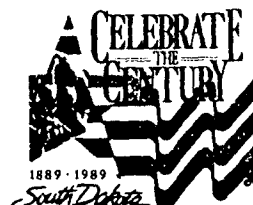
The hearing has been rescheduled and will NOT be held on May 11, 1988 in Pierre. The hearing is now scheduled for 10:30 am on July 27, 1988 in the Joe Foss Building, Room 216, 523 E Capitol, Pierre SD. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Ron Duvall".

Ron Duvall
Natural Resources Engineer
605 773-3352

enc.





C.L. Werner Cattle Co.
Hermosa, South Dakota
% P.O. Box 37308
Omaha, NE 68137

June 2, 1988

Department of Water and
Natural Resources
Joe Fass Building
Pierre, SD 57501

Re: Battle Creek application from Neugebauer Brothers

I own a ranch in Battle Creek, Custer County, South Dakota.

I have water rights on the Creek and have enclosed description of the land. Neugebauer's have presently pumped the creek dry. At times we do not have domestic water for livestock because of the pumping done by Neugebauer Brothers.

There is absolutely not enough water in Battle Creek for Neugebauer's requested permit. I object to the granting of their application.

Very truly yours,


C.L. Werner

cc: Brice Nelson
Louis Freiberg, Attorney

 **Department of
Water & Natural Resources**

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

July 7, 1988

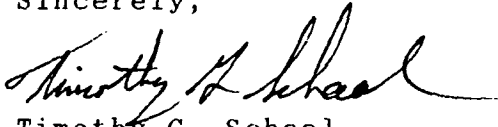
Louis K. Freiberg, Attorney
First Federal Plaza
909 St. Joe St., #420
Rapid City, SD 57701

Dear Mr. Freiberg:

Enclosed is a copy of the report on the Neugebauer Application
No. 2054-2 and a map of the area as you requested.

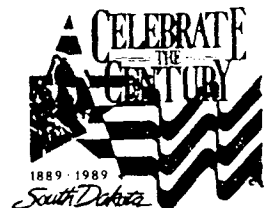
If you have any questions, please contact us.

Sincerely,



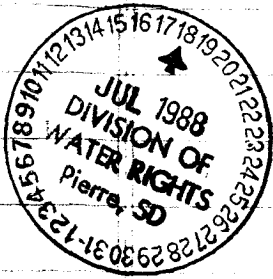
Timothy G. Schaal
Natural Resources Engineer
605 773-3352

enclosures



July 18, 1988

State Water Management Board
Pierre, S.D.



Re application
2054-2
Neugebauer Bros
Objection

We are user of domestic water
from the flow of Battle Creek.
Domestic flow must be maintained
on the creek.

CF. 3rd D.K. 20

A requirement of ~~CF~~ is
necessary at the Battle Creek
Bridge on SD Highway SD 44
(in Section 3, T4S, R10E. B.H.M.,
Custer County).

No second permit should
be granted on application No. 2054-2
that does not require that pumping
not be permitted until 3rd CFS flow
is at the Battle Creek bridge.

A requirement at the Hermosa measuring
station will not guarantee ~~use~~ a
domestic flow. A measuring device must be established
at this bridge. We discussed this with

Winterson and Schaul of your office on July 18, 1988

Bease Simmons - Ch. Werner. Sincerely,

Dorothy Kaiser

Clarence Foss

Gene Baker

Haris K. Harkness, Attorney for area

Jim Winterton
Tim Schaal
Natural Resources
Pierre, S.D.

July 18, 1988



Re application No. 2054-2
Hengebauer application
Objections

The domestic users on Battle
Creek request that gauging
station be established at the Battle
Creek Bridge section 3, T4S, R10E B14W
about 7 mi above the mouth of
Battle Creek and 3 cfs flow
be required before any flood
permits are given at this point.

This should be added to
the report on the application No. 2054-2
as a requirement to any flood permit
in addition to any other requirement.

Sincerely

Bruce Simms - C. L. Werner
Donald Kaiser
Gene Baker
Clarence Foss

Kevin H. Locking, attorney for domestic users
and objectors

Rural Route 5, Box 750
Rapid City, SD 57701
July 20, 1988

Mr. Timothy Schaal, Engineer
Dept. of Water & Natural Resources
Joe Foss Building
Pierre, South Dakota 57501



Dear Tim,

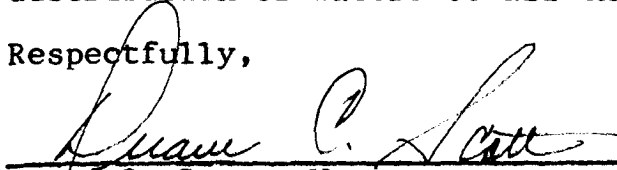
I recently attended a meeting of water users along Battle Creek at the request of Attorney Freiberg. It was an interesting meeting with a number of serious questions raised. The water permit application of Neugebauer Brothers No. 2054-2 was discussed.

One of the points questioned was the validity of the 38 year average which was data from different decades than we are experiencing today. I remember Elk Creek and Box Elder Creek, where I grew up in the 1940's and 1950's. These streams ran continuously then but they have been semi-dry for many years now. This no doubt from the increased timber growth in the Black Hills. This same situation exists on other drainages from the Black Hills.

The need to maintain domestic flow was mentioned, and in the Rapid Valley Conservancy District, I try to maintain flow for the full length of Rapid Creek which I understand is not existent in Battle Creek. We are fortunate to have our gage at the lower end of Rapid Creek which makes the domestic flow more manageable.

Like the other drainages, the Battle Creek watershed bears little resemblance to the one that existed in 1881. This probably means that the management of Battle Creek irrigation priorities will have to be reviewed with an eye to the fair and equitable distribution of waters to all the Battle Creek users.

Respectfully,


Duane C. Scott, Watermaster
Rapid Valley Conservancy District

DCS/nys
cc: Louis Freiberg

July 26, 1988

Revised Qualification for Application No. 2054-2

3. If Application No. 2054-2 is approved, approval should be for 1.71 cfs with the qualification that the permit be subject to a requirement that the owner of water right no. 2054-2 bear the cost of installing and maintaining a staff gage at the Highway 40 bridge over Battle Creek, located in the SE1/4 of Section 3, T4S, R10E. A minimum of 3 cfs must be maintained at the staff gage to insure flows for prior downstream existing water rights and domestic use. In addition the permit be subject to at least 15 cfs bypassing the diversion point. This can be monitored by using a bypass requirement of 16.71 cfs (15 cfs + 1.71 cfs diversion rate) at the USGS gaging station at Hermosa. SDCL 46-5-5 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. Flood flows for this application are considered to be twice the appropriated downstream water rights (30 cfs). If there is in excess of 30 cfs at the Hermosa gaging station, the permit holder could divert at a rate greater than 1.71 cfs. The Water Management Board may review and change the bypass requirement for this permit, if future information supports a change.

*Law Offices of
Louis K. Freiberg*

*Telephone
Rapid City (605) 343-5767
Wall (605) 279-2263*

*First Federal Plaza
909 St. Joe #420
Rapid City, South Dakota 57701-1159*

September 27, 1988

Water Management Board
Water Rights Division
Department of Water & Natural Resources
Joe Foss Building
523 E. Capitol Ave.
Pierre, SD 57501-3181



RE: Battle Water Rights, Our File 88-156
Neugebauer Brothers, Hermosa, South Dakota,
Application No. 2054-2

Would you please forward a copy of the Minutes of your July 27, 1988, meeting and action taken in regard to the above Water Permit at which I appeared as attorney for the water right holders and irrigators along Battle Creek objecting to the Neugebauer Application.

At the hearing, we waived Findings of Fact but I assume an Order was entered which set forth that the gauging requirements at the bridge just south of Hermosa and at the bridge on Lower Battle Creek below the Kaiser Ranch.

Also, would you advise what the status of the construction and the installation of the water gauging device on Lower Battle Creek at the lower bridge is, and if this has been accomplished or will be accomplished and approximately what time.

Sincerely,


Louis K. Freiberg
Attorney at Law

:js

cc: Gene Baker



Department of Water & Natural Resources

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

October 7, 1988

Louis K. Freiberg, Attorney
First Federal Plaza
909 St. Joe #420
Rapid City, SD 57701-1159

Dear Mr. Freiberg:

I am writing in reference to your letter asking about the status of the gaging station at the lower end of Battle Creek in association with the Neugebauer Brothers Water Permit Application No. 2054-2.

We are still in the process of determining what kind of station we want to install. There may be the possibility of installing a continuous recorder type station there. We are checking into the funding sources we have available. However, we still plan to have some type of measuring device constructed by the next irrigation season.

As requested, enclosed is a copy of the minutes of the July 27, 1988 Water Management Board meeting. If you have any questions, please contact this office.

Sincerely,

Timothy G. Schaal
Water Resources Engineer
605 773-3352

enclosure





Department of Water & Natural Resources

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

August 10, 1990

Louis K. Freiberg, Attorney
First Federal Plaza
909 St, Joe St. #420
Rapid City, SD 57701-1159

Dear Mr. Freiberg:

As requested, enclosed is a copy of the minutes of the July 27, 1988 Water Management Board meeting concerning Neugebauer's Water Permit Application No. 2054-2.

If you have any questions, please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Timothy G. Schaal".

Timothy G. Schaal, P.E.
Natural Resources Engineer
605 773-3352

found out the Hall well was 85 to 135 feet deep. The wells are approximately 3/4 mile apart. A test log was submitted with Application No. 1435-1, (Pope & Talbot) for the same area. This well log indicates that the Hall well and the Pope & Talbot wells are in different formations. Water levels in the observation wells show no connection between the aquifers. Staff does not believe pumping from the Pope & Talbot wells will have any effect on Lynelle Hall's well.

Mr. Brink MOVED, SECONDED by Mrs. Loucks Vested Water Right Application No. 1436-1 be VALIDATED. MOTION CARRIED.

1435-1, Pope & Talbot, Inc., Spearfish SD

Application is for 1.0 cfs from 1 well (Madison Formation) 855 feet deep. The water is used for industrial purposes in the processing of wood products, for sanitary purposes and for fire protection. Staff recommendation is for approval with the well interference qualification.

Mr. Lloyd MOVED, SECONDED by Mrs. Loucks that Application No. 1435-1 be APPROVED with the staff recommended qualification. MOTION CARRIED.

Water Permit Application No. 2054-2, Neugebauer Bros.

Application is for 2.5 cfs from Battle Creek to irrigate up to 120 acres. This application is for an appropriation from Battle Creek in excess of 1.0 cfs per 70 acres pursuant to SDCL 46-5-6 when flood flows are much in excess of the total recorded and approved water rights. Staff recommendation is for DEFERRAL to the Water Management Board for a determination on the question of if water is only available on an average of 20 to 30 percent of the time, if such amount of water is unappropriated water for approval of Application No. 2054-2 and if flood flows in Battle Creek at the proposed point of diversion are a flow equal to twice the total of downstream water rights.

Tim Schaal presented the report prepared on the application (copy on file). Mr. Schaal stated that several letters were received concerning the application (copies on file).

Chairman Gunderson administered the oath to Stanley Neugebauer.

Mr. Neugebauer stated he was representing Neugebauer Bros. Mr. Neugebauer stated they have worked with the Soil Conservation Service and decided that water spreading was one way to improve their land. SCS indicated if the Neugebauer's could get a high flow permit, they could set up a water conservation spreading system on the 120 acres.

Mr. Schaal stated the USGS has a continuous recorder on Battle Creek at Heromsa between the existing Neugebauer permits and upstream of the new application.

Louis Freiberg stated he was an attorney representing people on Battle Creek below the Neugebauer application.

Chairman Gunderson administered the oath to John Colgan.

Mr. Colgan stated he was a registered engineer. He lives on Spring Creek which is a sister creek paralleling Battle Creek to the north about 7 miles. They have property on Battle Creek four miles below the point of diversion of this application. They do not object to the permit providing there are qualifications that insure them of domestic water the full length of the creek before anyone starts pumping. This has not happened in the past on either creek. Possibly, a gauge could be installed where Battle Creek crosses Hwy 40, approximately five miles above the mouth of the creek. Mr. Colgan stated he did not feel that the 15 cfs by-pass figure is representative of what is needed to make the creek run. He felt a gauge should be set up near the end of the stream as a check for domestic needs. Mr. Colgan also suggested that a water master be appointed. They would also like to see the pump sized somewhere near the appropriation rate.

Chairman Gunderson administered the oath to Clarence Foss. Mr. Foss stated he lived at the lower end of Battle Creek. The creek is presently dry. With a flash flood, there is no guarantee that the water would get to the lower end of the creek, since there are potholes. The potholes and wells are used for domestic use.

Mr. Schaal presented a Revised Qualification for Application No. 2054-2 (copy on file). This would amend the 15 cfs by-pass to 16.71 cfs at the upper end and 3 cfs at the lower end. Mr. Schaal stated he could foresee a monitoring problem.

Chairman Gunderson administered the oath to Jim Goodman.

Mr. Goodman stated the records from the upper gaging station are USGS flow records and that these records are accurate.

Chairman Gunderson administered the oath to Gene Baker.

Mr. Baker stated he has irrigation rights on the creek and is concerned with granting more rights on the stream. The first right is domestic use. The Neugebauers' have pumped into their dams when the creek is dry. Since 1980 water has never went over Mr. Baker's concrete crossing. Mr. Baker stated he has 3 miles of creek on his land.

Chairman Gunderson administered the oath to Donald Kaiser.

Mr. Kaiser stated the creek is dry and has been for 2 1/2 months. They do have one spring at the lower end of their place. The well at the house is weak. At one time there was a measuring device on the bridge 1/4 mile northeast of his place. Mr. Kaiser stated he read the measurements daily and would be willing to do it again.

Chairman Gunderson administered the oath to Bruce Simmons.

Mr. Simmons stated he was the ranch manager for the C L Werner Ranch above the Kaiser place and approximately the third place from the mouth of the creek. Mr. Simmons stated 3 1/2 miles of the creek go through the Werner Ranch. A new well located along the creek had to be shut off. They have about 1 pothole that they use for livestock use.

Chairman Gunderson administered the oath to Craig Robinson.

Mr. Robinson stated he was manager of the Borgmeyer Ranch. Mr. Robinson stated they have quit running livestock on the creek. They cannot understand how the stressed creek can take any more irrigation.

Mr. Freiberg stated these people on the lower reaches of the creek are entitled to domestic water flow. They feel the creek must have a 15 cfs bypass at Hermosa plus the 3 cfs for domestic use at the mouth of the creek. There has to be a measuring device at the mouth of the creek.

Mr. Colgan stated he felt that a water users district could be formed. Possibly people would donate their time.

Jim Winterton passed out some information on the flows of Battle Creek (copy on file).

Mr. Neugebauer stated they would support the neighbors thinking. They intend to irrigate alfalfa. The 80 acres is in a horseshoe shape. Once the root system is wet, the root is in subsoil moisture. They may be able to irrigate 1 day a month or 1 day a year.

Mr. Goodman stated that high flows will effect the water levels in wells. According to other aquifers studied throughout the state generally the water level slopes toward the creek. There is discharge from the aquifer to the creek bed especially during low flow periods. When there is a heavy rain to create a flow, it will saturate the rest of the creek. The groundwater level rises in response to the creek, and is generally higher than the creek. The Creek levels and ground water levels are inter-related. There is a monitoring well on the edge of Hermosa measured three times a year. Basically water levels do not change much except to show relative differences between wet and dry years.

Mr. Rickenbach MOVED, SECONDED by Mr. Rollag that Water Permit Application No. 2054-2 be APPROVED for 1.71 cfs with the qualifications:

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 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 approved subject to the irrigation water use questionnaire being submitted each year.
MOTION CARRIED.

Mr. Brink MOVED, SECONDED by Mr. Rickenbach that the Division of Water Rights install the gauge at the bridge and that the chief engineer is authorized to appoint a water master. MOTION CARRIED.

Mr. Lloyd suggested that the area people form a water users district or association locally.

Mr. Freiberg stated he would waive Findings of Fact, Conclusions of Law and a Final Decision.

Meeting recessed at 3:05 pm. Meeting reconvened at 3:15 pm.

Golden Reward Mining Company

Chairman Gunderson stated the motion to reconsider Water Permit Application No. 1441-1 was held in abeyance until all parties could be present.

Ron Koth stated that the Department of Game, Fish and Parks feels that the motion to deny the application of Golden Reward Mining Company was proper in light of the questionable data they have. Mr. Koth stated they would like to go through the findings process and receive a suggestion in the rebuttal to the findings for a by-pass of water.

Mr. Koth stated they would waive Findings of Fact, Conclusions of Law and a Final Decision on Water Permit Applications No. 1438-1, 1439-1 and 1440-1.

Mr. Rickenbach and Mr. Rollag withdrew the motion and second to reconsider Application No. 1441-1.

Chairman Gunderson directed that Findings of Fact, Conclusions of Law and a Final Decision be prepared for Water Permit Application No. 1441-1 only.

Reconsider Deferred Water Permit Applications

3325-3, Marion Short & Omah Klopfenstein

Application is for 4.57 cfs from one well 72 feet deep to irrigate 320 acres in Spink County. Staff recommendation is for denial.

3391-3, Albert J. Wipf

Application is for 2.2 cfs from one well 80 feet deep to irrigate 160 acres in Spink County. Staff recommendation is for denial.

Jim Goodman presented a report prepared on the deferred applications (copy on file). Mr. Goodman also referred to maps prepared on the Tulare-East James Aquifer (maps on file).



Department of Water & Natural Resources

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

DEC 1 1988

Neugebauer Brothers
RR 1, Box 96
Hermosa, South Dakota 57744

Dear Mr. Neugebauer:

Enclosed is Water Permit No. 2054-2 as approved by the Water Management Board authorizing you to construct your water diversion system and put the water to beneficial use, not exceeding the limits as specified in Water Permit No. 2054-2.

Also enclosed is Form 10, Notice of Completion of Works and Application of Water to Beneficial Use, which you are to complete and submit to the Chief Engineer when you have completed the system and/or have put the water to beneficial use. An inspection can then be scheduled so that the Water License may be issued, thus completing your acquisition of a Water Right.

Very truly yours,

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

JH:ms

enclosure

PLEASE NOTE: Certain changes can be made in your permit within the five year construction period, usually without affecting the priority date provided an application to amend your permit is made within the five year period - i.e. changes in location or number of diversion points (wells) or location of land to be irrigated. Well locations for wells into the same aquifer can be moved up to 660 feet without application.

Applications to amend a permit after the five year construction period will be assigned a new priority date. Applications to change water sources, to add lands or increase original diversion rates, if approved will usually receive the date of the new application as a priority date regardless of the five year construction period.

Conversation or File Documentation

NAME OF PERSON OR FILE: CAROL FOOSADDRESS: _____ COUNTY CUSTERDATE: 20 JUNE 1990 TELEPHONE 255-4104RE: FLWS IN BATTLE CREEK

COMMENTS:

MR. FOOS CALLED TO REPORT FLWS IN LOWER
END OF BATTLE CREEK WERE GETTING LOW AND
THAT NEUGEBAUGS SHOULD BE SHUT OFF. THEY
WERE PUMPING INTO THEIR STORAGE DAM AND
THAT THIS WOULD DEPRIVE DOWNSTREAM USERS OF
DOMESTIC WATER.

WE DISCUSSED CREEK FLWS AND THE STAFF
GAUGE AT THE LOWER END.

I TOLD HER WE WOULD CHECK INTO THIS. I LEFT
MESSAGE FOR BROSE AT MOTEL IN HOT SPRINGS TO
CALL OFFICE. HE CAN STOP AND CHECK THIS
OUT.

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: JAG

Conversation or File Documentation

NAME OF PERSON OR FILE: CAROL FossADDRESS: _____ COUNTY CUSTERDATE: 6/21/90 TELEPHONE 255-4104RE: Flows IN Battle Creek

COMMENTS:

INVESTIGATED COMPLAINT OF LOW FLOWS IN THE
LOWER END OF BATTLE CREEK POSSIBLY CAUSED BY PUMPING
BY THE NEUGEBAUER OPERATION UPSTREAM.

~~VISITED~~ STAN NEUGEBAUER SAID THAT THEY HAD BEEN
PUMPING. HE SAID THAT FLOWS IN THE CREEK HAD BEEN HIGH
DUE TO RECENT RAINS. HE SAID THAT HE HAD CALLED MRS FOSS TO
SEE IF FLOWS ON THE LOWER BATTLE CREEK WERE HIGH ENOUGH TO PUMP,
SHE SAID THAT THERE WAS NOT AT THAT TIME BUT WOULD CALL WHEN
FLOWS WERE SUFFICIENT. HE SAID THAT WHEN FLOWS INCREASED SIGNIFICANTLY
SHE NEVER CALLED. SO THEY HAD BEEN PUMPING AFTER FLOWS WERE HIGHER

DEL BROSZ AND I LOOKED AT THE FLOWS ON BATTLE CREEK AT HWY 79
CROSSING, APPROXIMATELY 5 MILES DOWNSTREAM, AND AT THE USGS
GAGING STATION JUST UPSTREAM OF MRS FOSS'S PROPERTY. ALL THREE
SITES HAD GOOD FLOW WITH FLOWS AT THE GAGING STATION BEING AT
APPROXIMATELY 9 CFS.

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: Chris D. Roth



Department of Water & Natural Resources

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

August 15, 1990

NOTICE OF ORDER

TO: Battle Creek Water Users

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

A handwritten signature in black ink, appearing to read "John Hatch", written over the printed name and title.

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

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

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

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

Irrigation Water Right Owners and Domestic Users
Battle Creek

Stanley Neugebauer, Neugebauer Dairy, Inc., RR 1, Box 96, Hermosa
SD 57744
Clarence Foos, RR 4, Box 27, Hermosa SD 57744
Herb Kaiser, HCR 89, Box 303, Hermosa SD 57744
Gene Baker, RR 4, Box 11, Hermosa SD 57744
Ed Kanesky, Box 52, Caputa SD 57725
H. J. Borgmeyer, 1721 11th St, Rapid City SD 57701
Keith Robertson, HCR 89, Box 294, Hermosa SD 57744
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

Conversation or File Documentation

NAME OF PERSON OR FILE: Carol FoosADDRESS: Hermosa, SD COUNTY CusterDATE: 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
ZLCR 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 Neugebauers 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 far flood stage. 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.

In March Tim Sibal 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 stage. 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. Brosz 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. Brosz were not following your orders.

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

We have visited with Ron Emersons, Rick Cleland, Ed Kausky, and Kaisers and we all agree that we need domestic water and it must be maintained by your office enforcing the law which will ensure

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 please irrigators and domestic water users without wasted water - water running into the Cheyenne River.

Yesterday Mr. Schaal & Mr. Brosz met at our place with two other ranchers. We agreed we needed to use the 3 CFS as a way to ensure domestic use. However, that was already decided last summer.

Sincerely,

Clarence & Carol Zoos

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, R1E.

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: Delvin D. Bong

Conversation or File Documentation

NAME OF PERSON OR FILE: DON NEGERAUERADDRESS: HERMOSA COUNTY CUSTERDATE: 4/26/91 TELEPHONE 255-4462RE: 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 ON SAWT CFS
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.

NAME: W. D. R. H.

Conversation or File Documentation

NAME OF PERSON OR FILE: Mrs FoosADDRESS: Heemost COUNTY CusterDATE: 4/26/91 TELEPHONE 255-4104RE: Informing on Neugebauer's Pumping

COMMENTS:

I CALLED Mrs Foos AND TOLD HER THAT WE
WERE GOING TO ALLOW the Neugebauers to Pump
BECAUSE THE FLOW IS CURRENTLY 3.7 cfs and
it should be coming up due to THE rains. I TOLD
her that if the gage drops below 2.64 - that
the Neugebauers 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 Keith

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'S IF
GAGE IS BELOW 2.64 ~~THEY SHOULD~~
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'S TO TELL THEM
THAT FOOS WOULD CALL IF FLOW GOT BELOW 2.64 gpm
DR 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 CHECK
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: Mike D. Bell

Conversation or File Documentation

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

COMMENTS:

IS UPSET THAT NEIGHBORS CAN
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 HEIGHT 9950

SHE SAID THEY CAN ONLY PUMP WHEN FLOOD
FLOW IS OCCURRING. BASE ON THE INFORMATION
THAT JOHN HATCH GAVE ME, I 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.

NAME: M. D. Keith

Conversation or File Documentation

NAME OF PERSON OR FILE: Don NeugebauerADDRESS: 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 4:00 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 2.68 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
LCR 89 Box 315
Hermosa, 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. Brosz 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 interests of other users in mind.

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

Rebecca Kaiser 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.

Neugebauers 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. Brosz 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 Foss

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 WATER & NATURAL RESOURCES

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

2054-2

May 3, 1991

Clarence & Carol Foos
HCR 89, Box 315
Hermosa, SD 57744

Dear Mr. & Mrs. Foos:

I am writing in response to your April 19 and May 2, 1991 letters concerning the flows in Battle Creek. Since the receipt of your April 19 letter, I have also been in contact with Tim Edman from the Governor's Office concerning this matter.

The Neugebauer Brothers have three Water Rights/Permits from Battle Creek, Water Right Nos. 969-2 and 1191-2 and Water Permit No. 2054-2. Water Right No. 969-2 has two priority dates. Both priority dates are for irrigation of the same 121.7 acres of land. One priority date is based on a water right filing claim made in May of 1881. This gives the Neugebauers the first right on Battle Creek. Under the 1881 priority, they can divert up to 1.73 cubic feet per second (cfs) from Battle Creek directly onto the land.

The portion of Water Right No. 969-2 with the second priority date authorizes the Neugebauers to divert flows from Battle Creek into their storage dam for later irrigation use. Water Right No. 969-2 allows up to 43.9 acre-feet to be held in storage. Diversion of flows from Battle Creek for storage has a priority date of June 11, 1968.

Water Right No. 1191-2 authorizes the diversion of 0.33 cfs from Battle Creek to irrigate 23 acres with a priority date of May 1, 1881. This land is located on the south side of Battle Creek across from the 121.7 acres irrigated under Water Right No. 969-2.

The qualifications on Water Right Nos. 969-2 and 1191-2 are as follows:

1. Diversions of flow from Battle Creek for direct application to the land have a priority date of May 1, 1881. When such diversions are being made, low flows as needed for downstream domestic use shall be by-passed.
2. Diversions of flows from Battle Creek for storage into the dam have a priority date of June 11, 1968. When such diversions are being made, sufficient water shall be by-passed to satisfy downstream domestic use and prior water rights.

Page 2
Foos
May 3, 1991

Water Permit No. 2054-2 authorizes 1.71 cfs from Battle Creek to irrigate 120 acres approximately 2 miles downstream of the other two existing Water Rights. Water Permit No. 2054-2 has a priority date of March 15, 1988. The qualifications on Water Permit No. 2054-2 are as follows:

1. That Permit No. 2054-2 is subject to installation of a gaging station at the Highway 40 bridge over Battle Creek, located in the SE 1/4 of Section 3-T4S-R10E.
2. That a minimum of 3 cfs be maintained at the Highway 40 gage to insure flows for prior downstream existing water rights and domestic use.
3. That Permit No. 2054-2 is subject to at least 16.71 cfs bypassing the USGS gaging station at Hermosa during pumping under No. 2054-2.
4. This permit is subject to the irrigation water use questionnaire being submitted each year.

When Water Permit No. 2054-2 was approved at the July 27, 1988 Water Management Board Meeting there was a discussion on "Flood Flows". This discussion was held because the Neugebauers were asking to divert at a rate greater than the allowable 1 cfs per 70 acres irrigated. SDCL 46-5-6 states that the diversion rate requirement of 1 cfs per 70 acres shall not apply in cases of flood water at such times when the flow of the stream is much in excess of the recorded and approved rights on the stream. The Water Management Board determined that "Flood Flows" for this application are considered to be twice the appropriated downstream water rights or 30 cfs.

There has been some confusion placed on the Neugebauer Water Rights/Permits. The discussion at the July 1988 Water Management Board Meeting is the only time the term "Flood Flows" has been used. The term "Flood Flows" is not in any of the qualifications that pertain to the Neugebauer Water Rights/Permits. The minimum flow requirement of 3.0 cfs at the lower Battle Creek gaging station is a qualification on Water Permit 2054-2 only.

My August 15, 1990 Notice of Order to Battle Creek Water Users established a minimum flow of 3.0 cfs at the lower Battle Creek gaging station to provide water for downstream domestic use. This standard pertained to all Battle Creek Water Rights/Permits. The 3.0 standard was selected as a management tool. It gives us an amount of flow at the lower Battle Creek gage to compare with downstream flows. If this 3.0 cfs standard does not work out, it may be raised or lowered.

Page 3
Foos
May 3, 1991

On April 18, 1991 when Del Brosz and Tim Schaal met with you, they read the lower Battle Creek gage at 2.65 or 2.3 cfs. You had indicated a reading of 2.59, or 1.5 cfs. On April 30th the USGS in Rapid City informed us that 0.04 feet needs to be added to the outside staff gage because of movement of the gage, probably caused by ice action.

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

We do not believe that the Neugebauers have violated the qualifications of their permits. This spring there has always been water available in Battle Creek for domestic use (livestock water). In checking with the Forest Service, we were informed that your leases on the grasslands along Battle Creek are for the period from December 16 to May 15. Therefore, water for livestock will not be necessary below your property during the summer months. If prior water right holders wish to irrigate and there is not enough water in the Creek, junior water right holders will have to stop pumping.

Enclosed is a listing of the existing Water Rights/Permits on Battle Creek. Also enclosed as requested, is a copy of the General Rules pertaining to a request to the Water Management Board for a declaratory ruling and copies of Water Right Nos. 969-2 & 1191-2 and Water Permit No. 2054-2.

If you have questions, please contact Del Brosz, Tim Schaal or myself at (605) 773-3352.

Very truly yours,



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

cc: Stanley Neugebauer
John Stovall
Gene Baker
Keith Robertson
Dr. H. J. Borgmeyer
Rich Cleland
Fred Rittberger
Donald Kaiser
Herb Kaiser
Tim Edman, Governor's Office
all with copy of Water Rights/Permits List

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

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

Conversation or File Documentation

NAME OF PERSON OR FILE: Duane Scott

ADDRESS: _____ COUNTY _____

DATE: _____ TELEPHONE _____

RE: Nengebauer Application No. 2054-2

COMMENTS:

Duane called today on Nengebauers application, said Leinie Frieberg wanted him to send us a letter but he did not think it would get here before their meeting. They asked him to look at it because of his experience as a Water Master. They questioned the accuracy of the 39 years of records because the earlier years were influenced by more flow. Thought a Water Master would be a good idea. Also thought a gage or weir at D/S end of Battle Creek would help.

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: Kari Shea

Permit No. 2054-2
Upper Cheyenne River - Water District

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

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

I have this day, August 19, 1996, made a thorough examination of the water use system constructed by Neugebauer Brothers of HCR 89, Box 209, Hermosa, SD 57744 holder of Permit No. 2054-2, bearing the priority of March 15, 1988 authorizing the diversion of 1.71 cu. ft. per second of the waters of Battle Creek for irrigation purposes, in Custer County.

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

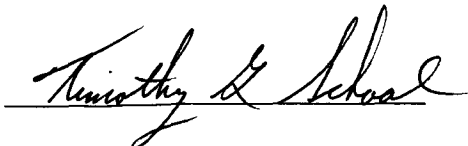
- A. Works used to divert the water:
 **PTO driven Berkeley Centrifugal pump, Model No. B3ZPM CW, Serial No. 7699431 with
 30 Hp Agip VM, 30 Hp diesel engine, model 295**
- B. Works used to transport water to place of use:
 aluminum pipe
- C. Works used to apply water to beneficial use:
 1800 feet of 8 inch gated aluminum pipe

The system is in the following condition Good. The point of diversion is located 2300 feet north & 950 feet west of the SE corner of Section 32-T2S-R8E (NE 1/4 SE 1/4). The works are capable of diverting and conveying to the place of use 1.77 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:

SE 1/4 NE 1/4 Section 32-T2S-R8E	--19
NE 1/4 SE 1/4 " "	--25
SE 1/4 SE 1/4 " "	--13

comprising a total of 57 acres of land and the license should be issued for 0.81 cfs.
Applicable permit qualifications have been complied with: Yes ☒

Exceptions to compliance are: none Date Report Completed: August 23, 1996



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

REPORT ON INSPECTION OF PERMIT NO. 2054-2

Other permit(s) associated with the project: XXXX

DATE OF INSPECTION: August 19, 1996

NAME & ADDRESS OF INSPECTION CONTACT/ Marvin & Stan Neugebauer

RELATIONSHIP TO PERMIT HOLDER, IF APPLICABLE: owners

NAME & ADDRESS OF PERMIT HOLDER: Neugebauer Brothers

DIVERSION POINT LEGAL LOCATION: 2300 feet north & 950 feet west of the SE corner of Section 32-T2S-R8E (NE 1/4 SE 1/4)

Pump:

- 1) Make Berkeley Centrifugal
- 2) Model B3ZPM CW
- 3) Size 9 inch
- 4) Capacity 800 GPM

Motor:

- 1) Make Agip VM
- 2) Model No. 295, Serial No. 17878
- 3) Horsepower rating 30 hp

DISTRIBUTION LINES OR CANALS:

- 1) Type Aluminum
- 2) Size 8 inches
- 3) Length about 1800 feet

CHEMIGATION EQUIPMENT:

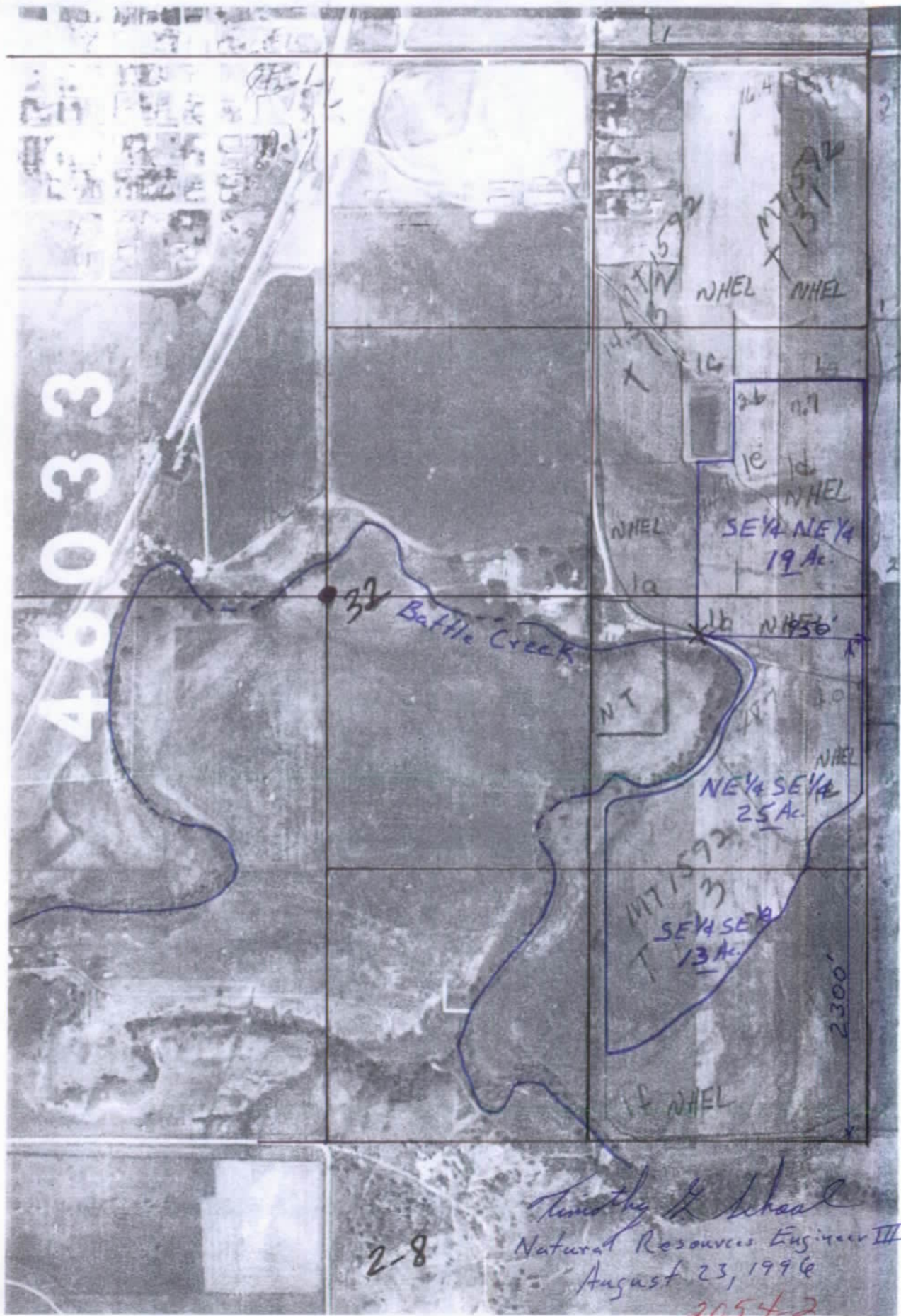
- 1) Does chemigate No

PERMIT QUALIFICATIONS AND REGULATIONS:

- 1) Soil and water permit lands agree with lands being irrigated and lands listed on permit N/A
- 2) Special qualifications to permit being abided by yes
- 3) All structures, wells and lands on map yes
- 4) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period yes

2054-2

NOT TO SCALE



Timothy L. Michael
Natural Resources Engineer III
August 23, 1996

2-8

2054-2



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 10, 1996

2054-2

Marvin and Stan Neugebauer
Neugebauer Brothers
HCR 89, Box 209
Hermosa, SD 57744

Dear Sirs:

The investigation of your water use system, including the extent of application of water to beneficial use, as developed under Water Permit No. 2054-2, has been completed. Your final water right document, the Water License, can now be issued.

Statutes require that we charge a \$50.00 fee for the investigation and issuance of the Water License. Upon receipt of the \$50.00 fee from you, we will begin processing your Water License.

**Please remit fee to:
Department of Environment & Natural Resources
Water Rights Program
523 E. Capitol
Pierre, SD 57501-3181**

Sincerely,

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

NOTE: On check or money order, please specify your permit number. This will insure proper handling of the fee.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

The Honorable David Daughters
President, Town of Hermosa
PO Box 298
Hermosa, SD 57744-0298

RE: Town of Hermosa SWD permit no.: SD-0022349

Dear Mr. Daughters:

This is in response to a statement made in a letter submitted to this office on September 17, 1996, and an inspection conducted by a staff member of the Water Rights Program. The statement and inspection said that wastewater from your facility is beening used for irrigation purposes. Your Surface Water Discharge permit does not allow this at this time and must be modified at your request to allow this type of disposal of wastewater.

I am enclosing the recommended *South Dakota Design Criteria for Disposal of Effluent by Irrigation* and a handout written by this department on *Reclaiming Wastewater*.

The following information must be received by this department prior to granting the use of irrigation as a disposal method for wastewater:

- 1) Total number of acres to be used for irrigation.
- 2) Total volume of water to be discharged.
- 3) Loading in gallons per acre.
- 4) Pond sample data for Total Nitrogen, Nitrates, Nitrites, Sulfates, Chlorides, pH, Temperature, TDS, and Fecal Coliform.
- 5) 7.5 inch quadrangle map showing:
 - a) application site,
 - b) location of any under drains.
- 6) Soil classification and profile of irrigation site (if known).
- 7) Vegetation to be grown on the application site.
- 8) Explain the irrigation method.
- 9) Potential for human contact with the wastewater during irrigation (i.e. golf course, park, etc...).

Thank you for your interest in helping manage and protect the natural resources of South Dakota. If you have any questions or need further information, please contact me at (605) 773-3351.

Sincerely,

A handwritten signature in cursive script that reads "Norma C. Job".

Norma C. Job
Natural Resources Engineer
Air and Surface Water Program

enclosures

cc: Jeanne Goodman, SDDENR (GWQ) w/out enclosures
✓ Tim Schall, SDDENR (WR)) w/out enclosures
Neugebauer Bros, Stanley Neugebauer, HCR 89 Box 209, Hermosa, SD 57744) with
enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 7, 1997

SECOND NOTICE
Permit No. 2054-2

NOTICE OF WATER LICENSE INSPECTION FEE REQUIREMENT

Marvin and Stan Neugebauer
Neugebauer Brothers
HCR 89, Box 209
Hermosa, SD 57744

Dear Sirs:

On October 10, 1996, you were notified the final inspection fee of \$50.00 is due before Water License No. 2054-2 can be issued. As of this date, the fee has not been received.

The fee is a final step in the legal process of obtaining and perfecting a water right and is required by SDCL 46-2-13(3). Upon receipt of the \$50.00 fee, your Water License will be sent to you. This is the final document for the perfection of your Water Right. A perfected water right is similar to a property right and once a water right is perfected, it cannot be lost as long as the water is used.

Please remit fee to:
Department of Environment & Natural Resources
Water Rights Program
523 E. Capitol
Pierre, SD 57501-3181

According to South Dakota Water Law 46-5-30.1, you may not divert water until the License fee is paid. Please submit the required fee immediately to avoid jeopardizing your water permit.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Program
(605) 773-3352

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

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

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

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

Consult postmaster for fee.

3. Article Addressed to:

Marvin and Stan Neugebauer
Neugebauer Brothers
HCR 89, Box 209
Hermosa, SD 57744

20542

4a. Article Number

P 422 707 470

4b. Service Type

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

7. Date of Delivery

5. Received By: (Print Name)

Conni Neugebauer

6. Signature: (Addressee or Agent)

X Conni Neugebauer

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

[Signature]

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

RECEIPT

415373

Division of Water Rights

South Dakota Department of Environment and Natural Resources

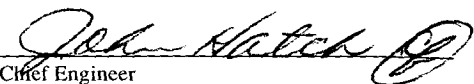
Pierre, _____ May 29, 19 97

RECEIVED OF Neugebauer Brothers Dairy, HCR 89, Box 209, Hermosa, SD 57744-9703

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 _____		
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. <u>2054-2</u>	50	00
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	50 00

By 
Chief Engineer



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

JUN 11 1997

2054-2

Marvin and Stan Neugebauer
Neugebauer Brothers
HCR 89, Box 209
Hermosa, SD 57744-9703

Dear Sirs:

Enclosed is Water License No. 2054-2 and Receipt No. 415373 for \$50.00 which was assessed for an investigation and issuance of the license. Water License No. 2054-2 is the final document which completes the process of obtaining a water right.

As long as you use the water beneficially, as stated in the Water License, State Water Laws provide that you have a continuing right to use the water.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Program
(605) 773-3352

gm
enclosures

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 2054-2

(1) Neugebauer Brothers, HCR 89 Box 209, Hermosa, SD 57744-9703 made Application No. 2054-2, March 15, 1988, for a water permit to divert 1.71 cubic feet of water per second from Battle Creek, Custer County, South Dakota for irrigation purposes. Permit No. 2054-2, with a priority date of March 15, 1988 was approved July 27, 1988 and issued to the applicants for diversion of water with construction of the described water supply system to be completed on or before July 27, 1993 and for the application to beneficial use of said water on or before July 27, 1997.

(2) It is certified that the applicants have complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and are entitled to divert 0.81 cubic feet of water per second for beneficial use. The location of the diversion point is 2300'N and 950'W of the SE corner of Section 32, T2S, R8E (NE¼ SE¼).

(3) The applicants have complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate the following land:

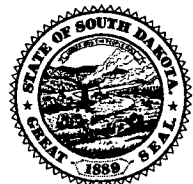
Section 32, T2S, R8E	SE ¼ NE¼	19 acres
	NE¼ SE¼	25 acres
	SE¼ SE¼	13 acres
Total		57 acres

(4) Pursuant to South Dakota Water Law 46-5-30.1 Neugebauer Brothers, HCR 89 Box 209, Hermosa, SD 57744-9703 the holders and/or owners of Water Permit No. 2054-2 are issued a license to appropriate water, the right to use 0.81 cubic feet of water per second from Battle Creek with a priority date of March 15, 1988 from the location specified in (2) of this license. The water to be conducted to and upon lands specified in (3) of this license for the purpose of irrigation. This license is subject to any limitations or qualifications listed in Water Permit No. 2054-2 and subject to South Dakota State Law.


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

JUN 11 1997

date





January 16, 2002

NOTICE

2054-2
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

TO: NEUGEBAUER BROTHERS, STANLEY NEUGEBAUER, HCR 89 BOX 209, HERMOSA, SD 57744

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

SUBJECT: Reporting Requirement for 2001 Irrigation Questionnaires

Our records indicate that the 2001 Irrigation Questionnaires have not been submitted for Permit Nos. 2054-2 & 2153-2, 969-2. The request for the Questionnaires was dated October 12, 2001. The Water Management Board has directed that owners of water permits who have not submitted the 2001 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 969-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2054-2 & 2153-2 qualification:

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

The hearing will be held at 10:00 am, March 13, 2002 in the Visitor Center (west side of Capitol Lake), 650 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

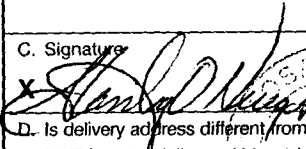
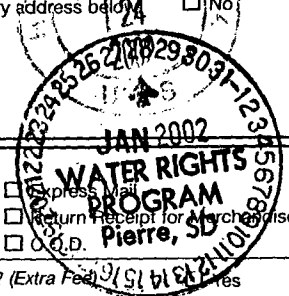
1. Suspend or cancel Permit No(s) 2054-2 & 2153-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 969-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaires are received in this office on/or before March 8, 2002, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath (605) 773-3352.

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

2054-2

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Received by (Please Print Clearly) B. Date of Delivery C. Signature  ☐ Agent ☐ Addressee D. Is delivery address different from item 1? ☒ Yes ☐ No If YES, enter delivery address below 3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes ☐ No	
1. Article Addressed to: NEUGEBAUER BROTHERS STANLEY NEUGEBAUER HCR 89 BOX 209 HERMOSA SD 57744			
2. Air 7001 2510 0004 4797 5682			



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 1, 2002

969-2
2054-2
2153-2

Stanley Neugebauer
Neugebauer Brothers
HCR 89 Box 209
Hermosa SD 57744

Dear Sir:

I am writing to acknowledge receipt of your 2001 irrigation questionnaires. You may disregard the January 16, 2002, "Notice" concerning reporting requirements for Water Right Nos. 969-2, 2054-2 and 2153-2.

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

If you have any questions, please contact me.

Sincerely,

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



January 14, 2004

2054-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

NOTICE

TO: NEUGEBAUER BROTHERS, STANLEY NEUGEBAUER, HCR 89 BOX 209, HERMOSA, SD 57744

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

SUBJECT: Reporting Requirement for 2003 Irrigation Questionnaires

Our records indicate that the 2003 Irrigation Questionnaires have not been submitted for Permit Nos. 2054-2 & 2153-2, 969-2. The request for the Questionnaires was dated October 17, 2003. The Water Management Board has directed that owners of water permits who have not submitted the 2003 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 969-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2054-2 & 2153-2 qualification:

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

The hearing will be held at 8:30 am, March 3, 2004 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2054-2 & 2153-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 969-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaires are received in this office on/or before February 27, 2004, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath (605) 773-3352.

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



2054-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 3, 2004

969-2
2054-2
2153-2

Stanley Neugebauer
Neugebauer Brothers
HCR 89 Box 209
Hermosa SD 57744

Dear Mr. Neugebauer:

I am writing to acknowledge receipt of your 2003 irrigation questionnaires. You may disregard the January 14, 2004, "Notice" concerning reporting requirements for Water Right Nos. 969-2, 2054-2 and 2153-2.

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

If you have any questions, please contact me.

Sincerely,

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 20, 2004

NOTICE OF SHUTOFF ORDER

TO: NEUGEBAUER BROTHERS
STANLEY NEUGEBAUER
HCR 89 BOX 209
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. 969-2 2153-2 2054-2

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.



2054-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 20, 2005

NOTICE

TO: NEUGEBAUER BROTHERS, STANLEY NEUGEBAUER, HCR 89 BOX 209, HERMOSA, SD 57744

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

SUBJECT: Reporting Requirement for 2004 Irrigation Questionnaires

Our records indicate that the 2004 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 22, 2004. The Water Management Board has directed that owners of water permits who have not submitted the 2004 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 969-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2054-2 & 2153-2 qualification:

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

The hearing will be held at 8:30 am, March 2, 2005 in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2054-2 & 2153-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 969-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaires are received in this office on/or before February 25, 2005, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath (605) 773-3352.

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



2054-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 10, 2005

969-2
2054-2
2153-2

Stanley Neugebauer
Neugebauer Brothers
HCR 89 Box 209
Hermosa SD 57744

Dear Mr. Neugebauer:

I am writing to acknowledge receipt of your 2004 irrigation questionnaires. You may disregard the January 20, 2005, "Notice" concerning reporting requirements for Water Right Nos. 969-2, 2054-2 and 2153-2.

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

If you have any questions, please contact me.

Sincerely,

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



2054-2
**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.



2054-2
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 26, 2006

969-2
2054-2
2153-2

Stanley Neugebauer
Neugebauer Brothers
14197 SD Hwy 40
Hermosa SD 57744

Dear Mr. Neugebauer:

Enclosed is a "Notice" dated October 20, 2006 concerning the 2006 irrigation questionnaire. The notice was originally mailed to HCR 89 Box 209, Hermosa SD. The post office notified us that your address has changed and I will update our records accordingly.

If you have any questions, please contact me.

Sincerely,

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

enclosures



2054-2

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:

2054-2

PERMIT NO	PTL_PRIOR1	PTL_PRIOR2	PRIORDATE	COUNTY	STA/USE	FIRST_NAME	LAST_NAME	ADDRESS2	CITY	STATE	ZIP	PL/US4
2153-2			05/01/1882	CU	LC IRR		NEUGEBAUER BROTHERS DAIRY	14197 SD HWY 40	HERMOSA	SD	57744	
969-2			05/01/1882	CU	LC IRR		NEUGEBAUER BROTHERS	14197 SD HWY 40	HERMOSA	SD	57744	
2368-2			10/14/1887	CU	LC IRR		CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
2368A-2			10/14/1887	CU	PE IRR		CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
0421-2			10/27/1894	CU	PE IRR		JD RANCH REAL ESTATE LLC	HCR 89 BOX 298	HERMOSA	SD	57744	
0170-2			12/29/1895	CU	PE IRR	CLARENCE	FOOS	HCR 89 BOX 317	HERMOSA	SD	57744	
2373-2			03/02/1896	CU	LC IRR		RODALES RANCHES, INC.	8730 SHERIDAN LAKE RD	RAPID CITY	SD	57702	9066
1209-2			09/29/1900	CU	LC IRR	EDWARD/BETTY S	KANESKY	BOX 52	CAPUTA	SD	57725	
1221-2			09/29/1900	CU	LC IRR		RITBERGER BROTHERS	15663 SD HWY 40	HERMOSA	SD	57744	
2367-2			01/01/1905	CU	LC IRR		BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
2367A-2			01/01/1905	CU	PE IRR		BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
2367B-2	01/01/1905	07/17/1948	01/01/1905	CU	PE IRR		BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
187-2			09/11/1912	CU	LC IRR	CLARENCE	FOOS	PO BOX 317	HERMOSA	SD	57744	0317
1275-2			01/01/1935	CU	LC IRR	DONALD	KAISER	15745 SD HWY 40	HERMOSA	SD	57744	
319-2			07/17/1948	CU	LC IRR		BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
1170-2			01/28/1974	CU	LC IRR	JOHNDARLENE	STOVALL	14829 SD HWY 40	HERMOSA	SD	57744	
1283-2			08/01/1975	CU	PE COM	PETE	LIEN & SONS INC	PO BOX 440	RAPID CITY	SD	57709	0440
2054-2			03/15/1988	CU	LC IRR		NEUGEBAUER BROTHERS	14197 SD HWY 40	HERMOSA	SD	57744	



2054-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 22, 2010

NOTICE

TO: NEUGEBAUER BROTHERS, STANLEY NEUGEBAUER, 14197 SD HWY 40, HERMOSA, SD 57744

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

SUBJECT: Reporting Requirement for 2009 Irrigation Questionnaires

Our records indicate that the 2009 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 16, 2009. The Water Management Board has directed that owners of water permits who have not submitted the 2009 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 969-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2054-2 & 2153-2 qualification:

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

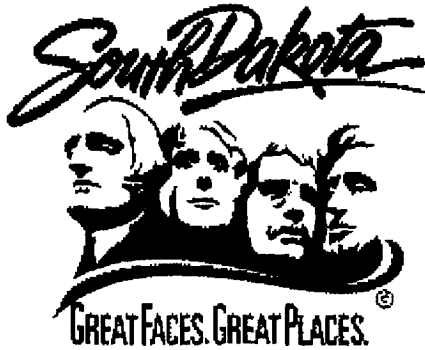
The hearing will be held at **10:00 am, March 10, 2010** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2054-2 & 2153-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 969-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaire(s) is (are) received in this office on/or before **March 5, 2010**, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link:
<https://denr.sd.gov/iq.aspx>

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 2, 2010

969-2
2054-2
2153-2

Stanley Neugebauer
Neugebauer Brothers
14197 SD Hwy 49
Hermosa SD 57744

Dear Mr. Neugebauer:

I am writing to acknowledge receipt of your 2009 irrigation questionnaires. You may disregard the January 22, 2010, "Notice" concerning reporting requirements for Water Right Nos. 969-2, 2054-2 and 2153-2.

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

If you have any questions, please contact me.

Sincerely,

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



2054-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 21, 2011

NOTICE

TO: NEUGEBAUER BROTHERS, STANLEY NEUGEBAUER, 14197 SD HWY 40, HERMOSA, SD 57744

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



SUBJECT: Reporting Requirement for 2010 Irrigation Questionnaires

Our records indicate that the 2010 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 15, 2010. The Water Management Board has directed that owners of water permits who have not submitted the 2010 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 969-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2054-2 & 2153-2 qualification:

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

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

1. Suspend or cancel Permit No(s) 2054-2 & 2153-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 969-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaire(s) is (are) received in this office on/or before **March 4, 2011**, you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link:
<http://denr.sd.gov/iq.aspx>

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 1, 2011

969-2
2054-2
2153-2

Stanley Neugebauer
Neugebauer Brothers
14197 SD Hwy 40
Hermosa SD 57744

Dear Sir:

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

You may disregard the January 21, 2011, "Notice" concerning reporting requirements for Water Right Nos. 969-2, 2054-2 and 2153-2. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

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

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



2054-2

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

STANLEY NEUGEBAUER
NEUGEBAUER BROTHERS DAIRY
14197 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	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	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: STANLEY NEUGEBAUER
NEUGEBAUER BROTHERS DAIRY
14197 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. 2153-2 969-2 2054-2

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



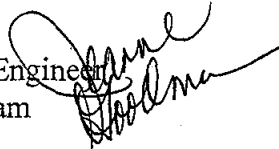
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

NOTICE OF SHUTOFF ORDER
JUNE 26, 2013

TO: NEUGEBAUER BROTHERS DAIRY
STANLEY NEUGEBAUER
14197 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. 2153-2 969-2(2054-2)

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:

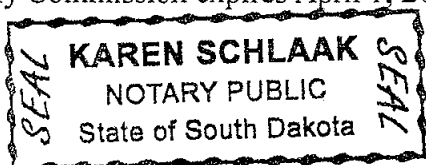
NEUGEBAUER BROTHERS DAIRY	STANLEY NEUGEBAUER	14197 SD HWY 40	HERMOSA	SD	57744
WYOMING DAKOTA RAILROAD PROPERTIES INC	DAVID S DRACH	120 S 6TH ST - 9TH FLOOR	MINNEAPOLIS	MN	55402
TRAVIS BIES		25813 SOUTH FOR ROAD	FAIRBURN	SD	57738
JD RANCH REAL ESTATE LLC		HCR 89 BOX 298	HERMOSA	SD	57744
RUSHMORE VIEW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

[illegible]

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

Karen Schlaak
Karen Schlaak
Notary Public
My Commission expires April 1, 2019





2054-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 16, 2015

NOTICE

TO: NEUGEBAUER BROTHERS, STANLEY NEUGEBAUER, 14197 SD HWY 40, HERMOSA, SD 57744

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



SUBJECT: Reporting Requirement for 2014 Irrigation Questionnaires

Our records indicate your 2014 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 17, 2014. The Water Management Board has directed that owners of water permits who have not submitted the 2014 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 969-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2054-2 & 2153-2 qualification:

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

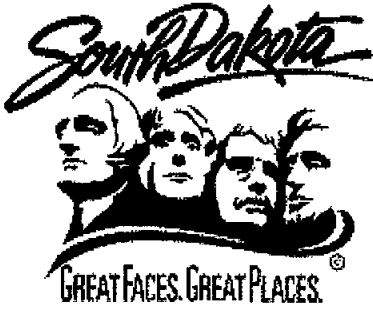
The hearing will be held at **10:00 am, March 4, 2015** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2054-2 & 2153-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 969-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaire(s) is (are) received in this office before the **March 4, 2015** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
PMB 2020
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3182

January 26, 2015

969-2
2054-2
2153-2

Stanley Neugebauer
Neugebauer Brothers
14197 SD Hwy 140
Hermosa SD 57744

Dear Mr. Neugebauer:

I am writing to acknowledge receipt of your 2014 irrigation questionnaires.

You may disregard the January 16, 2015, "Notice" concerning reporting requirements for Water Right Nos. 969-2, 2054-2 and 2153-2. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Genny McMath".

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



DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

July 12, 2016

denr.sd.gov

Dear Water Right Holder;

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

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

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

PERMIT_NO	Priority	STATUS	USE	LAST_NAME
2153-2	May 1, 1881	LC	IRR	NEUGEBAUER BROTHERS DAIRY
969-2	May 1, 1881	LC	IRR	NEUGEBAUER BROTHERS
2368-2	October 14, 1886	LC	IRR	WYOMING DAKOTA RAILROAD PROPERTIES INC
2368A-2	October 14, 1886	PE	IRR	WYOMING DAKOTA RAILROAD PROPERTIES INC
2373-2	March 2, 1895	LC	IRR	RUSHMORE VIEW RANCH
1209-2	September 29, 1900	LC	IRR	KANESKY
1221-2	September 29, 1900	LC	IRR	RITTBERGER BROTHERS
2367B-2	January 1, 1905	LC	IRR	BATTLE CREEK VALLEY RANCH
187-2	September 11, 1912	LC	IRR	FOOS
1170-2	January 28, 1974	LC	IRR	STOVALL
1283-2	August 1, 1975	PE	COM	LIEN & SONS INC
2054-2	March 15, 1988	LC	IRR	NEUGEBAUER BROTHERS

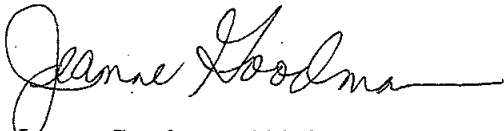
South Dakota water law gives the highest priority to domestic use, which includes livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses, including irrigation, will begin to interfere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

continue to monitor water availability and should conditions improve, the shutoff orders could be rescinded.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanne Goodman", with a horizontal line extending to the right.

Jeanne Goodman, Chief Engineer
DENR, Water Rights Program



2054-2
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

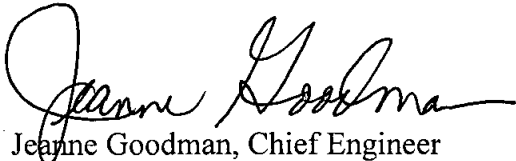
South Dakota water law gives the highest priority to domestic use, which includes livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses, including irrigation, will

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", with a stylized, flowing script.

Jeanne Goodman, Chief Engineer
DENR, Water Rights Program

969-2, 2054-2,
2153-2



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

August 16, 2022

NEUGEBAUER BROTHERS
14197 SD HWY 40
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



2054-2
2153-2
969-2

**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

January 20, 2026

NOTICE

TO: NEUGEBAUER BROTHERS, STANLEY NEUGEBAUER, 14197 SD HWY 40, HERMOSA, SD 57744

FROM: Ron Duvall, Engineer III
for Adam Mathiowetz, PE, Acting Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2025 Irrigation Questionnaires

Our records indicate your 2025 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 8, 2025. The Water Management Board has directed owners of water permits who have not submitted the 2025 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 969-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2054-2 & 2153-2 qualification:

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

The hearing will be held on **Wednesday, March 4, 2026 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2054-2 & 2153-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 969-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaires are received in this office before the **March 4, 2026** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Shannon Konst at (605) 773-3352 or email at shannon.konst@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://danr.sd.gov/iq> using this password: DTSPTJ**

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



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

STANLEY NEUGEBAUER	969-2
14197 SD HWY 40	2054-2
HERMOSA, SD 57744	2153-2

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: STANLEY NEUGEBAUER
14197 SD HWY 40
HERMOSA, SD 57744

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

Subject: Shutoff Order for Water Right No. 969-2, 2054-2, & 2153-2

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).