

Considered: _____

WATER PERMIT NO. VR 2153-2

Phone: 255-4212

Name of Applicant: Neugebauer Bros Dairy

Post Office Address: HCR 89, Box 209, Hermosa, SD

Amount of Water Claimed: 0.05 cfs Total Acres: 4 acres

Source of Water Supply: Battle Creek

Water to be used for: irrigation County: Custer

About 2 miles North of Hermosa

PROOF OF PUBLICATION: Received _____ Not Received _____

APPLICATION: Approved _____ Subject to _____

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

PRIORITY Date Received: 1/30/90 Fee: \$15 Remarks Vested Right

Claim on 4 acres that were not included on VR Claim No. 1191-2

Corrected Application Received 12/18/90 Period of Annual Use April 1 - Oct. 31

WATER QUALITY APPROVAL RECEIVED _____ APPROVED/CONDITIONAL (Circle one)

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

Diversion Point: NE1/4 SW 1/4 Sect. 31 T2S-R8E

Land to be Irrigated: NW1/4 SW1/4 Section 31 T2S

R8E

		31			
	x				

Well Log: Driller: _____ Licensed YES _____ NO _____

Depth of Well: _____ REMARKS _____

Type of Map: ASCS Aerial PREPARED BY: Tim Schaal Reviewed and the Number

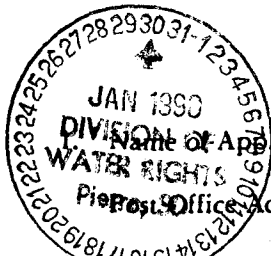
Assigned on 12/19/90 By Eric Gronlund

(See instructions)

No. 2153-2 Hydrologic Unit 10120109
Basin Upper Cheyenne
Newspaper Custer County Chronicle Box 551 57730

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 _____



Name of Applicant Neugebauer Bros Dairy Phone No. 255-4212
Post Office Address HCR 89, Box 209, Hermosa State SD
(Street, RR or Box) (City) Zip Code

2. Amount of water claimed (c.f.s.) 10.000 Total acres irrigated 4

3. Source of Water supply Battle Creek

4. Location of point of diversion NE 1/4 SW 1/4 section 31-T2S-R8E

County Custer

5. Counties where water will be used Custer

6. Annual period during which water is to be used Apr 1 - Oct 31

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>NW 1/4 SW 1/4 sec 31-T2S-R8E</u>	<u>4</u>

Land Description	No. Acres Irr.

Attach sheet if more space is needed

8. Type of Irrigation: Gravity: _____ Towline: _____ Center Pivot: _____ Gun: _____ Other: _____ (Specify) _____

9. Crops to be Irrigated: _____

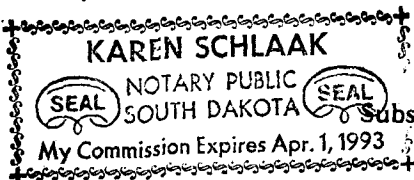
10. Give a description of proposed project. (Attach sheet if more space is needed)

This claim includes 4 acres not specified on Vested Right Claim No. 1191-2. The total acreage (23 acres) was included on Claim No. 1191-2 but the legal description of the above 4 acres was omitted.

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 Hughes)^{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 (Partner)
Neugebauer

Subscribed and sworn to before me this 30th day of January 1990

Karen Schlaak
Notary Public

SOUTH DAKOTA

VESTED WATER RIGHT NO. 2153-2 FOR IRRIGATION

Date of Receipt of Claim January 30, 1990.

Date of Validation May 1, 1991.

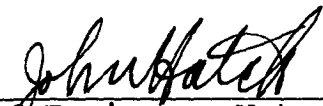
The Chief Engineer, on behalf of the Water Management Board validated Vested Water Right Claim No. 2153-2 for irrigation purposes for Neugebauer Brothers Dairy, HCR 89, Box 209, Hermosa SD 57744 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 2153-2 is to irrigate 4 acres located in the NW 1/4 SW 1/4 Section 31-T2S-R8E from Battle Creek. Vested Right No. 1191-2 appropriates 0.33 cubic feet of water per second (cfs) from Battle Creek to irrigate 19 acres located in the NE 1/4 SW 1/4 Section 31-T2S-R8E. The point of diversion from Battle Creek for Vested Right No. 1191-2 and this right is located in the NE 1/4 SW 1/4 Section 31-T2S-R8E. This right does not increase the 0.33 cfs diversion rate from Battle Creek.
2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per irrigated acre per year. The water is to be used during the following annual period: April 1 - October 31.
3. The priority date of the Vested Water Right is May 1, 1881.
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Validation of No. 2153-2 is for irrigation of 4 acres in the NW 1/4 SW 1/4 of Section 31-T2S-R8E that are contiguous to the 19 acres specified by No. 1191-2.
2. Validation of No. 2153-2 does not increase the diversion rate of 0.33 cfs authorized by No. 1191-2.

WATER MANAGEMENT BOARD

By: 

Chief Engineer, Water Right Division
Department of Environment and Natural Resources

JUL 23 1991

date

STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 2153-2 FOR IRRIGATION

(1) Neugebauer Brothers Dairy of HCR 89 Box 209, Hermosa, SD 57744 made Application No. 2153-2, January 30, 1990 for validation of a vested right claim to appropriate no add'l cubic feet of water per second from Battle Creek, Custer County, South Dakota for irrigation purposes. Vested Water Right No. 2153-2 was validated May 1, 1991 with a priority date of May 1, 1881. Construction of the described water supply system and application of water to beneficial use has been completed and complies with applicable provisions of South Dakota State Law.

Vested Right No. 2153-2 was validated to include 4 acres not within the legal description specified on Vested Water Right No. 1191-2. No. 2153-2 does not increase the 0.33 cfs diversion rate from Battle Creek.

The applicable portions of Vested Right No. 1191-2 (validated May 1, 1991) are incorporated into this Vested Right Water License No. 2153-2.

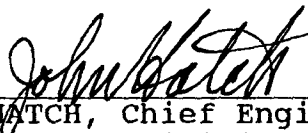
(2) The applicant is entitled to divert 0.33 cubic feet of water per second for beneficial use. The location of the diversion point is 1420'E and 1420'N of the SW corner of Section 31, T2S, R8E (NE 1/4 SW 1/4).

The location of the irrigated acreage is:

T2S, R8E Section 31	NE 1/4 SW 1/4	19 acres
	NW 1/4 SW 1/4	4 "

Total 23 acres

(3) Pursuant to Section 46-5-30.1 Neugebauer Brothers Dairy of HCR 89 Box 209, Hermosa, SD 57744 the holder(s) and/or owner(s) of Vested Water Right No. 2153-2 is issued a license to appropriate 0.33 cubic feet of water per second from Battle Creek with a priority date of May 1, 1881 from the location specified in (2) of this license. The water is to be used for the purpose of irrigation. This license is subject to any limitations, conditions or qualifications listed in Vested Water Right No. 2153-2 and subject to South Dakota State Law.



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

JUL 23 1991

Affidavit of Water Use

No. _____

(Type or Print in Ink)

Note: This Form is supplemental to Form 2 and is to be used when an affidavit pertaining to construction of water use already constructed is needed, primarily with vested right claims.



**Affidavit Of Construction Of Water Use System
And Application Of Water To Beneficial Use**

Name of Applicant (Same as Form 2) Neugebauer Brothers
 Post Office Address H.C.R. 89 Box 209 S.D. 57744
(Street, RR or Box) (State) (Zip Code)
A. Notice of Appropriation _____ Date of Posting 1881
 Date of recording 1881 Recording date Book 4 Page 146
Where Book Page
B. Date of start of construction of water supply system 1881C. Date that water was first applied to beneficial use 1881D. Name of owner of original water supply system O. H. KleinE. Amount of water originally applied to beneficial use Approx 1 C.F.S.F. Present Use of Water - Amount of water now being used Approx 1 C.F.S.Date that this water was first used 1881

G. Chronological History of Water Use

Construction of the system was believed to have started soon after the 1881 Posting & filing. IT is believed that the water has been used at frequent intervals, when water was available, after 1881.

Attach to this Form 2B any copies of notices, postings, filings, publications, affidavits, or other records that apply. You may also attach any written statement by you, or by others, that you deem pertinent.

State of South Dakota)

County of Custer) ss

I, Neugebauer Bros the applicant, certify that I have read the foregoing
(print or type)
 and that the matters therein stated are true.

 Signed Stanley O. Neugebauer
December 15, 1990

Subscribed and sworn to before me _____

My CommissionExpires Jan. 22, 1999

Notary Public or other qualified officer

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

Morrin A. Neugebauer 12-14-90
(Print name)
Carol A. Neugebauer 12-14-90
(Print name)

Permit No. 1191-2/2153-2Upper Cheyenne Water District**Report Of Examination Of Works And/Or Application Of Water To Beneficial Use**

TO: Chief Engineer, Division of Water Rights, DWNR, Foss Bldg., Pierre, SD 57501

I have this day made a thorough examination of the water use system constructed by Nengebauer Brothers Dairy of HCR 89, Box 209, Hermosa, SD holder of Permit No. 1191-2, bearing the priority of May 1, 1881 ~~49~~ authorizing the diversion of 0.33 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:

Berkley Pump, 3x4 with 12" Imp. Dia. &
Reliance 7 1/2 HP Elec. Motor, Serial No. 1Y892462A24

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

4" Aluminum pipe & Open ditches

C. Works used to apply water to beneficial use:

Flood Irrigation

The system is in the following condition GoodThe point of diversion is located 1420 ft. East & 1420 ft. North of the SW Corner of Sec. 31-T2S-R8E (NE 1/4 SW 1/4)The works are capable of diverting and conveying to the place of use 0.78 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:

19 Ac. NE 1/4 SW 1/4 Sec. 31-T2S-R8E
4 Ac. NW 1/4 SW 1/4 " "
for land in NW 1/4 SW 1/4

comprising a total of 23 acres of land and the license should be issued for 0.33 cfsApplicable permit qualifications have been complied with Yes NoExceptions to compliance are: _____ Date June 6, 1990

* Vested Right No. 2153-2 now covers the
 add'l 4 acres. (Same priority date)

(signature)

Timothy K. Schaal

LICENSE FOR PERMIT NUMBER 1191-2

1. Legal location of wells: 1420 ft. East & 1420 ft. North of the SW
Corner of Sec. 31-T2S-R8E (NE 1/4 SW 1/4)

dams & structures: _____

2. Well Information: Well Drilling Firm _____

Completion Report Yes ___ No ___ No. of Wells _____ Depth _____

Casing a) diameter _____ Screen a) type _____
b) length _____ b) length _____

c) type _____ Static Water Level _____

Pump a) make Berkely Pump Motor a) make Reliance

b) model _____ b) ^{Serial} ~~model~~ No. 1Y892462A24

c) size 3x4 w/ 12" Imp. Dia c) horsepower rating 7 1/2 HP

d) capacity 350 gpm

e) turbine pump - no. of stages _____

f) operating PSI _____

3. Distribution lines or canals

a) size 4" Aluminum Pipe &

b) type Open Ditches

c) length Approx. 1500'

4. Dam Information:

a) height to crest _____ m) Outlet tubes:

b) height to primary spillway _____ 1) diameter _____

c) height to secondary spillway _____ 2) type _____

d) crest width _____ 3) valved (Y/N) _____

e) crest length _____ 4) valve type _____

f) spillway length _____ 5) location on structure _____

g) spillway width _____

h) approx. storage _____ n) Category of Dam _____

i) approx. storage to crest _____

j) date constructed _____

k) inspection sheet completed (Y/N) _____

l) Name of Contractor _____

5. System Type a) sideroll:

- 1) length _____ feet
- 2) diameter of pipe _____
- 3) make, model & number of
sprinklers _____
- 4) spacing of sprinklers _____
- 5) nozzle size _____

c) gun

- 1) make _____
- 2) nozzle size _____
- 3) capacity (GPM) _____
- 4) hose size _____
- 5) hose length _____

e) gated pipe

- 1) length _____
- 2) diameter _____
- 3) spacing of gates _____

f) portable boom

- 1) make _____
- 2) nozzle size _____
- 3) capacity (GPM) _____

b) towline:

- 1) length _____ feet
- 2) make, model & number of
sprinklers _____
- 3) spacing of sprinklers _____
- 4) nozzle size _____

d) center pivot

- 1) make _____
- 2) number of towers _____
- 3) distance between towers _____
- 4) overall length _____
- 5) end gun (Y/N) _____
- 6) high or low pressure _____
- 7) make & size of nozzles _____
- 8) capacity (GPM) _____

g) siphons

- 1) size _____
- 2) number _____

NOTE: For Permits with additional wells or changes in well locations, record the following for each well: pumping capacity, date constructed, well driller and if a well log is available.

Indicate any other permit(s) which are associated with project _____

Yes	No	Check Items
<i>* Need Permit</i> <i>for Land E. 5u</i> <i>NA 1/4 SW 1/4</i>	☒	1. Soil and water permit lands agree with lands being irrigated and lands listed on permit?
☒	☐	2. Special qualifications to permit being abided by?
☒	☐	3. All structures, wells and lands on map?
☒	☐	4. Irrigation Questionnaires checked to determine if permit owner started irrigation by end of construction period?
☐	☒	5. Is chemigation used?
☐	<i>NA</i>	6. If yes, does equipment comply with chemigation rules?

REMARKS:

Conversation or File Documentation

NAME OF PERSON OR FILE: Neugebauer BrothersADDRESS: RR 1 Box 96 Hermosa SD 57744 COUNTY CusterDATE: September 26, 1989 TELEPHONE _____

RE: _____

COMMENTS:

On September 21, 1989, I made an investigation of Vested Water Right Claim No. 1191-2. The system is still used as described; however, the Vested Right Claim indicates that the 23 acres are located in the NE 1/4 SW 1/4 of Section 31-T2S-R8E and there are 4 acres of this 23 acre field located in the NW 1/4 SW 1/4.

We need to either drop the 4 acres off of Vested Water Right Claim No. 1191-2 or have the Neugebauer Brothers make another Vested Right application for the 4 acres.

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.



Department of Water & Natural Resources

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

June 11, 1990

Neugebauer Brothers Dairy
HCR 89 Box 209
Hermosa, SD 57744

Dear Mr. Neugebauer:

This letter is in regards to your vested right claim application for four acres in the NW1/4 SW1/4 of Section 31 T2S-R8E that had not been included on Vested Right Claim No. 1191-2. An affidavit of water use must be completed before the application may be processed.

I have enclosed a affidavit form to be filled out and returned to this office. I have also enclosed a copy of the affidavit you submitted with Claim No. 1191-2. Include any applicable portions from the old affidavit onto the new form.

Please feel free to contact me if you have any questions.

Sincerely,

Eric Gronlund
Water Rights Division
(605) 773-3352

enclosures



Department of Water & Natural Resources

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

August 10, 1990

Stan Neugebauer
Neugebauer Dairy
HCR 89 Box 209
Hermosa, SD 57744

Dear Mr. Neugebauer:

Enclosed are copies of information previously sent to you concerning Vested Right Claim No. 1191-2 and some additional affidavit forms. Either you or previous owners need to complete the forms and return them to us.

If you have any questions, please let me know.

Sincerely,

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

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

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

Pierre, _____, 19____

RECEIVED OF _____

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

Fee for Application for Permit No. 2153-2 to Appropriate Water, to construct works and to put water to beneficial use _____

Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____

Fee to retain Future Use Permit No. _____ after period of seven years.

Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____

Fee for Filing Transfer Form _____

Fee for Filing Extension Request _____

Fee for Certified Copy of _____

Fee for Print Copy of Map _____

Fee for Certifying _____

Fee for _____

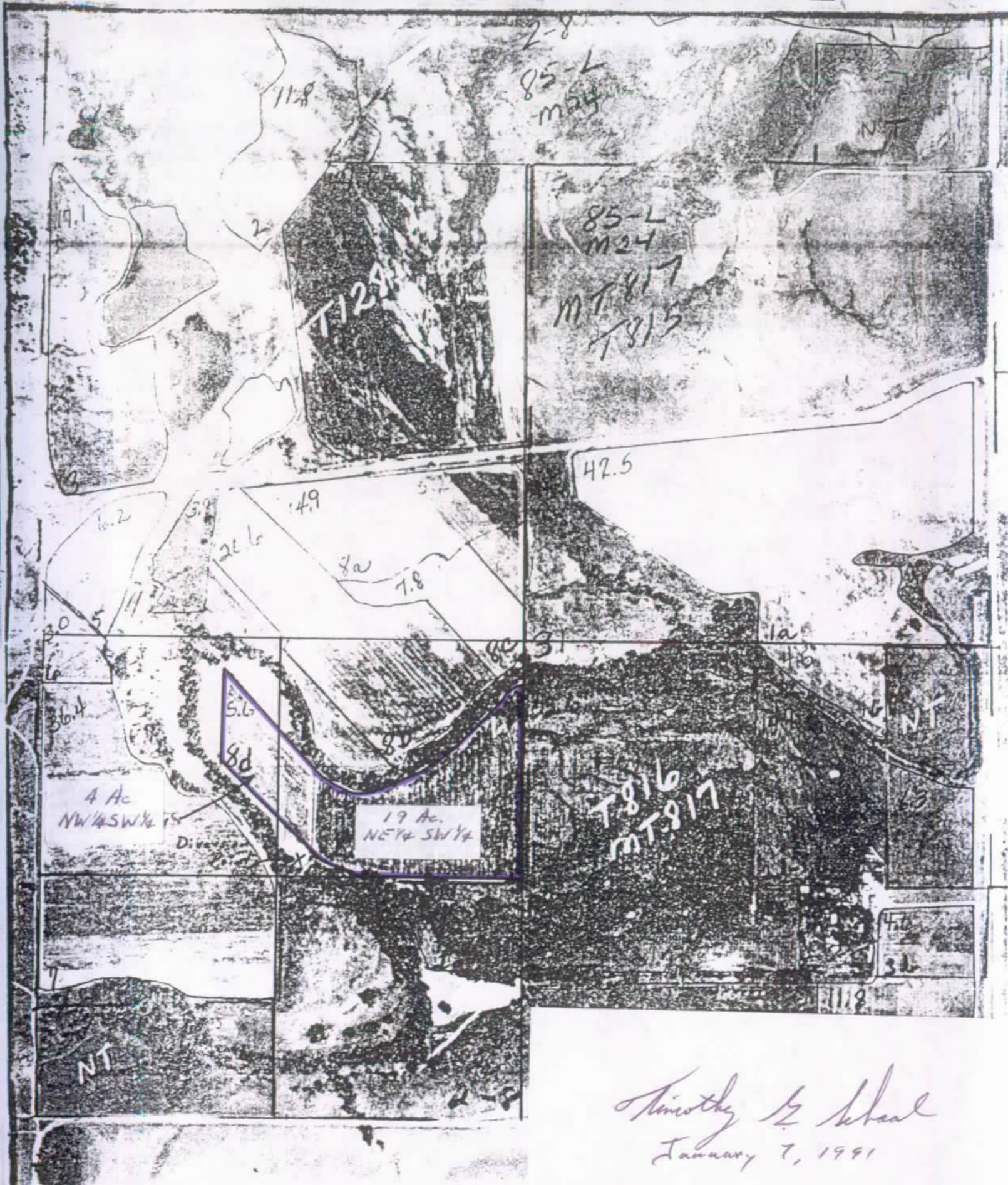
(Any Other Work Provided by Law)

Total

By _____

Chief Engineer

NOT TO SCALE



Timothy E. Sheal
January 7, 1991

Conversation or File Documentation

NAME OF PERSON OR FILE: Carol Foos
ADDRESS: Hermosa, SD COUNTY Custer
DATE: Feb 1, 1991 TELEPHONE _____
RE: Flows in Battle Creek

COMMENTS:

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

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

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

Water Permit 2058-2 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.

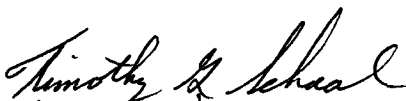
REPORT ON
VESTED RIGHT CLAIM NO. 2153-2
NEUGEBAUER BROTHERS
JANUARY 7, 1991

Vested Right Claim No. 2153-2 was filed to include 4 acres not within the legal description specified on Vested Right Claim No. 1191-2. Vested Right Claim No. 1191-2 was filed in 1974 for 23 acres located in the NE 1/4 SW 1/4 of Section 31-T2S-R8E. Vested Right Claim No. 1191-2 has a priority date of May 1, 1881 which was established under Water Right Filing No. 0254-2.

An inspection of Vested Right Claim No. 1191-2 was conducted on September 21, 1989 to determine the validity of the Vested Right Claim. The inspection found that 4 acres of the 23 irrigated acres are located in the NW 1/4 SW 1/4 of Section 31-T2S-R8E contiguous to the 19 acres specified by No. 1191-2.

Conclusion:

1. The project was inspected and found to exist as described above.
2. According to the Affidavit of Water Use, the system was constructed during 1881 and water has been put to beneficial use since May 1, 1881.
3. It is recommended that Vested Right Claim No. 2153-2 be validated with a May 1, 1881 priority dated for irrigation of 4 acres in the NW 1/4 SW1/4 of Section 31-T2S-R8E that are contiguous to the 19 acres specified by No. 1191-2.
4. Vested Right Claim No. 2153-2 does not increase the total irrigated acreage or diversion rate of the original Vested Right Claim.


Timothy G. Schaal, P.E.
Natural Resources Engineer III

RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED
WATER RIGHT APPLICATION NO. 2153-2, 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 Validation of Vested Water Right Application No. 2153-2, Neugebauer Brothers Dairy, HCR 89 Box 209, Hermosa, SD.

The Chief Engineer is recommending VALIDATION of Application No. 2153-2 because 1) water has been appropriated as described for irrigation use with a priority date of May 1, 1881 2) the use has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Validation of No. 2153-2 is for irrigation of 4 acres in the NW 1/4 SW1/4 of Section 31-T2S-R8E that are contiguous to the 19 acres specified by No. 1191-2.
2. Validation of No. 2153-2 does not increase the diversion rate of 0.33 cfs authorized by No. 1191-2.

See report on application for additional information.



JOHN HATCH, Chief Engineer
January 31, 1991



DEPARTMENT OF WATER & NATURAL RESOURCES

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

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

March 20, 1991

Stan Neugebauer
Neugebauer Dairy
HCR 89 Box 209
Hermosa, SD 57744

Dear Mr. Neugebauer:

Your Application No.2153-2 for a vested water right claim has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of your claim has been sent to the Publisher of the Custer County Chronicle printed at Custer, SD. For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your notice of hearing to validate a vested right 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 twenty days before the board meeting. We must receive Proof of Publication before the application can be considered.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures



DEPARTMENT OF WATER & NATURAL RESOURCES

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

March 20, 1991

Custer County Chronicle
Box 551
Custer, SD 57730

ATTENTION: Legal Department

Enclosed is a Notice of Hearing on Application No. 2153-2 to be published twice. Please publish the first notice on March 27, 1991, with the second publication 7 days later.

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 Dairy, HCR 89, Box 209, 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. No action may be taken on the permit application until proof of publication has been received.

Sincerely,

Eric Gronlund
Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

FIRST TRANSMITTAL NOTICE

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

No. _____

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

Instruction to Newspaper - Publish first Notice on March 27, 1991, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING To Validate
Vested Water Right Application No. 2153-2 to Appropriate Water

Notice is given that Neugebauer Brothers Dairy, HCR 89, Box 209, Hermosa SD 57744 has filed an application to validate a vested water right claim to irrigate 4 acres located in the NW 1/4 SW 1/4 Section 31, T2S, R8E from Battle Creek with a claimed priority date of 1881. Vested Right No. 1191-2 appropriates 0.33 cubic feet of water per second from Battle Creek to irrigate 23 acres located in the NE 1/4 SW 1/4 Section 31, T2S, R8E. An inspection of Vested Right Claim No. 1191-2 found that 4 acres of the 23 irrigated acres are located in the NW 1/4 SW 1/4 Section 31, T2S, R8E. The point of diversion from Battle Creek for Vested Right No. 1191-2 and this application is located in the NE 1/4 SW 1/4 Section 31, T2S, R8E. This application, if validated, does not increase the irrigated acreage or the diversion rate of the original Vested Right Claim No. 1191-2.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2153-2 because 1) water has been appropriated as described for irrigation with a priority date of May 1, 1881, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, and 4) it is in the public interest. Unless a petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation, the Water Management Board will NOT CONDUCT a HEARING to consider this application and the chief engineer will issue the vested water right application as recommended. Petitions filed in support of the application will NOT require the Board to hear the application.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 22, 1991. The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

For purposes of publishing 1) the notice of hearing on Application No. 2153-2 and 2) the chief engineer's recommendation, a Board meeting is scheduled for May 1, 1991, at 10:00 a.m. at Chef Louie's, Meeting Room, 601 E Havens, Mitchell SD. If this application is opposed or the recommendation is contested, the May 1, 1991 hearing date may be rescheduled for another Board meeting. If the hearing is rescheduled, notice of the time and place will be given by First Class Mail to the applicant and persons filing petitions. Anyone not filing a petition, but interested in attending the hearing, may contact the Division of Water Rights to confirm a hearing date and location. The May 1, 1991 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by April 22, 1991.

If a hearing is held, the Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve the validation, 2) approve the validation with qualifications, 3) defer, or 4) deny validation of the application based on the facts presented at the public hearing. Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact the Water Rights Division to request copies of information pertaining to this application or to assure access to the hearing by the handicapped.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 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, 46-2A-18; 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, 46-5-49; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; 74:02:01:19 thru 74:02:01:22.

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
) ss.
 County _____)

I, Terri Tuggle
 certify that the attached printed Notice 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:

3/27/91

4/3/91

Terri Tuggle
 (Signature)

Publisher
 (Title)

4-16-91
 (Date Signed)

Cost of Printing: 54.47



NOTICE OF HEARING

To Validate
 Vested Water Right Application No.
 2153-2 to Appropriate Water

Notice is given that Neugebauer Brothers Dairy, HCR 89, Box 209, Hermosa SD 57744 has filed an application to validate a vested water right claim to irrigate 4 acres located in the NW 1/4 SW 1/4 Section 31, T2S, R8E from Battle Creek with a claimed priority date of 1881. Vested Right No. 1191-2 appropriates 0.33 cubic feet of water per second from Battle Creek to irrigate 23 acres located in the NE 1/4 SW 1/4 Section 31, T2S, R8E. An inspection of Vested Right Claim No. 1191-2 found that 4 acres of the 23 irrigated acres are located in the NW 1/4 SW 1/4 Section 31, T2S, R8E. The point of diversion from Battle Creek for Vested Right No. 1191-2 and this application is located in the NE 1/4 SW 1/4 Section 31, T2S, R8E. This application, if validated, does not increase the irrigated acreage or the diversion rate of the original Vested Right Claim No. 1191-2.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2153-2 because 1) water has been appropriated as described for irrigation with a priority date of May 1, 1881, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, and 4) it is in the public interest. Unless a petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation, the Water Management Board will NOT CONDUCT a HEARING to consider this application and the chief engineer will issue the vested water right application as recommended. Petitions filed in support of the application will NOT require the Board to hear the application.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Division, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 22, 1991. The petition may be informal, but must include a statement describing the petitioner's interest in the



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

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

Dear Sirs:

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

In November Marvin Neugebauer called to see if they could pump into their dams. He called February 1, 1991 with the same request. I reminded him pumping into dams was for flood 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. Brozy 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 Kanesky, 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 Foos on the lowerCOMMENTS: end of Battle Creek. Section 20 & 21, T4S, R11E.

I called Mr. Erk about the lease on this property.
The lease states that Mr & Mrs Foos 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. Booz

Conversation or File Documentation

NAME OF PERSON OR FILE: DON NEGERAUERADDRESS: HERMOSA COUNTY CLUSTERDATE: 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 OR SHUT OFF
HE SAID THAT HE WOULD CALL IN ON Monday

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

NAME: MA DPH

Conversation or File Documentation

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

COMMENTS:

I CALLED Mrs Foss AND TOLD HER THAT WE
WERE GOING TO ALLOW the Mengerbaur's Pump
BECAUSE THE FLOW IS CURRENTLY 3.7 cfs and
it should be coming up due to THE PUMP. I TOLD
her that if the gage drops below 2.64 - that
the Mengerbaur's 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 ~~FOR SHUTTING~~
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 gage
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 IT
IF FLOW WAS LESS HE SAID HE WOULD SHUT OFF
OR 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: Mark D. Holt

Conversation or File Documentation

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

COMMENTS:

IS UPSET THAT NEIGHBORHOODS 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 Hemoose 5950

SHE SAID THEY CAN ONLY PUMP WHEN FLOOD
FLAWS ARE OCCURRING. BASE ON THE INFORMATION
THAT JOHN HATH GAVE ME, I TOLD HER NEIGHBORHOODS
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.

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 8:00 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 Foos 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
ZCR 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 Rath 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. Schaal 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 Zos

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



JUL 23 1991

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

2153-2
1191-2

Stan Neugebauer
Neugebauer Brothers Dairy
HCR 89 Box 209
Hermosa, SD 57744

Dear Mr. Neugebauer:

Enclosed are your Validated Vested Water Right Nos. 1191-2 and 2153-2, and Water License No. 2153-2. As long as you use the water beneficially, as stated in the Water License, the State Water Laws provide that you have a continuing right to use the water.

Very truly yours,


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

enclosures

The applicable portions of Vested Right No. 1191-2 (validated May 1, 1991) are incorporated into this Vested Right Water License No. 2153-2.



2153-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 16, 1994

NEUGEBAUER BROTHERS DAIRY
HCR 89 BOX 209
HERMOSA SD 57744

NOTICE

RE: Violation of Water Permit No(s) 969-2, 2153-2 and 1993 Irrigation
Questionnaire Requirements

Our records indicate that the 1993 Irrigation Questionnaire has not been submitted for Permit No(s) 969-2, 2153-2. The request for the Questionnaires was dated October 18, 1993. The Water Management Board has directed that owners of water permits who have not submitted the 1993 Irrigation Questionnaire be given notice of permit violation and a hearing to be held by the Board. The hearing held by the Board will be 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) 2153-2 qualification:

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

The hearing will be held at 8:45 am, April 6, 1994, at the Golden Hills Resort, 900 Miners Avenue, Lead, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to SDCL 1-26. 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) 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 April 1, 1994, you will no longer be in violation of your permit and your name will be deleted from the Board agenda.

Very truly yours,

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

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

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

3. Article Addressed to:

**NEUGEBAUER BROTHERS DAIRY
HCR 89 BOX 209
HERMOSA SD 57744**

4a. Article Number

P 837 692 579

4b. Service Type

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

7. Date of Delivery

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

5. Signature (Addressee)

6. Signature (Agent)

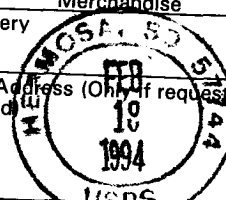
PS Form 3811, December 1991 ☆ U.S.G.P.O. : 1992-307-530

DOMESTIC RETURN RECEIPT

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

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

Consult postmaster for fee.



Thank you for using Return Receipt Service.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 24, 1994

969-2
2153-2

Neugebauer Brothers
HCR 89 Box 209
Hermosa, SD 57744

Dear Sirs:

I am writing to acknowledge receipt of your 1993 irrigation questionnaires. You may disregard the February 16, 1994, **Notice of Violation of Water Permit Nos. 969-2 & 2153-2 and the 1993 Irrigation Questionnaire Requirements.**

The questionnaires were received in our office prior to the Water Management Board meeting and your names were deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

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

2153-2



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 7, 1995

NEUGEBAUER BROTHERS
STANLEY NEUGEBAUER
HCR 89 BOX 209
HERMOSA SD 57744

NOTICE

RE: Violation of Water Permit No(s) 969-2, 2153-2 and 1994 Irrigation Questionnaire Requirements

Our records indicate that the 1994 Irrigation Questionnaire has not been submitted for Permit No(s) 969-2, 2153-2. The request for the Questionnaires was dated November 3, 1994. The Water Management Board has directed that owners of water permits who have not submitted the 1994 Irrigation Questionnaire be given notice of permit violation and a hearing to be held by the Board. The hearing held by the Board will be 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) 2153-2 qualification:

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

The hearing will be held at 9:30 am, March 8, 1995 in the Crown Room, 3rd Floor, Kings Inn Best Western Convention Center, 200 S 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 SDCL 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) 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 3, 1995, you will no longer be in violation of your permit and your name will be deleted from the Board agenda.

Very truly yours,

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

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

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

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

1. ☐ Addressee's Address

2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

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

4a. Article Number

P 157 566 298

4b. Service Type

☐ Registered

☐ Insured

☒ Certified

☐ COD

☐ Express Mail

☐ Return Receipt for Merchandise

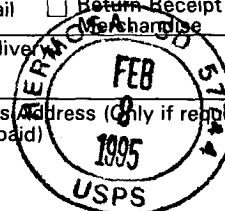
7. Date of Delivery

5. Signature (Addressee)

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

6. Signature (Agent)

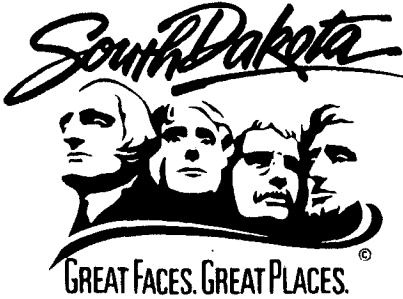
Stanley Neugebauer



PS Form 3811, December 1991 ☆ U.S.G.P.O. : 1992-307-530

DOMESTIC RETURN RECEIPT

Thank you for using Return Receipt Service.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 1, 1995

969-2
2153-2 ✓

Stanley Neugebauer
Neugebauer Brothers
HCR 89 Box 209
Hermosa, SD 57744

Dear Mr. Neugebauer:

I am writing to acknowledge receipt of your 1994 irrigation questionnaires. You may disregard the February 7, 1995, **Notice of Violation of Water Permit and the Requirement to Submit the 1994 Irrigation Questionnaire.**

The questionnaires were 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 Division
(605) 773-3352



January 16, 2002

NOTICE
**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:

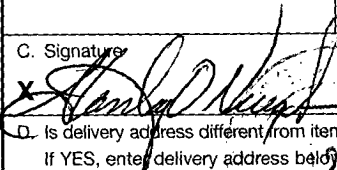
1. Suspend or cancel Permit No(s) 2054-2 & 2153-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 969-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

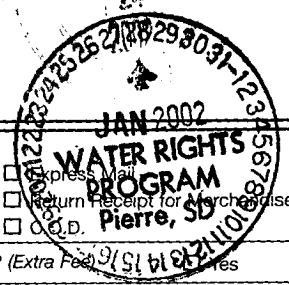
The hearing is an adversary proceeding. The permit owner has the right to be present or to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and the State Supreme Court as provided by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

2153-2

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
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**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
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www.state.sd.us/denr

January 14, 2004

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

Ron Duvall

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.

2153-2



**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.



2153-2

**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.

2153-2



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2153-2

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

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 18, 2005

NOTICE OF MODIFICATION TO 1990 BATTLE CREEK ORDER

TO: Battle Creek Water Users

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program

SUBJECT: Chief Engineer's Order for Battle Creek Water Rights to Protect Domestic Uses

**Modified Chief Engineer Order for Water Right Nos. 187-2, 319-2, 969-2,
1170-2, 1209-2, 1221-2, 1275-2, 1283-2, 2153-2, 2367-2,
2367A-2, 2367B-2, 2368-2, 2368A-2, 2373-2.**

Effective immediately the August 15, 1990 Chief Engineer's Order requiring the 3.0 cubic feet of water per second (cfs) minimum flow bypass at the Hwy 40 bridge east of Hermosa is modified to a **1.5 cubic foot of water per second (cfs) domestic use bypass** as measured at the USGS gaging station, BATTLE CR BELOW HERMOSA SD - No. 06406500. This gage is located by the Hwy 40 bridge east of Hermosa and stream flow readings can be accessed over the USGS website at <http://waterdata.usgs.gov/sd/nwis/>.

On July 27, 1988 the South Dakota Water Management Board conducted a hearing and subsequently issued Water Permit No. 2054-2 for diversion of flood flows from Battle Creek. The Board issued the permit with the following qualification to address domestic use and prior water rights downstream from the Hwy 40 gaging station:

That a minimum of 3 cfs be maintained at the Highway 40 gage to insure flows for prior downstream existing water rights and domestic use.

The downstream existing water rights below the Highway 40 gage account for approximately 1.5 cfs of the 3.0 cfs bypass requirement. The remaining 1.5 cfs is attributable to the amount of water necessary to meet downstream domestic uses. South Dakota Codified Law 46-1-5 directs that

domestic use takes precedence over appropriative rights such as irrigation and commercial use. To be consistent with the 1988 Water Management Board determination of domestic use, a 1.5 cfs

bypass for domestic use at the Hwy 40 gaging station is now enacted on all Battle Creek water rights other than Water Right No. 2054-2 which has a separate qualification addressing bypass requirements. If flows in Battle Creek at the Hwy 40 gaging station drop below 1.5 cfs, upstream diversions from the creek must be reduced or cease so that a minimum flow of 1.5 cfs is maintained.

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

Given the current drought conditions, the Water Rights Program intends to monitor Battle Creek flows carefully to ensure domestic needs are maintained.

If you have any questions, please contact Mark Rath or Don Stroup with the Water Rights Program at (605) 773-3352. Thank you.



2153-2
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.



2153-2
**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



2153-2

**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:

2153-2

PERMIT_NO	PTL_PRIOR1	PTL_PRIOR2	PRIORDATE	COUNTY	STATUS	FIRST_NAME	LAST_NAME	ADDRESS2	CITY	STATE	ZIP	PLUS4
2153-2			05/01/1882	CU	LC	IRR	NEUGEBAUER BROTHERS DAIRY	14197 SD HWY 40	HERMOSA	SD	57744	
969-2			05/01/1882	CU	LC	IRR	NEUGEBAUER BROTHERS	14197 SD HWY 40	HERMOSA	SD	57744	
2368-2			10/14/1887	CU	LC	IRR	CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
2368A-2			10/14/1887	CU	PE	IRR	CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
0421-2			10/27/1894	CU	PE	IRR	JD RANCH REAL ESTATE LLC	HCR 89 BOX 298	HERMOSA	SD	57744	
0170-2			12/29/1895	CU	PE	IRR	FOOS	HCR 89 BOX 317	HERMOSA	SD	57744	
2373-2			03/02/1896	CU	LC	IRR	RODALES RANCHES, INC.	8730 SHERIDAN LAKE RD	RAPID CITY	SD	57702	9066
1209-2			09/29/1900	CU	LC	IRR	KANESKY	BOX 52	CAPUTA	SD	57725	
1221-2			09/29/1900	CU	LC	IRR	RITBERGER BROTHERS	15663 SD HWY 40	HERMOSA	SD	57744	
2367-2			01/01/1905	CU	LC	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
2367A-2			01/01/1905	CU	PE	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
2367B-2	01/01/1905	07/17/1948	01/01/1905	CU	PE	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
187-2			09/11/1912	CU	LC	IRR	FOOS	PO BOX 317	HERMOSA	SD	57744	0317
1275-2			01/01/1935	CU	LC	IRR	KAISER	15745 SD HWY 40	HERMOSA	SD	57744	
319-2			07/17/1948	CU	LC	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
1170-2			01/28/1974	CU	LC	IRR	STOVALL	14829 SD HWY 40	HERMOSA	SD	57744	
1283-2			08/01/1975	CU	PE	COMPETE	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	



2153-2
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/asp>

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.



2153-2

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2303 2160 0000 0802 9945

NEUGEBAUER BROTHERS
STANLEY NEUGEBAUER
14197 SD HWY 40
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Waiver of Signature ☐ YES ☐ NO

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**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



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.

2153-2

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Track & Confirm

Search Results

Label/Receipt Number: 2303 2160 0000 0802 1437

Service(s): **Signature Confirmation™**Status: **Delivered**

Your item was delivered at 1:31 pm on January 22, 2011 in HERMOSA, SD 57744. The item was signed for by S NEUGEBAUER.

Detailed Results:

- Delivered, January 22, 2011, 1:31 pm, HERMOSA, SD 57744
- Out for Delivery, January 22, 2011, 8:04 am, HERMOSA, SD 57744
- Sorting Complete, January 22, 2011, 7:54 am, HERMOSA, SD 57744
- Arrival at Post Office, January 22, 2011, 7:39 am, HERMOSA, SD 57744

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No FEAR Act EEO Data

FOIA

mailing.

SIGNATURE CONFIRMATION NUMBER:
2303 2160 0000 0802 1437

NEUGEBAUER BROTHERS
STANLEY NEUGEBAUER
14197 SD HWY 40
HERMOSA SD 57744

Waiver of Signature ☐ YES ☐ NO

Postmark
Here

POSTAL CUSTOMER:
Keep this receipt. For Inquiries:
Access internet web site at
www.usps.com
or call 1-800-222-1811

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**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

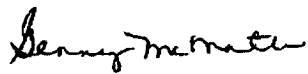
Dear Sir:

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,


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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

June 20, 2012

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	LIC_CFS	P-Order	PRIORDATE	LAST_NAME
2153-2	LC	0.33	1	05/01/1881	NEUGEBAUER BROTHERS DAIRY
969-2	LC	1.73	1	05/01/1881	NEUGEBAUER BROTHERS
2368-2	LC	1.85	2	10/14/1886	WYOMING DAKOTA RAILROAD PROPERTIES INC
2368A-2	PE	0.00	2	10/14/1886	WYOMING DAKOTA RAILROAD PROPERTIES INC
0421-2	PE	0.00	3	10/27/1893	JD RANCH REAL ESTATE LLC
2373-2	LC	1.66	4	03/02/1895	RODALES RANCHES INC
1209-2	LC	1.07	5	09/29/1900	KANESKY
1221-2	LC	1.14	5	09/29/1900	RITBERGER 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

NEUGEBAUER BROTHERSEmail: sjneugebauer@hcinet.net

+++++

RECEIVED**JAN - 7 2013****WATER RIGHTS
PROGRAM**

Marvin & Carol Neugebauer
14193 SD Hwy 40
Hermosa, SD 57744
605-255-4688

Stanley & Joy Neugebauer
14197 SD Hwy 40
Hermosa, SD 57744
605 255-4212

Garland Erbele, Chief Engineer
Department of Environment and Natural Resources
2050 West Main Street, Suite #1
Rapid City, SD 57702-2493

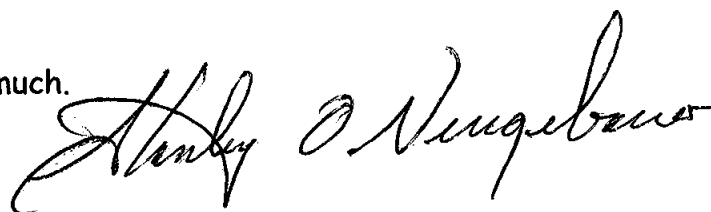
January 2, 2013

Dear Garland,

We would like to express our appreciation to you, Mark Rath, and Aaron Tieman for working with the Battle Creek Water Users and allowing us to manage the stream flow and irrigation pumping. Gary Baker was a very good person to have coordinating the irrigation and notifying people. He worked well with everyone, and there was good communication between the water users.

We hope we all have a good year with more water in the creek in 2013.

Thanks very much.

A handwritten signature in cursive script, appearing to read "Stanley Neugebauer". The signature is written in dark ink and is positioned below the "Thanks very much." text.



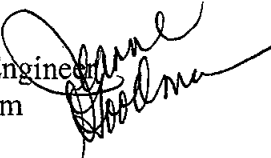
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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. 2153-2969-2 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.

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:

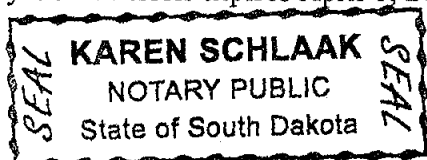
NEUGEBAUER BROTHERS DAIRY	STANLEY NEUGEBAUER	14197 SD HWY 40	HERMOSA	SD	57744
WYOMING DAKOTA RAILROAD PROPERTIES INC	DAVID S DRACH	120 S 6TH ST - 9TH FLOOR	MINNEAPOLIS	MN	55402
TRAVIS BIES		25813 SOUTH FOR ROAD	FAIRBURN	SD	57738
JD RANCH REAL ESTATE LLC		HCR 89 BOX 298	HERMOSA	SD	57744
RUSHMORE VIEW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





2153-2

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,

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	RITTBARGER BROTHERS
2367B-2	January 1, 1905	LC	IRR	BATTLE CREEK VALLEY RANCH
187-2	September 11, 1912	LC	IRR	FOOS
1170-2	January 28, 1974	LC	IRR	STOVALL
1283-2	August 1, 1975	PE	COM	LIEN & SONS INC
2054-2	March 15, 1988	LC	IRR	NEUGEBAUER BROTHERS

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

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

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

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

Sincerely,

A handwritten signature in cursive script, reading "Jeanne Goodman", followed by a horizontal line.

Jeanne Goodman, Chief Engineer
DENR, Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

July 11, 2017

Dear Water Right Holder;

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

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

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

PERMIT NO	STAT	LIC_CFS	P-Order	PRIORDATE	LAST_NAME
2153-2	LC	0.33	1	05/01/1881	NEUGEBAUER BROTHERS DAIRY
969-2	LC	1.73	1	05/01/1881	NEUGEBAUER BROTHERS
2368-2	LC	1.85	2	10/14/1886	BRENT & TAYLOR FOX
2368A-2	LC	0.00	2	10/14/1886	WYOMING DAKOTA RAILROAD PROPERTIES INC
2373-2	LC	1.66	4	03/02/1895	RUSHMORE VIEW RANCH
1209-2	LC	1.07	5	09/29/1900	KANESKY
1221-2	LC	1.14	5	09/29/1900	RITTBERGER BROTHERS
2367B-2	LC	1.14	6	01/01/1905	BATTLE CREEK VALLEY RANCH
187-2	LC	0.86	7	09/11/1912	FOOS
2367B-2	LC	1.57	8	07/17/1948	BATTLE CREEK VALLEY RANCH
1170-2	LC	3.00	9	01/28/1974	STOVALL
1283-2	PE	3.34	10	08/01/1975	LIEN & SONS INC
2054-2	LC	0.81	11	03/15/1988	NEUGEBAUER BROTHERS

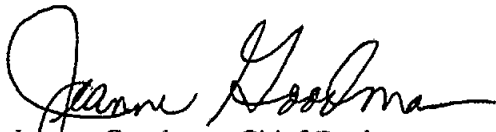
South Dakota water law gives the highest priority to domestic use, which includes livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses, including irrigation, will

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanne Goodman". The signature is fluid and cursive, with a large initial "J" and "G".

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).