

WATER PERMIT NO. VR 2367-2

Name of Applicant: Alden (Gene) Baker

Address: HCR 89 Box 293, Hermosa, SD 57744

Phone: 255-4245

Amount of Water Claimed: 1.14 cfs Total acres: 80

Source of Water Supply: Battle Creek

Water to be used for: Irrigation County: Custer

Type of Waste Disposal System: Not Applicable

Location: approximately 5 miles South East of Hermosa

PRIORITY Date Received: July 15, 1996 Fee: \$ 15

Corrected Application Received: Period of Annual Use: April 1 - September 30

Remarks: Vested Water Right Application

Diversion Point: orginal diversion point --

SW1/4 SW1/4 Sect 16, T3S, R9E

new diversion point -- NE1/4 SW1/4 Section 21, T3S, R9E

Land to be Irrigated: NW1/4 SE1/4 and

SW1/4 SE1/4 Sect 21, T3S, R9E

Depth of Well: not applicable

Well Driller: not applicable

Remarks:

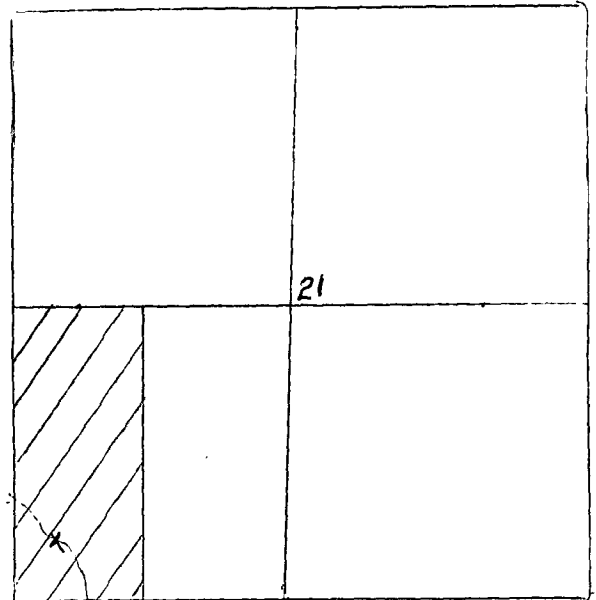
Type of Map: ASCS aerial

Prepared by: Tim Schaal

Reviewed and the Number Assigned on: July 17, 1996

By: Eric Gronlund

Notice of Hearing - date to intervene: _____



SOUTH DAKOTA

VESTED WATER RIGHT NO. 2367-2 FOR IRRIGATION

Date of Receipt of Claim July 15, 1996.

Date of Validation July 10, 1997.

The Water Management Board validated Vested Water Right Claim No. 2367-2 for irrigation purposes for Alden (Gene) Baker, HCR 89, Box 293, Hermosa SD 57744 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 2367-2 appropriates 1.14 cubic feet of water per second from Battle Creek originally located in the SW 1/4 SW 1/4 Section 16 for irrigation of 80 acres located in the NW 1/4 SE 1/4 and the SW 1/4 SE 1/4 Section 21; all in T3S-R9E. This claim is based on Water Right Filing No. 0134-2. This permit also authorizes a change in the point of diversion from the original diversion dam along Battle Creek located in the SW 1/4 SW 1/4 Section 16-T3S-R9E to a point located in the NE 1/4 SW 1/4 Section 21-T3S-R9E.
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 - September 30.
3. The priority date of the Vested Water Right is January 1, 1905.
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

QUALIFICATION

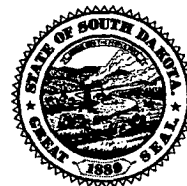
Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

WATER MANAGEMENT BOARD

By: 
John Hatch, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

NOV 12 1997

date





Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	(office use only)
	No. <u>2367-2</u> Hydrologic Unit <u>10/20/09</u>
	Basin <u>Upper Cheyenne</u>
	Newspaper <u>Custer County Chronicle, Custer, SD</u>

Application For Permit To Appropriate Water For Irrigation

Type of Application: _____ New _____ X Vested Right _____ Amendment/Correction to Permit No. _____
(check one) (Use predates Mar 2, 1955)

Description of amendment/correction: (i.e. acreage change, change diversion point(s), add diversion point(s), etc.) _____

1. Name of Applicant Alden (Gene) Baker ☒ Owner ☐ Tenant/Lessee Phone (605) 255-4245
(check one)
- Mailing Address HCR 89 Box 293 Hermosa State SD 57744
(Street, RR, or Box) (Zip Code)
2. Amount of water claimed 1.14 *CFS or _____ **GPM _____ ***AF Total Acreage 80
(*Cubic Feet per Second) (**Gallons per Minute) (***Acre Feet - storage capacity of dam/dugout if applicable)
3. Source of water supply Battle Creek
4. Location of point of diversion (example - 3 wells in SW $\frac{1}{4}$ NE $\frac{1}{4}$ section 12-T104N-R53W) (original) 1320 ft. east & 1150 ft. north of the SW corner of Sec. 16-T3S-R9E (SW $\frac{1}{4}$ SW $\frac{1}{4}$)
County Custer
5. County or counties where water will be used Custer
6. Annual period during which water is to be used April 1 through September 30
7. List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
(Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 21-T3S-R9E	40		
SW $\frac{1}{4}$ SE $\frac{1}{4}$ " "	40		

8. Give a description of the project. (Attach sheet if more space is needed)

This Vested Right Claim is based of Water Right Filing No. 0134-2 to irrigate the NW $\frac{1}{4}$ SE $\frac{1}{4}$ & SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 21-T3S-R9E. It also involves a change in point of diversion from the original diversion dam located in the SW $\frac{1}{4}$ of Sec. 16-T3S-R9E to the diversion point for Water Right No. 319-2, which is located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 21-T3S-R9E.

Attachments: Attach Form 2A if diversion is from a well or dugout, or if storage of water is proposed. Attach map and any other technical information. (see instructions)

STATE OF SOUTH DAKOTA)

County of Custer ss

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

Signed

Alden (Gene) Baker

Subscribed and sworn to before me this 11 day of July 19 96

Thyla H. Robertson
Notary Public

my Commission expires 8-7-02

Affidavit of Water Use

No. _____

Note: This Form is supplemental to Form 2 and is to be used when an affidavit pertaining to construction and 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) Alden (Gene) Baker
- Mailing Address HCR 89, Box 293 Hermosa SD 57744
(Street, RR or Box) (City) (State) (Zip Code)
- A. Notice of Appropriation January 1, 1905 Date of Posting _____
Date of Recording March 11, 1905 Recording Date _____
- B. Date of start of construction of water supply system January 1, 1905
- C. Date that water was first applied to beneficial use January 1, 1905
- D. Name of owner of original water supply system M. J. Everly
- E. Amount of water originally applied to beneficial use 6 cfs (300 miners inches)
- F. Present use of water - amount of water now being used 1.14 cfs
Date that this water was first used _____
- G. Chronological History of Water Use

This Vested Right Claim is based on Water Right Filing No. 0134-2. To the best of my knowledge, this Filing has been continuously used, depending upon water availability. Arthur Kroth, and previous owners, were irrigating from Battle Creek before the application for Water Right No. 319-2 was filed.

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 Cluster)
SS

I, Alden (Gene) Baker the applicant, certify that I have read the foregoing and that
(print or type)
the matters therein are true.

Signed Alden (Gene) Baker

Subscribed and sworn to before me July 11, 1996

Lynda S. Robertson
Notary Public
My Commission Expires 9-7-02

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

_____, 19_____
(Print Name)

_____, 19_____
(Print Name)

RECEIPT

415013

Division of Water Rights

South Dakota Department of Environment and Natural Resources

Pierre, _____ July 15, 19 96

RECEIVED OF Alden (Gene) Baker, HCR 89, Box 293, Hermosa, SD 57744

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

Fee for Application for Permit No. <u>2367-2</u> to Appropriate Water, to construct and to put water to beneficial use _____	15	00
Fee for Application for Permit No. _____ to Appropriate Water, for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	15 00

By John Hatch (Signature)
Chief Engineer

REPORT ON
VESTED WATER RIGHT APPLICATION No. 2367-2
Alden (Gene) Baker
July 26, 1996

Vested Water Right Application No. 2367-2 has been filed by Alden (Gene) Baker claiming 1.14 cubic feet of water per second from Battle Creek located in the SW 1/4 SW 1/4 of Section 16-T3S-R9E to irrigate 80 acres located in the NW 1/4 SE 1/4 and SW 1/4 SE 1/4 of Section 21-T3S-R9E. This Vested Water Right Claim is based on Water Right Filing No. 0134-2 and has a claimed priority date of January 1, 1905. The application also involves a change in point of diversion from the original diversion dam located in the SW 1/4 SW 1/4 of Section 16-T3S-R9E to the diversion point for Water Right No. 319-2, which is located in the NE 1/4 SW 1/4 of Section 21-T3S-R9E.

Discussion:

On January 1, 1905, M.J. Everly located Water Right Filing No. 0134-2 in the SW 1/4 of Section 16-T3S-R9E. It claimed 300 miners inches of water for irrigating purposes on the SW 1/4 SE 1/4, NW 1/4 SE 1/4 and the S 1/2 NW 1/4 of Section 21-T3S-R9E.

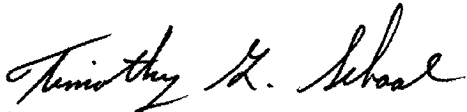
Arthur Kroth, who originally filed for Water Right No. 319-2 in 1948, hired Julian Staven, a Consulting Engineer from Rapid City, in 1946 to help him file for a Water Permit. Julian Staven contacted Mr. Loucks of the State Engineer's Office and asked for advice on how to proceed with Mr. Kroth's application. He indicated that Mr. Kroth was diverting water from Battle Creek at a rate of 500 gpm to irrigate approximately 65 acres and had been doing this for "a considerable amount of time". Indicating that this procedure was also done by the previous owner. Mr. Kroth also wanted to increase the amount of irrigation to 200 acres and possibly 400 acres at a later date. Mr. Loucks indicated that the State Engineers Office had 35 water rights on Battle Creek with a total appropriation of 429.82 cfs. He also indicated that many of these water rights were probably abandoned and made arrangements with Mr. Staven to do an investigation of Battle Creek to make a determination of water availability.

Mr. Staven's investigation found several "inactive" Water Right Filings and older water rights with a total diversion rate of approximately 150 cfs. Several of these "inactive" filings and water rights were never acted on and canceled. Some have correspondence indicating that Mr. Staven's investigation was in error and they were not "inactive". Of those listed as "inactive" are Water Right No. 187-2 for Clarence Foss, which has been licensed for 0.86; Water Right Filings No. 0359-2 for Dr. Borgmeyer, No. 0421-2 for JD Ranch which are considered "active" and Water Right Filing No. 0134-2.

There is also reference to Water Right Filing No. 0134-2, and its use, in Water Permits No. 566-2 and 796-2, Western Cattle Company, which indicate that Mr. Kroth and the previous owners were using Water Right Filing No. 0134-2 to irrigate directly from Battle Creek, and these lands correspond with some of the land irrigated under Water Right No 319-2.

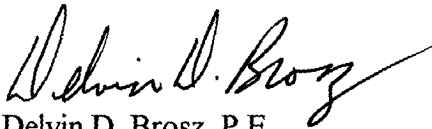
Conclusions:

1. The project was inspected and found to exist as described.
2. The priority date for Vested Water Right Claim No. 2367-2, and the land irrigated under Water Right No. 319-2 located in the NW 1/4 SE 1/4 and SW 1/4 SE 1/4, should be January 1, 1905.
3. If Vested Water Right Claim No. 2367-2 is validated, the applicable portions of Water Right Filing No. 0134-2 should be incorporated into Vested Right Claim No. 2367-2 and the abandoned portions canceled.



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

Approved by,



Delvin D. Brosz, P.E.
Natural Resources Engineer IV

RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER

RIGHT APPLICATION NO. 2367-2, Alden Baker

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Validation of Vested Water Right Application No. 2367-2, Alden (Gene) Baker, HCR 89, Box 293, Hermosa, SD 57744.

The Chief Engineer is recommending VALIDATION of Application No. 2367-2 for 1.14 cfs and that the applicable portions of Water Right Filing No. 0134-2 be incorporated into No. 2367-2 and that the abandoned portions of No. 0134-2 be cancelled because 1) water has been appropriated as described for irrigation use with a priority date of January 1, 1905, 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 qualification:

Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

See report on application for additional information.


FOR JOHN HATCH, Chief Engineer
August 6, 1996



**DEPARTMENT of ENVIRONMENT
and 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.

August 12, 1996

Alden (Gene) Baker
HCR 89, Box 293
Hermosa, SD 57744

Dear Mr. Baker:

Vested Water Right Application No. 2367-2 for irrigation use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of hearing has been sent to the Publisher of the Custer County Chronicle printed at Custer, SD (Ph # (605) 673-2217). 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 prior to publication 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 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. The newspaper has been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the application.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 12, 1996

Custer County Chronicle
Box 551
Custer, SD 57730-0551

ATTENTION: Legal Department

Enclosed is a Notice of Hearing on Vested Water Right Application No. 2367-2 to be published twice. Please publish the first notice on August 22, 1996, 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 Alden (Gene) Baker, HCR 89, Box 293, Hermosa, SD 57744 (Ph # (605) 255-4245).

A copy of BOTH publications must be SENT to the WATER RIGHTS PROGRAM. 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
Natural Resources Engineer
605 773-3352

enclosures

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

FIRST TRANSMITTAL NOTICE

TO: Eric Gronlund
Water Rights Program
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 August 22, 1996, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING To Validate
Vested Water Right Application No. 2367-2 to Appropriate Water

Notice is given that Alden (Gene) Baker, HCR 89, Box 293, Hermosa, SD 57744 has filed an application to validate a vested water right claim to appropriate 1.14 cubic feet of water per second from Battle Creek located in the SW 1/4 SW 1/4 Section 16 for irrigation of 80 acres located in the NW 1/4 SE 1/4 and SW 1/4 SE 1/4 Section 21; all in T3S, R9E. This claim is based on Water Right Filing No. 0134-2. The water use has a claimed priority date of January 1, 1905.

This publication is also to serve notice of a change in the point of diversion from the original diversion dam along Battle Creek located in the SW 1/4 SW 1/4 Section 16, T3S, R9E to a point located in the NE 1/4 SW 1/4 Section 21, T3S, R9E.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2367-2 for 1.14 cfs and that the applicable portions of Water Right Filing No. 0134-2 be incorporated into No. 2367-2 and that the abandoned portions of No. 0134-2 be cancelled, because 1) water has been appropriated as described for irrigation use with a claimed priority date of January 1, 1905, 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.

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 Program, 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 September 20, 1996. 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.

The Water Management Board will consider this application at 11:00 a.m. (CST), October 2, 1996, Floyd Matthew Training Center, 523 East Capitol, Pierre, SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the facts presented at the public hearing. The October 2, 1996, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by September 20, 1996.

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 Eric Gronlund by September 20, 1996, at the above Water Rights Program address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

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-20, 46-2A-21; 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; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Nettie H. Myers, Secretary, Department of Environment and Natural Resources.

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Custer) SS

I, James Anderson

certify that the attached printed Notice was

taken from the Custer County
Chronicle

printed and published in Custer

County of Custer and State of

South Dakota. The notice was published in
the newspaper on the following two dates:

8-22-96

8-29-96

Cost of Printing: _____

James Anderson
(Signature)

Publiser
(Title)

Sept 4-96
(Date Signed)



NOTICE OF HEARING TO VALIDATE VESTED WATER RIGHT APPLICATION NO. 2367-2 TO APPROPRIATE WATER

Notice is given that Alden (Gene) Baker, HCR 89, Box 293, Hermosa, SD 57744 has filed an application to validate a vested water right claim to appropriate 1.14 cubic feet of water per second from Battle Creek located in the SW1/4 SW1/4 Section 16 for irrigation of 80 acres located in the NW1/4 SE1/4 and SW1/4 SE1/4 Section 21; all in T3S, R9E. This claim is based on Water Right Filing No. 0134-2. The water use has a claimed priority date of January 1, 1905.

This publication is also to serve notice of a change in the point of diversion from the original diversion dam along Battle Creek located in the SW1/4 SW1/4 Section

16, T3S, R9E to a point located in the NE1/4 SW1/4 Section 21, T3S, R9E.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2367-2 for 1.14 cfs and that the applicable portions of Water Right Filing No. 0134-2 be incorporated into No. 2367-2 and that the abandoned portions of No. 0134-2 be cancelled, because 1) water has been appropriated as described for irrigation use with a claimed priority date of January 1, 1905, 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.

Any person interested in opposing or supporting these applications 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 recommendations. The Chief Engineer's address is "Water Rights Program, 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 September 20, 1996. The petition may be informal, but must include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting the applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

The Water Management Board will consider these applications at 11:00 a.m. (CST), October 2, 1996, Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, SD. The Chief Engineer's recommendations are not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny these applications based on the facts presented at the public hearing. The October 2, 1996, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the applications. The request for an automatic delay must be filed by September 20, 1996.

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 Eric Gronlund by September 20, 1996, at the above Water Rights Program address to request copies of information pertaining to these applications, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

These application are 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-20, 46-2A-21; 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; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15. Nettie H. Myers, Secretary, Department of Environment and Natural Resources.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 14, 1996

TO: Battle Creek Water Users

SUBJECT: Vested Water Right Application Nos. 2367-2, 2368-2 and 2369-2

Enclosed is a copy of a notice of hearing for Vested Water Right Application No. 2367-2, filed by Gene Baker and Vested Water Right Application Nos. 2368-2 and 2369-2, filed by JD Ranch Real Estate, LLC. These applications claim water from Battle Creek for irrigation. The claims are based on old water right filings and an investigation of historic water use conducted by staff engineer, Tim Schaal.

Publication of the two notice of hearings are scheduled on August 22 and 29, 1996 in the Custer County Chronicle. If you wish to participate in the October 2, 1996, hearing to support or oppose validation of these claims, a petition to intervene must be filed by September 20, 1996. The procedure for filing a petition is contained in the enclosed notice of hearing.

If you have any questions or want a copy of the staff report prepared on Application Nos. 2367-2, 2368-2 or 2369-2, please contact Tim Schaal at (605) 773-3352.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosures

ALDREN/JEANETTE BAKER
HCR 89, BOX 293
HERMOSA, SD 57744

CLARENCE FOOS
~~HCR 76, BOX 120~~ HCR 89 Box 317
~~NISLAND, SD 57762~~ Hermosa, SD 57744

DONALD KAISER
HCR 89, BOX 303
HERMOSA, SD 57744

EDWARD/BETTY S. KANESKY
BOX 52
CAPUTA, SD 57725

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

RITTBERGER BROTHERS
HCR 56, BOX 19
BUFFALO GAP, SD 57722

JOHN/DARLENE STOVALL
HCR 89, BOX 317
HERMOSA, SD 57744

BOB BORGMEYER
9055 ~~X~~ N. MORNING GLORY ROAD
PARADISE VALLEY, AZ 85253-1736

RODALES CORPORATION
1721 11TH STREET
RAPID CITY, SD 57701

JOHN HAMNER AND DEAN PERKINS
JD RANCH L.L.C.
HCR 89, BOX 298
HERMOSA, SD 57744

MARVIN D. TRUHE
LAW OFFICES

909 ST. JOSEPH STREET
5TH FLOOR
P.O. BOX 8106

RAPID CITY, SOUTH DAKOTA 57709
TELEPHONE (605) 342-2800



TELECOPIER
(605) 342-2801

MARVIN D. TRUHE
LINDEN R. EVANS

September 6, 1996

Mr. John Hatch
Chief Engineer
Water Rights Program
South Dakota Department of
Environment & Natural Resources
Foss Building
523 East Capitol Avenue
Pierre, SD 57501

TELECOPIED

Re: Water Rights on Battle Creek, Custer County, South Dakota
Vested Water Right Application Nos. 2367-2, 2368-2 and 2369-2

Dear John:

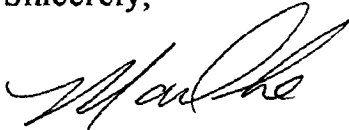
I am writing to confirm my August 29, 1996 letter to Tim Schaal regarding the above-referenced matter, and my subsequent visit yesterday with Tim and Eric Gronlund. On behalf of the Borgmeyer family we are formally requesting a continuance of the scheduled October 2-3, 1996 Water Management Board hearing on the above applications. We need the additional time to review the documents and reports, and otherwise prepare for the hearing. I understand that this request automatically continues the hearing to the next scheduled Board hearing, which we have been advised is December 4-5, 1996. We will prepare the required petitions by the September 20, 1996 deadline, and will also submit applications pertaining to Borgmeyer's water rights for consideration at that hearing.

I am sending copies of this notice to the landowners Eric identified for us, and unless I hear from you otherwise, we will assume the hearing has been rescheduled to December 4-5, 1996.

Mr. John Hatch
September 6, 1996
Page 2

Thank you for your consideration, and please give me a call if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Marvin D. Truhe', written in dark ink.

Marvin D. Truhe

MDT/cdp

cc: Robert Borgmeyer
JD Ranch, LLC, c/o John Hamner, HCR 89 Box 298, Hermosa, SD 57744
Alden (Gene) Baker, HCR 89 Box 292, Hermosa, SD 57744
John & Darlene Stovall, HCR 89 Box 317, Hermosa, SD 57744



September 12, 1996

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

NOTICE

TO: John Hamner Alden Baker John and Darlene Stovall
 JD Ranch Real Estate HCR 89, Box 293 HCR 89, Box 317
 HC 89, Box 298 Hermosa, SD 57744 Hermosa, SD 57744
 Hermosa, SD 57744

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

SUBJECT: Automatic Delay of Hearing for Vested Water Right Application Nos. 2367-2,
 2368-2, 2369-2 and Water Permit Application No. 2371-2

Marvin Truhe, representing the Borgmeyer family, requests a continuance of the October 2, 1996, hearing on Vested Water Right Application Nos. 2367-2, 2368-2, 2369-2 and Water Permit Application No. 2371-2. Therefore, the hearing on these applications is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on October 2, 1996.

The Water Management Board will now consider these applications on December 4, 1996, at 10:30 am, in the Conference Room, Floyd Matthew Training Center, Foss Building, 523 East Capitol Ave., Pierre, SD. The agenda time is an estimate and may be delayed due to prior agenda items.

Mr. Truhe's letter states the Borgmeyer family will submit applications pertaining to Borgmeyer's water rights. This will allow all Battle Creek issues to be addressed at the same hearing. Additionally, the Water Rights Program will continue the cancellation of a number of old water right filings along Battle Creek until the December 4, 1996, hearing time.

Applicable provisions of the notices of hearing for these applications published in the Custer Co. Chronicle will apply at the hearing. This hearing is an adversary proceeding. Any party of record has the right to be present and to be represented by a lawyer. These and other due process right will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Please contact Eric Gronlund, staff engineer at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General
 Parties of Record (see attached list)

PARTIES OF RECORD

VESTED WATER RIGHT APPLICATION NO. 2367-2, ALDEN (GENE) BAKER

VESTED WATER RIGHT APPLICATION NOS. 2368-2 AND 2369-2,
JD RANCH REAL ESTATE, LLC

WATER PERMIT APPLICATION NO. 2371-2, JOHN AND DARLENE STOVALL

APPLICANTS

Alden (Gene) Baker
HCR 89, Box 293
Hermosa, SD 57744

John Hamner
JD Ranch Real Estate, LLC
HC 89, Box 298
Hermosa, SD 57744

John and Darlene Stovall
HCR 89, Box 317
Hermosa, SD 57744

PETITIONERS

Borgmeyer Family
represented by:

Marvin Truhe, Attorney
Marvin D. Truhe Law Offices
P.O. Box 8106
Rapid City, SD 57709

CERTIFICATION

I hereby certify that on September 12, 1996, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated September 12, 1996, along with a copy of the Parties of Record List, regarding Automatic Delay of Hearing for Vested Water Right Application Nos. 2367-2, 2368-2, 2369-2 and Water Permit Application No. 2371-2, addressed as stated below:

John Hamner, JD Ranch Real Estate, HC 89, Box 298, Hermosa, SD 57744.

Alden Baker, HCR 89, Box 293, Hermosa, SD 57744.

John and Darlene Stovall, HCR 89, Box 317, Hermosa, SD 57744.

Marvin Truhe, Attorney, Marvin D. Truhe Law Offices, P.O. Box 8106, Rapid City, SD 57709.

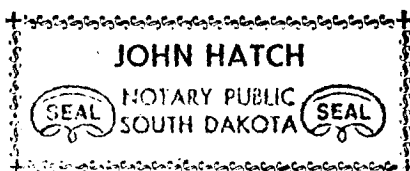
A copy of the above described Notice and Parties of Record List was sent inter-office to:

Diane Best, Assistant Attorney General, Capitol Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 23rd day of September, 1996




Notary Public

JOHN HATCH, Notary Public
My Commission Expires
April 1, 2001

MARVIN D. TRUHE
LAW OFFICES

909 ST. JOSEPH STREET
5TH FLOOR
P.O. BOX 8106

RAPID CITY, SOUTH DAKOTA 57709
TELEPHONE (605) 342-2800



MARVIN D. TRUHE
LINDEN R. EVANS

TELECOPIER
(605) 342-2801

September 20, 1996

Mr. Alden (Gene) Baker
HCR 89 Box 292
Hermosa, SD 57744

Re: J D Ranch Real Estate Vested Water Right Application
Nos. 2368-2 and 2369-2; Petition in Opposition

Dear Mr. Baker:

Pursuant to SDCL § 46-2A-4, enclosed please find Petition of Rodales Ranches, Inc. and the Borgmeyer Family in Opposition to Application Nos. 2368-2 and 2369-2 in the above-referenced matter. Note that the Petition opposes only the purported rights of J D Ranch Real Estate.

Sincerely,

Marvin D. Truhe

MDT:nlb

Enclosure

cc: Robert Borgmeyer
John Hatch, Chief Engineer

MARVIN D. TRUHE
LAW OFFICES802 ST JOSEPH STREET
5TH FLOOR
P.O. BOX 8106RAPID CITY, SOUTH DAKOTA 57709
TELEPHONE (605) 342-2800MARVIN D. TRUHE
LINDEN R. EVANSTELECOPIER
(605) 342-2801

September 20, 1996

TELECOPIED
AND VIA FIRST CLASS MAIL

Mr. John Hatch
Chief Engineer
Water Rights Program
South Dakota Department of
Environment and Natural Resources
Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Re: J D Ranch Real Estate Vested Water Right Application
Nos. 2368-2 and 2369-2; Petition in Opposition

Dear John:

Pursuant to SDCL § 46-2A-4, enclosed please find Petition of Rodales Ranches, Inc. and the Borgmeyer Family in Opposition to Application Nos. 2368-2 and 2369-2 in the above-referenced matter. Please note the Certificate of Service which indicates we have mailed copies of the Petition to all parties who received our request for hearing continuance. Note, however, that the Petition opposes only the purported rights of J D Ranch Real Estate.

Sincerely,

Marvin D. Truhe

MDT:nlb

Enclosure

cc: Robert Borgmeyer (w/encl.)



STATE OF SOUTH DAKOTA

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF THE APPLICATIONS) PETITION OF RODALES RANCHES,
OF J D RANCH REAL ESTATE, LLC, TO) INC. AND THE BORGMAYER FAMILY
VALIDATE APPLICATION NO. 2368-2) IN OPPOSITION TO APPLICATION
AND APPLICATION NO. 2369-2) NOS. 2368-2 AND 2369-2

To: John Hatch, Chief Engineer, State Water Rights Program
J D Ranch Real Estate, LLC, c/o John B. Hamner

J D Ranch Real Estate (hereinafter "Applicant") has filed a Notice of Hearing to Validate certain purported water rights on Battle Creek in Custer County, South Dakota, pursuant to Water Right Application Nos. 2368-2 and 2369-2.

Petitioner Rodales Ranches, Inc. is a South Dakota corporation whose directors are Robert J. Borgmeyer, Henry J. Borgmeyer, Myrtle I. Borgmeyer and Janice Borgmeyer Gallagher (hereinafter the "Borgmeyer Family"). Petitioner owns property on Battle Creek immediately upstream from Applicant's property.

Petitioner possesses vested water rights on Battle Creek dating back to 1895, and Applicant's purported rights pre-date 1895. During certain years the water available from Battle Creek exceeds the amount of purported vested water rights to the creek. Accordingly, Petitioner's interest in this matter is such that the validity of Applicant's purported rights, and/or the dates of vesting of Applicant's purported rights, will have a direct and substantial impact upon Petitioner's water rights.

Applicant's stated point of diversion for Water Right Application No. 2368-2 is at a point upstream from Petitioner's property, with a stated utilization via a ditch running through Petitioner's property. The stated point of diversion for Water Right Application No. 2369-2 is within the J D Ranch property.

Petitioner opposes the granting of Applicant's Water Rights Applications, for at least the following reasons:

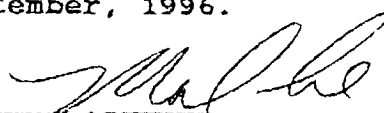
1. Applicant and/or its predecessors in interest have failed to beneficially use the purported water rights for a period or periods in excess of three years, without legal excuse pursuant to ARSD 74:02:01:37.01, and said rights have been forfeited pursuant to SDCL § 45-6-37, and other applicable law.

2. Applicant and/or its predecessors in interest have abandoned said rights pursuant to SDCL § 45-6-36, and other applicable law.

3. Petitioner's vested water rights take priority over Applicant's purported water right referenced in Water Rights Application No. 2368-2 by virtue of an agreement between Applicant's predecessor in interest, and Petitioner's predecessor in interest.

The hearing in this matter was originally scheduled for October 2, 1996, but upon Petitioner's request it has been rescheduled to December 4, 1996. Petitioner requested the continuance so that it would have time to fully investigate the various water rights at issue, review applicable water rights records, and contact persons knowledgeable about the water rights. Following that investigation Petitioner may supplement this Petition as additional information is obtained.

Dated this 20th day of September, 1996.



Marvin D. Truhe
Marvin D. Truhe Law Offices
909 St. Joseph Street, 5th Floor
P. O. Box 8106
Rapid City, SD 57709
Telephone: (605) 342-2800

Attorneys for Rodales Ranches, Inc.
and the Borgmeyer Family

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing Petition was served upon the persons herein next designated, on the date below shown, by facsimile transmission of the same to John Hatch, at 3:55 p.m., MDT, to facsimile No. (605) 773-4068; and by depositing true and correct copies thereof in the United States mail at Rapid City, South Dakota, first class postage prepaid, in envelopes addressed to:

John Hatch
Chief Engineer
Water Rights Program
South Dakota Department of
Environment and Natural Resources
Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Mr. Alden (Gene) Baker
HCR 89 Box 292
Hermosa, SD 57744

J D Ranch Real Estate, LLC
c/o John Hamner
HCR 89 Box 298
Hermosa, SD 57744

John and Darlene Stovall
HCR 89 Box 317
Hermosa, SD 57744



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

November 21, 1996

NOTICE

TO: Marvin Truhe, Attorney
Marvin D. Truhe Law Offices
P.O. Box 8106
Rapid City, SD 57709
and Parties of Record to Battle Creek Applications (see attached list)

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

SUBJECT: Automatic Delay of Hearing for Vested Water Right Application No. 2373-2, Rodales Ranches, Inc.

Michael Hickey, representing the J D Ranch Real Estate, requests a continuance of the December 4, 1996, hearing on Vested Water Right Application No. 2373-2. Therefore, the hearing on Application No. 2373-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will not be held on December 4, 1996.

Vested Water Right Application Nos. 2367-2, 2368-2, 2369-2 and Water Permit Application No. 2371-2 which were scheduled for December 4, 1996 are also being continued. In addition, validation of recognized vested water rights and cancellation of a number of old water right filings along Battle Creek are also continued. This will allow the Board to consider all pending Battle Creek issues at the same hearing

The Water Management Board will now consider the Battle Creek applications at their March 5 and 6, 1997, meeting. Future notice will be provided on the time and location of the meeting to all parties of record.

Please contact Eric Gronlund, staff engineer at (605) 773-3352, if you have any questions.

c: Diane Best, Assistant Attorney General

PARTIES OF RECORD

VESTED WATER RIGHT APPLICATION NO. 2367-2, ALDEN (GENE) BAKER

VESTED WATER RIGHT APPLICATION NOS. 2368-2 AND 2369-2,
JD RANCH REAL ESTATE, LLC

VESTED WATER RIGHT APPLICATION NO. 2373-2, RODALES RANCHES, INC.

WATER PERMIT APPLICATION NO. 2371-2, JOHN AND DARLENE STOVALL

John Hamner
JD Ranch Real Estate, LLC
HC 89, Box 298
Hermosa, SD 57744

represented by:

Michael M. Hickey
Bangs McCullen Law Firm
P.O. Box 2670
Rapid City, SD 57709-2670

Rodales Ranches, Inc.
1721 11th Street
Rapid City, SD 57701

represented by:

Marvin D. Truhe
Marvin D. Truhe Law Offices
P.O. Box 8106
Rapid City, SD 57709

Robert Borgmeyer
9055 N. Morning Glory Road
Paradise Valley, AZ 85253-1736

John and Darlene Stovall
HCR 89, Box 317
Hermosa, SD 57744

Alden (Gene) Baker
HCR 89, Box 293
Hermosa, SD 57744



May 22, 1997

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

NOTICE

TO: John Hamner
JD Ranch Real Estate
HC 89, Box 298
Hermosa, SD 57744

Robert Borgmeyer
Rodales Ranches
9055 N. Morning Glory Road
Paradise Valley, AZ 85253-1736

Alden Baker
HCR 89, Box 293
Hermosa, SD 57744

John and Darlene Stovall
HCR 89, Box 317
Hermosa, SD 57744

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

SUBJECT: Scheduling of Hearing on Battle Creek Applications including Vested Water Right
Application Nos. 2367-2, 2368-2, 2369-2, 2373-2 and Water Permit Application No.
2371-2

The Water Management Board will consider Application Nos. 2367-2, 2368-2, 2369-2 and 2371-2 and 2373-2 at 10:00 AM (CDT) on July 10, 1997, in the Conference Room, Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave., Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items.

The hearing will be held in conjunction with other Battle Creek issues, including validation of recognized vested water rights and cancellation of a number of water right filings along Battle Creek.

Applicable provisions of the Notice of Hearing published in the Custer County Chronicle for each application will still apply at this hearing. This hearing is an adversary proceeding. Any party of record has the right to be present and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Please contact Tim Schaal at (605) 773-3352 or Diane Best, Assistant Attorney General at (605) 773-3215, if you have any questions.

c: Diane Best, Assistant Attorney General
Marvin Truhe, Attorney
Michael Hickey, Attorney

PARTIES OF RECORD

VESTED WATER RIGHT APPLICATION NO. 2367-2, ALDEN (GENE) BAKER

VESTED WATER RIGHT APPLICATION NOS. 2368-2 AND 2369-2,
JD RANCH REAL ESTATE, LLC

VESTED WATER RIGHT APPLICATION NO. 2373-2, RODALES RANCHES, INC.

WATER PERMIT APPLICATION NO. 2371-2, JOHN AND DARLENE STOVALL

John Hamner
JD Ranch Real Estate, LLC
HC 89, Box 298
Hermosa, SD 57744

represented by:

Michael M. Hickey
Bangs McCullen Law Firm
P.O. Box 2670
Rapid City, SD 57709-2670

Rodales Ranches, Inc.
1721 11th Street
Rapid City, SD 57701

represented by:

Marvin D. Truhe
Truhe, Beardsley, Jensen
Helmer & Von Wald
P. O. Box 8106
Rapid City, SD 57709

Robert Borgmeyer
9055 N. Morning Glory Road
Paradise Valley, AZ 85253-1736

John and Darlene Stovall
HCR 89, Box 317
Hermosa, SD 57744

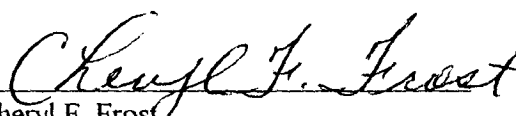
Alden (Gene) Baker
HCR 89, Box 293
Hermosa, SD 57744

CERTIFICATION

I hereby certify that on May 22, 1997, I have personally deposited with the United States mail at Pierre, South Dakota, first class postage, prepaid envelopes containing a Notice dated May 22, 1997, along with a copy of the Parties of Record List, regarding Scheduling of Hearing on Battle Creek Applications including Vested Water Right Application Nos. 2367-2, 2368-2, 2369-2, 2373-3 and Water Permit Application No. 2371-2, addressed as stated below, and on the attached Parties of Record List:

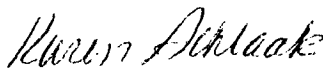
A copy of the above described Notice and attachment was sent Inter-office to:

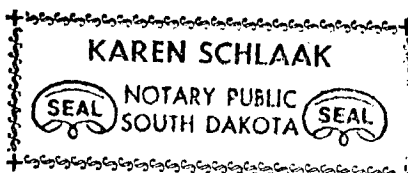
Diane Best, Assistant Attorney General, Capitol Building.


Cheryl F. Frost
Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 29th day of May, 1997


Notary Public



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

GARY BAKER

HCR 89 Box 291
Hermosa, SD 57744
255-4504
gbaker@enetis.net

319-2 Lic. 207.6 acres
2.9 cfs

2367-2 Lic. 80 acres 1.14 cfs

January 16, 2001

SD Water Rights
Att: Mark Rath
523 Capitol Ave.
Pierre, SD 57501

Dear Mark;

We presently have a flood system of irrigation on Battle Creek. We would like to put in a center pivot system on this ground. This would involve a change in some of the irrigation acreages. I have enclosed a map depicting the approximate coverage of a center pivot system. The yellow line shows where the center pivot would cover. The orange lines are the existing ditches for our current irrigation rights. We would like to move the rights to the pivot system or and change rights from the low ground that the pivot will miss in the bends in the creek to cover the areas that aren't covered by the current rights. The take out point and the first (farthest west) ditch will remain in the same spot. This is so we could use our current ditch system and still flood irrigate the field south of the pivot system.

We feel that by putting in a pivot system we can utilize the water more efficiently. The only change that would be made is a swap of a few acreages from what is covered to what isn't to cover the ground that the center pivot will water. The take out point will remain the same. We want to make sure that this will not effect the date on our water rights. We do not want it to change to a 2001 date. We also want to keep the same amount of acres of irrigation rights that we currently have.

If you have any further questions on this please give me a call at 605-255-4504. If I am not in please leave a message and I will return your call when I can. I can also be reached by e-mail at gbaker@enetis.net.

Sincerely,



Gary Baker





yellow is approximate placement of center pivot
we want to put in - the takeout point and the first
ditch will stay so we can get water to the lower
flood ir. fields.

the orange lines are some of the IRR. Ditches we use
now. -

we want to move the rights to the pivot and ~~the ditch~~
off the low ground that the pivot will miss. in the
bends of the creek *

~~We~~ We want to make sure our water rights
dates stay the same as they are today - we don't
~~want~~ want them to show 2001.

Any Questions please Call Gary Baker
(255-4504 (Herms SA, SP)

Q. How many
Pivot Locations

old Road to Hermosa

RETAIN
Flood IRP Rights
in this

166

NHEL

37.5

NHEL

16 28.4

NHEL
IC

NHEL

35.5

See

J-



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 22, 2001

Gary Baker
HCR 89 Box 291
Hermosa, SD 57744

Dear Mr. Baker:

This is in regards to your request to change a portion of the acreage presently irrigated by a gravity or flood system to irrigation by a center pivot system. No change in acreage or amount of appropriated water presently authorized by Water Licenses 319-2 and 2367-2 is requested.

Enclosed are a partially completed Form 2 (Application for Permit to Appropriate Water for Irrigation), instruction sheet, and a map showing the acreage presently irrigated under licenses 319-2 and 2367-2. The map also shows the diversion point on Battle Creek and based on your description, the approximate area to be irrigated by the proposed center pivot system. It appears that approximately 14 acres will be irrigated in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 T3S R9E using the center pivot that are not currently covered under licenses 319-2 and 2367-2. Please review this map and make any corrections or additions that you feel necessary.

Further processing of your request requires that the enclosed Form 2 be completed identifying the 14 acres to be relocated from the gravity irrigation system and placed under the center pivot system. Also, please show the original location of these acres on the enclosed map.

A \$50 application fee and a \$50 inspection fee for a total of \$100 is required by state law and should be submitted along with the signed and notarized Form 2 and the map identifying the swapped acres.

An acre for acre swap from the gravity irrigation system to the center pivot system with no increase in the amount of water appropriated will not change the priority dates of your water rights.

If you have any questions, please contact me at (605)773-3352.

Sincerely,

Donald E. Stroup
DENR Natural Resources Engineer



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 29, 2003

No. 319-2
2367-2
2367A-2

Battle Creek Valley Ranch Limited Partnership
c/o Gary Baker
HCR 89 Box 293
Hermosa SD 57744

Dear Mr. Baker:

Enclosed are three partially completed "Notice of Transfer" forms for use in filing an ownership change on Water Right Nos. 319-2, 2367-2 and 2367A-3. I believe Mark Rath has talked to you about the transfers.

The transfer forms should be checked over and signed by you. Upon completion, return the forms to our office. We will apply the \$2.50 check already submitted towards one of the transfers. Another \$5.00 will be required for the other two transfers.

If you have any questions, please contact me.

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
605 773-3352

enclosures

Water Management Board
July 9-10, 1997 Meeting Minutes

is a bypass requirement of 3 cfs at the gauging station. That is the only permit that the bypass requirement is officially associated with, but unofficially it has been used for the whole stretch of the creek.

Mr. Schaal said Water Right No. 1170-2, John Stovall, is a flood flow permit issued in 1974. The board will consider an application by John Stovall to permit diversion of water from a dry draw.

Water Right No. 319-2, Gene Baker, has priority dates of 1905 & 1948. The board will consider Mr. Baker's application for a vested right claim.

Mr. Schaal said there are three contested cases, Water Right Filings No. 0359-2, Rodales Ranch, Inc. and Nos. 0422-2 and 0421-2, JD Ranch Real Estate. Filing Nos 0359-2 and 0422-2 share the same diversion point. At one time there was an agreement to make this shared diversion point and now it is causing some contention among the parties.

Water Right No. 1209-2, Edward Kaneshy and No. 1221-2, Rittberger Brothers, are on today's agenda to validate as recognized vested water right claims. They were advertised in the newspaper and the Water Rights Program contested them so an onsite investigation could be conducted.

Mr. Schaal said Water Right Nos. 1275-2, Donald Kaiser and No. 187-2, Clarence Foos, are based on some of the old zero numbers for water rights filings.

VESTED WATER RIGHT APPLICATION NO. 2367-2, ALDEN (GENE) BAKER

Mr. Schaal presented his report on the application (copy on file). He stated that in 1948 when one of the previous landowners wanted a water permit the landowner contacted the state engineer's office and a thorough investigation was done of water availability. Some of the water right filings that were considered inactive at that time were actually active and being used. Water Right Filing No. 0134-2 involves irrigation of 80 acres of approximately 210 acres that are now being irrigated, so Mr. Baker will be given a priority date of 1905 for those 80 acres.

Mr. Schaal stated that the priority date ranking probably doesn't really mean that much because of the water availability in Battle Creek and with the 3 cfs bypass requirement. Mr. Schaal presented a hydrograph of the gauging station at Hermosa and two data sheets from the USGS book. (copy on file). The data sheet for Battle Creek below Hermosa from October 1989 to September 1990 shows that except for short periods following a rain storm, most of the time there is no flow or less than 3 cfs. The data sheet for Hermosa is from October 1994 to September 1995. It is representative of the past few years. Mr. Schaal said during the last three or four years of above normal precipitation there has been quite a bit of flow in Battle Creek and it has a false security to these irrigators.

Water Management Board
July 9-10, 1997 Meeting Minutes

Mr. Schaal said some of the increase in flow is attributed to the Custer State Park fire. Bear Gulch Creek runs through a portion of the fire area and flows to Grace Coolidge Creek which then dumps into Battle Creek.

Mr. Schaal said Mr. Baker had talked to him in the past about having an earlier priority date because it was always being used. Mr. Schaal stated that his investigation of Mr. Baker's file and the rest of the Battle Creek files show that it was being used at the time the original application was made and somehow it got overlooked to include that priority date for those 80 acres.

The chief engineer recommended validation of Application No. 2367-2 with the Low Flow Qualification.

Mr. Schaal noted that none of the Battle Creek applications the board was hearing today have been contested. He stated that at one time the upper 1/3 to 1/2 of Battle Creek was under the Western Cattle Company. They made application in 1960 for some storage and irrigation of land that included priority dates from quite a few of the permits the board will cancel at this meeting. The filings that were considered active at that time include the three that are being contested and Mr. Baker's (No. 0134-2).

MOTION by Freeman, SECONDED by Gunderson, to validate Vested Water Right No. 2367-2, Alden (Gene) Baker, for 1.14 cfs with the Low Flow Qualification, and that the applicable portions of Water Right Filing No. 0134-2 be incorporated into No. 2367-2 and that the abandoned portions of No. 0134-2 be canceled. Motion carried.

Mr. Schaal noted that the hydrograph (45 years of historic record) shows that most of the time the flow is less than 10 cfs in Battle Creek. Some of the arguments about priority dates on the contested cases should not be that big of an issue because there is either enough water for everybody or there is no water available for anybody.

WATER PERMIT APPLICATION NO. 2371-2, JOHN AND DARLENE STOVALL

Mr. Schaal presented his report on the application (copy on file). He noted that this is not a vested right claim; it is a new water permit application. It deals with Water Right No. 1170-2 which is a flood flow permit from Battle Creek.

Mr. Schaal reported that Mr. Stovall constructed a water spreader diking system which utilizes water from a dry draw on the property associated with the flood flow irrigation permit. The dry draw has a drainage area of about 1.5 square miles. Application No. 2371-2 is to appropriate 4.06 cfs from the dry draw to irrigate 284 acres.

The department recommended approval of Application No. 2371-2 without qualifications.

Mr. Schaal noted that there has been no opposition to this application.

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date February 5, 2003

RECEIVED OF Baker Cattle Limited Partnership, RCR 89 Box 223, Hermosa SD 57744

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	2 50	
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>2367--2</u>		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	2.50

No.

000000

By

Darlene E. Ebel

Chief Engineer

gm

NOTICE OF TRANSFER OF OWNERSHIP

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

No. 2367-2

Date: _____

I/We request that Water Right/Permit No. 2367-3

formerly owned by: Alden (Gene) Baker

be transferred to: (name & address) Battle Creek Valley Ranch Limited Partnership

HCR 89 Box 293, Hermosa SD 57744

Telephone No. 605 255-4504

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

80 acres - W 1/2 SE 1/4 Section 21-T3S-R9E

I/We understand that the validity of Water Right/Permit No. 2367-2 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

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

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

I/We Battle Creek Valley Ranch LTO P, the new owner, certify that the above information is true and correct.

Gray Baker, General Partner
(Signed by new owner)

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

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

RECEIVED
FEB - 5 2003
WATER RIGHTS
PROGRAM



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 7, 2003

319-2
2367-2
2367A-2

Battle Creek Valley Ranch Limited Partnership
c/o Gary Baker
HCR 89 Box 293
Hermosa SD 57744

Dear Mr. Baker:

Thank you for following up on the ownership change for Water Right Nos. 319-2, 2367-2, 2367A-2. The transfers have been completed. The water rights are now listed in the name of Battle Creek Valley Ranch Limited Partnership

Enclosed are Receipt Nos. 642-643 in the amount of \$2.50 each. If I can answer any questions for you, please contact me.

Sincerely,

Karen Schlaak

Karen Schlaak
Environmental Scientist
Water Rights Program
(605) 773-3352

enclosures

Water Right Filing No. 2367-2

Battle Creek - Water District

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

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

I have this day, **June 5, 1996**, made a thorough examination of the water use system constructed by **Alden (Gene) Baker** of **HCR 89, Box 293** holder of Water Right Filing No. **2367-2**, bearing the priority of **January 1, 1905** authorizing the diversion of **1.14** cu. ft. per second of the waters of **Battle Creek** for **irrigation** purposes, in **Custer** County.

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

A. Works used to divert the water:

**12 1/8 inch Berkeley Centrifugal pump, Model No. B86RMBM CW, Serial No. 8257235
with a 3 cyl. 353 Detroit Diesel motor**

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

several hundred feet of gravity ditches

C. Works used to apply water to beneficial use:

flood irrigation

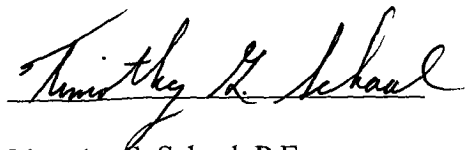
The system is in the following condition **Good**. The point of diversion is located **2400 feet north & 2000 feet east of the SW corner of Section 21-T3S-R9E (NE 1/4 SW 1/4)**. The works are capable of diverting and conveying to the place of use **1.14** cu. ft. per second of water which is to be used for **irrigation**. Water has been put to beneficial use to the maximum extent as follows:

**NW 1/4 SE 1/4 Section 21-T3S-R9E--- 40 Acres
SW 1/4 SE 1/4 " " -- 40**

comprising a total of **80** acres of land and the license should be issued for **1.14**

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

Exceptions to compliance are: **none** Date Report Completed: **July 15, 1997**



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

REPORT ON INSPECTION OF WATER RIGHT FILING NO. 2367-2

Other permit(s) associated with the project: 319-2

DATE OF INSPECTION: June 5, 1996

NAME & ADDRESS OF INSPECTION CONTACT/ Gene Baker

RELATIONSHIP TO PERMIT HOLDER, IF APPLICABLE: owner

NAME & ADDRESS OF PERMIT HOLDER: HCR 89, Box 293

DIVERSION POINT LEGAL LOCATION: Same as No. 319-2--2400 feet north & 2000 feet east of the SW corner of Section 21-T3S-R9E (NE 1/4 SW 1/4).

Pump:

- 1) Make Berkeley centrifugal
- 2) Model B86RMBM CW, Serial No. 8257235
- 3) Size 12 1/8 inch
- 4) Capacity XXX GPM

Motor:

- 1) Make 3 cyl. Detroit Diesel
- 2) Model No. 353
- 3) Horsepower rating 50 hp

DISTRIBUTION LINES OR CANALS:

several hundred feet of ditches

CHEMIGATION EQUIPMENT:

- 1) Does chemigate NO

PERMIT QUALIFICATIONS AND REGULATIONS:

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

16



T. A. G. 110

STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 2367-2 FOR IRRIGATION

(1) Alden (Gene) Baker made Application No. 2367-2, for validation of a vested right claim to appropriate 1.14 cubic feet of water per second from Battle Creek, Custer County, South Dakota, for irrigation purposes. Vested Water Right No. 2367-2 was validated July 10, 1997 with a priority date of January 1, 1905. 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.

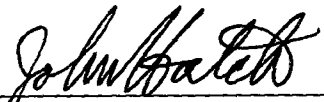
The applicable portions of Water Right Filing No. 0134-2 are incorporated into No. 2367-2 and the abandoned portions of No. 0134-2 being cancelled. This water license utilizes the same diversion point as authorized by Water Right No. 319-2.

(2) The vested right owner is entitled to divert 1.14 cubic feet of water per second for beneficial use. The location of the diversion point is 2,400 feet north and 2,000 feet east of the southwest corner of Section 21-T3S-R9E (NE 1/4 SW 1/4).

The location of the irrigated acreage is:

Section 21-T3S-R9E	NW 1/4 SE 1/4	40 acres
	SW 1/4 SE 1/4	40 acres
	Total	80 acres

(3) Pursuant to Section 46-5-30.1 Alden (Gene) Baker, HCR 89, Box 293, Hermosa SD 57744 the holder and/or owner of Vested Water Right No. 2367-2 is issued a license to appropriate 1.14 cubic feet of water per second from Battle Creek with a priority date of January 1, 1905 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. 2367-2 and subject to South Dakota State Law.



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

NOV 12 1997

date





**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

NOV 12 1997

VR 2367-2

Alden (Gene) Baker
HCR 89, Box 293
Hermosa, SD 57744

Dear Mr. Baker:

Enclosed are your Validated Vested Water Right and Water License No. 2367-2. 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 Program
(605) 773-3352

enclosures

NOTE: The applicable portions of Water Right Filing No. 0134-2 are incorporated into No. 2367-2.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 20, 2004

NOTICE OF SHUTOFF ORDER

TO: BATTLE CREEK VALLEY RANCH
GARY BAKER, GENERAL PTR
HCR 89 BOX 291
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. 2367-2 2367A-2 2367B-2 319-2

Effective immediately no diversions of water from Battle Creek will be allowed. On July 20, 2004, flow in Battle Creek is at 0.79 cubic feet of water per second (cfs) which is well below the 3 cfs minimum flow bypass for domestic use. This flow is measured at the USGS gaging station by the Hwy 40 bridge east of Hermosa. Water availability in Battle Creek has reached critically low levels and diversions of water are interfering with domestic use including livestock watering. According to South Dakota Codified Law 46-1-5, domestic use takes precedence over appropriative water uses such as irrigation and commercial uses.

Flows in Battle Creek will be closely monitored, and if the flows increase and stabilize at a level sufficiently higher than the 3.0 cfs domestic use bypass, this shutoff order may be rescinded. If conditions do not improve, this order remains in effect until December 31, 2004.

I am asking for your cooperation in complying with this shutoff order. If you have any questions, please contact Mark Rath or Don Stroup with the Water Rights Program at (605) 773-3352. Thank you.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 18, 2005

NOTICE OF MODIFICATION TO 1990 BATTLE CREEK ORDER

TO: Battle Creek Water Users

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program

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

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

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

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

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

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

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

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

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

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

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

2367-2



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:

2367-2

PERMIT_NO	PTL_PRIOR1	PTL_PRIOR2	PRIORDATE	COUNTY	STATUS	USE	FIRST_NAME	LAST_NAME	ADDRESS2	CITY	STATE	ZIP	PLUS4
2153-2			05/01/1882	CU	LC	IRR		NEUGEBAUER BROTHERS DAIRY	14197 SD HWY 40	HERMOSA	SD	57744	
969-2			05/01/1882	CU	LC	IRR		NEUGEBAUER BROTHERS	14197 SD HWY 40	HERMOSA	SD	57744	
2368-2			10/14/1887	CU	LC	IRR		CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
2368A-2			10/14/1887	CU	PE	IRR		CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
0421-2			10/27/1894	CU	PE	IRR		JD RANCH REAL ESTATE LLC	HCR 89 BOX 298	HERMOSA	SD	57744	
0170-2			12/29/1895	CU	PE	IRR	CLARENCE	FOOS	HCR 89 BOX 317	HERMOSA	SD	57744	
2373-2			03/02/1896	CU	LC	IRR		RODALES RANCHES, INC.	8730 SHERIDAN LAKE RD	RAPID CITY	SD	57702	9066
1209-2			09/29/1900	CU	LC	IRR	EDWARD/BETTY S	KANESKY	BOX 52	CAPUTA	SD	57725	
1221-2			09/29/1900	CU	LC	IRR		RITTBERGER 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			09/1/1912	CU	LC	IRR	CLARENCE	FOOS	PO BOX 317	HERMOSA	SD	57744	0317
1275-2			01/01/1935	CU	LC	IRR	DONALD	KAISER	15745 SD HWY 40	HERMOSA	SD	57744	
319-2			07/17/1948	CU	LC	IRR		BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
1170-2			01/28/1974	CU	LC	IRR	JOHN/DARLENE	STOVALL	14829 SD HWY 40	HERMOSA	SD	57744	
1283-2			08/01/1975	CU	PE	COM	PE TE	LIEN & SONS INC	PO BOX 440	RAPID CITY	SD	57709	0440
2064-2			03/15/1988	CU	LC	IRR		NEUGEBAUER BROTHERS	14197 SD HWY 40	HERMOSA	SD	57744	



2367-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

JUN 20 2007

2367B-2

Battle Creek Valley Ranch Limited Partnership
15199 Baker Rd
Hermosa SD57744

Dear Sir:

Enclosed is Water License No. 2367B-2. This is the final water right document completing your process of obtaining a Water Right. Also, included with your license is a map prepared by the staff engineer who conducted the investigation.

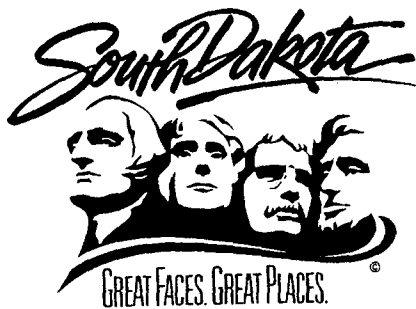
As long as you use the water beneficially, as stated in the Water License, the State Water Laws provide that you have a continuing right to use the water. If you have any questions, please contact our office.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program
(605) 773-3352

Note: The applicable portions of No. 319-2, 2367-2 and 2367A-2 are incorporated into Water License No. 2367B-2.

enclosures



**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

GARY BAKER, GENERAL PTR
BATTLE CREEK VALLEY RANCH
15199 BAKER RD
HERMOSA, SD 57744

Dear Water Right Holder;

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

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

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

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

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

Sincerely,

Garland Erbele, Chief Engineer
DENR, Water Rights Program

attachment

06/20/2012

Battle Creek Water Rights

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