

WATER PERMIT NO. 2367A-2

Name of Applicant: Baker Cattle PTO

Address: HCR 89 Box 293, Hermosa SD 57744

Phone: 605 255-4245

Amount of Water Claimed: no additional

Total Acres: no additional

Source of Water Supply: Battle Creek

Water to be used for: irrigation County: Custer

Type of Waste Disposal System:

Location: approximately 5 miles southeast of Hermosa

PRIORITY Date Received: 2-1-2001

Fee: \$50.00

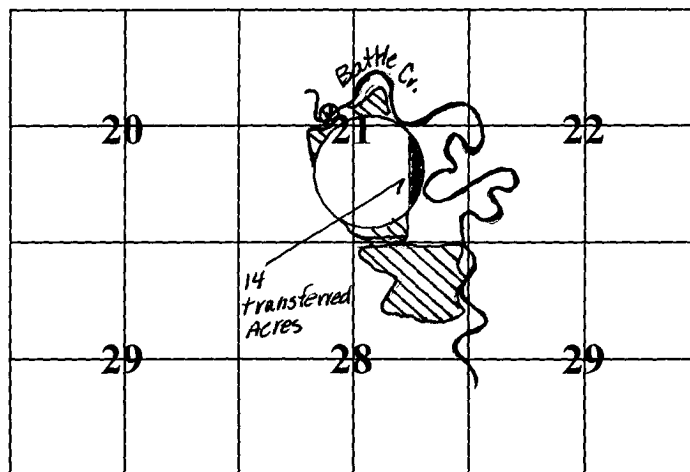
Corrected Application Received:: 2-6-2001

Period of Annual Use: April 1 – September 30

Remarks: change of acreage to allow for a center pivot system

Diversion Point: SE ¼ NW ¼ Sec 21-T3S-R9E

Land to be Irrigated: SW ¼ NE ¼, SE ¼ NW ¼, E
½ SW ¼, SE ¼ Section 21; NE ¼ Section 28;
all in T3S-R9E



Depth of Well: NA

Well Driller: : NA

Remarks:

Type of Map: topo

Prepared by: Donald E Stroup

Reviewed and the Number Assigned on: 2-6-2001

By: Karen Schlaak

Notice of Hearing - date to intervene: _____

FORM 2: Application for irrigation in South Dakota
(type or print)

Mail to: Water Rights Program Joe Foss Building 523 E. Capitol Pierre, SD 57501-3181 (605) 773-3352	(office use only) No. <u>2367A-2</u> Hydrologic Unit <u>10120109</u>
	Basin <u>Upper Cheyenne</u>
	Newspaper <u>Custer County Chronicle, Custer</u>
	<u>605-673-2217</u>

Application For Permit To Appropriate Water For Irrigation

Type of Application: New X Vested Right X Amendment/Correction to License No. 319-2 & 2367-2
(Use predates Mar 2, 1955)

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.) Change 130 acres from gravity irrigation system to center pivot irrigation system.

- Name of Applicant Baker Cattle PTO Phone 605 255 4245
(check one) Owner Tenant/lessee
Mailing Address HCR 89 Box 293 Hermosa State SD 57744
(Street, RR, or Box and City) (Zip Code)
- Amount of water claimed NA *CFS or **GPM ***AF Total Acreage NA
(*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)
- Source of water supply Battle Creek, Custer County, South Dakota
- Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) ~~SE1/4 NW1/4~~ Section 21 T3S R9E
NE1/4 SW1/4
County Custer
- County or counties where water will be used Custer
- Annual period during which water is to be used April 1 through September 30
- 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
<u>See attached list</u>			

- Give a description of the project. (Attach sheet if more space is needed)
Change approximately 130 acres from irrigation by gravity to irrigation by a center pivot system. No increase in appropriated water or acres irrigated under Water Licenses 319-2 and 2367-2 is authorized by this application.

STATE OF SOUTH DAKOTA) SS
County of Pennington

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)

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

Applicant's signature Jim Baker (truster)

Subscribed and sworn to before me this 26th day of January 19 2001

Rita Baker

Notary Public signature



BAKER CATTLE LAND DESCRIPTION FOR IRRIGATION

Section 21	
SW1/4 NE1/4	6
SE1/4 NW1/4	3
NW1/4 SE1/4	40
NE1/4 SW1/4	22
SW1/4 SE1/4	40
SE 1/4 SW 1/4	12
NE1/4 SE1/4	10
SE1/4 SE1/4	4
Section 28	
NE1/4 NE1/4	32
NW1/4 NE1/4	20
SE1/4 NE 1/4	14
SW1/4 NE1/4	5

was 20 acres but swapped for 14
acres below.

> approximate 14 acres in swap.

SOUTH DAKOTA
WATER PERMIT NO. 2367A-2 FOR IRRIGATION

Date of first receipt of application February 1, 2001.

Date of return to applicant for corrections, amendments or changes February 1, 2001.

Date of receipt of corrected application February 6, 2001.

The Water Management Board approved Water Permit Application No. 2367A-2 on May 2, 2001 for Baker Cattle PTO, HCR 89 Box 293, Hermosa SD 57744 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 2367A-2 authorizes changing the location of 14 acres irrigated under Vested Water Right No. 319-2. Vested Water Right No. 319-2 and Vested Water Right No. 2367-2, combined, appropriate water from Battle Creek to irrigate 208 acres located in portions of the SW ¼ NE ¼, SE ¼ NW ¼, W ½ SE ¼, E ½ SW ¼ Section 21 and NE ¼ Section 28; all in T3S-R9E. The point of diversion is in the NE ¼ SW ¼ Section 21, T3S, R9E. The acreage relocation is to accommodate the installation of a center pivot irrigation system on the property and will change 130 acres from a gravity irrigation to a center pivot irrigation system. Fourteen of the 20 acres previously irrigated in the SW ¼ NE ¼ Section 21 will no longer be irrigated. The irrigation of those 14 acres will be transferred to the E ½ SE ¼ Section 21 to allow a center pivot to be set up and make a complete rotation. The remaining 78 acres will continue to be gravity irrigated. No increase in the diversion rate or number of acres irrigated is authorized by this permit.
2. The amount of the appropriation may not exceed 3 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: April 1 – September 30.
3. The date from which applicant may claim right is January 1, 1905 (established by Water Right No. 2367-2).
4. One-fifth of the construction is to be completed on or before November 2, 2003.
5. All construction is to be completed on or before May 2, 2006.
6. Water is to be put to beneficial use on or before May 2, 2010.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be by-passed.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

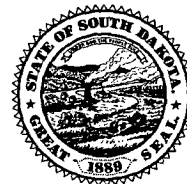
WATER MANAGEMENT BOARD

By: Garland Erbele

Garland Erbele, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

JUN 06 2001

date



**Diversion Point
for 2367-2 and
319-2**

**Approximately 14 acres
not included in either 319-2
or 2367-2**

**Approximate area
covered by proposed
center pivot system**

**Irrigated Acreage
from 1996 Inspection**

Baker All T3S R9E
2367-2 1.14 cfs 80 acres
Sec. 21
NW1/4 SE1/4
SW1/4 SE1/4

This application changed
the diversion point to the
same as 319-2 for 80 acres
that was covered under
134-2 and is now included
in 319-2.

319-2 2.9 cfs 208 acres

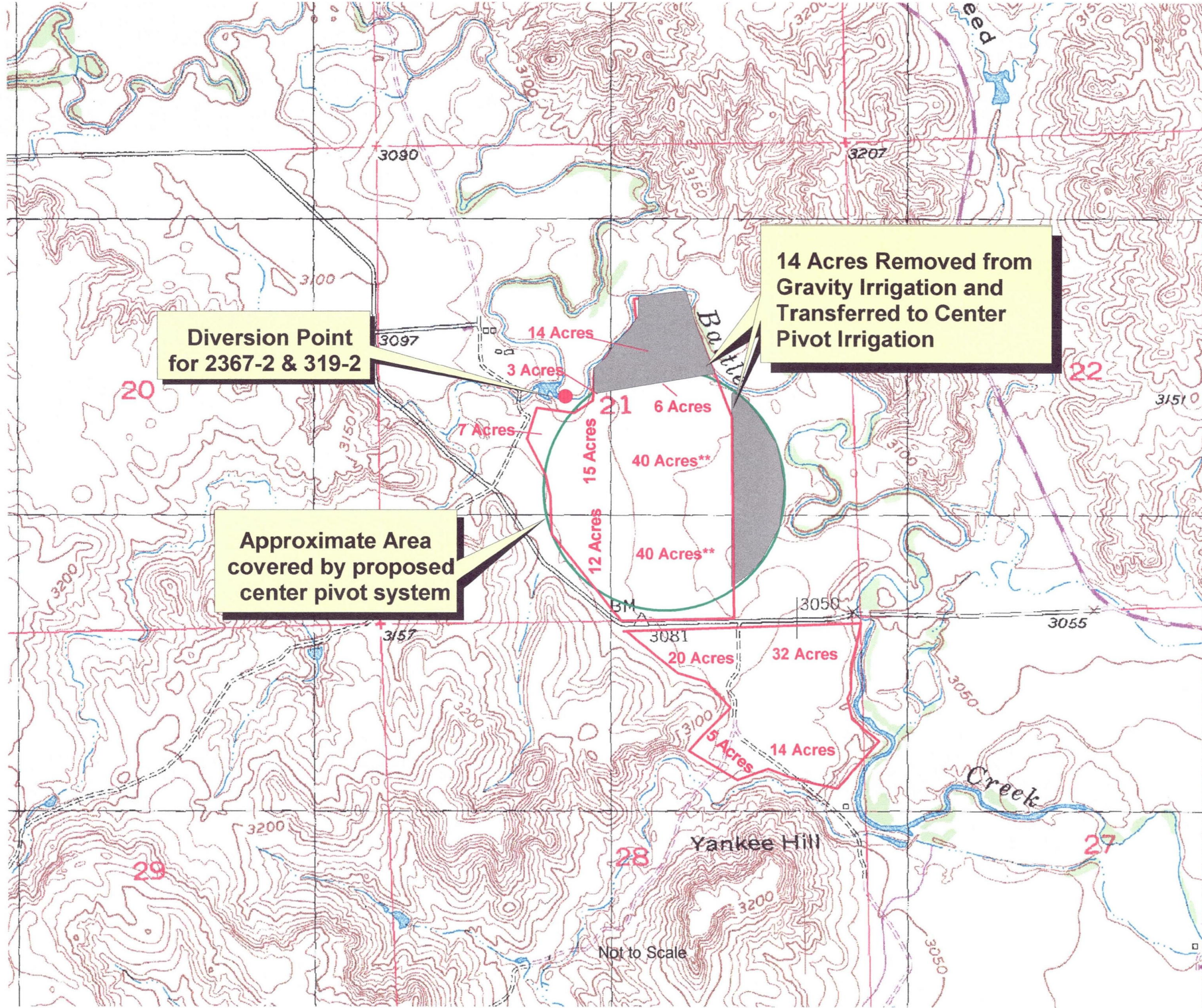
Sec. 21
SW1/4 NE1/4 20
SE1/4 NW1/4 3
NW1/4 SE1/4 40
NE1/4SW1/4 22
SW1/4 SE1/4 40
SE1/4 SW1/4 12

Sec. 28
NE1/4 NE1/4 32
NW1/4 NE1/4 20
SE1/4 NE1/4 14
SW1/4 NE1/4 5

Donald E. Stroup
Donald E. Stroup

DENR Natural Resources Engineer

2367A-2



2367A-2 Baker Cattle PTO
All T3S R9E

23678-2
Priority 1/1/1905 1.14 cfs 80 Acres
Sec. 21 Included in 130 Acres Center
Pivot Irrigated
NW1/4 SE1/4 40 Acres **
SW1/4 SE1/4 40 Acres **

This VR changed the diversion
point to the same as 319-2 for 80
acres that were authorized by
0134-2 and are now listed in both
319-2 and 2367-2.

319-2
Priority 7/17/1948 2.9 cfs 208 Acres
Sec. 21 50 acres included in 130 acres
Center Pivot Irrigated.
SW1/4 NE1/4 6 Acres
SE1/4 NW1/4 3 Acres
NE1/4 SW1/4 15 Acres
SE1/4 SW1/4 12 Acres
E1/2 SE1/4 14 Acres ***

Acres Gravity Irrigated
Sec. 21
NE1/4 SW1/4 7 Acres

Sec. 28
NE1/4 NE1/4 32 Acres
NW1/4 NE1/4 20 Acres
SE1/4 NE1/4 14 Acres
SW1/4 NE1/4 5 Acres

Legend

**

Acres Listed in No 2367-2
& 319-2

Irrigated Acres from 1996
Inspection

Acres Relocated from the
SW1/4 NE1/4 Section 21

Donald E. Stroup
Natural Resources Project Engineer
DENR



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 1, 2001

Gary Baker
HCR 89, Box 291
Hermosa SD 57744

Dear Mr. Baker:

Thank you for submitting the *Application for a Permit to Appropriate Water* for Baker Cattle PTO. As stated in our January 22, 2001 letter, a \$50 application fee and a \$50 licence fee (\$100.00 total) is required for the application.

Upon receipt of the fee, further processing of the application will continue. If you have any questions, please contact me.

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
605 773-3352

Sorry that we forgot to send this!



RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

NE 416749

Pierre, February 6, 2001

RECEIVED OF Baker Cattle PTO, 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>2367A-2</u> to Appropriate Water, to construct and to put water to beneficial use _____	50	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. <u>2367A-2</u>	50	00
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	100 00

By

Chief Engineer

Darland Erbe

gmv

March 1, 2001

Memorandum

To: Files 319-2, 2367-2 and 2367A-2

From: Donald E. Stroup, DENR Natural Resources Engineer

Subject: Required Changes to Vested Water Right Nos. 319-2, 2367-2 & 2367A-2

Location of the center pivot proposed in 2367A-2 covers approximately 14 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 21 T3S R9E not authorized by either Vested Water Right Nos. 319-2 or 2367-2. Installing the center pivot system and relocating 14 acres will also change a total of 130 acres included in Vested Water Right Nos. 319-2 and 2367-2 from gravity to center pivot irrigation. Attached Table 1 summarizes acreage, diversion rates, and required changes to Vested Water Right Nos. 319-2 and 2367-2.

The 80 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 T3S R9E from original Water Right Filing No. 0134-2 that are listed in both Vested Water Right Nos. 319-2 and 2367-2 are included in the 130 acres to be irrigated by the proposed center pivot system. The remaining 50 acres of the 130 acres are from Vested Water Right 319-2.

To operate the center pivot and remaining gravity systems with no increase in the authorized diversion rates for Vested Water Right Nos. 2367-2 and 319-2, individual diversion rates by acres irrigated should be interpolated proportionally to obtain adjusted diversion rates for the two systems. This can be done by the simple relational formula of;

New Rate is to New Acres as Old Rate is to Old Acres and solving for the New Rate

Of the 207.6 acres (208 actual acres from 1996 examination) listed in Vested Water Right No. 319-2, the 80 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 T3S R9E are the same acres listed as being irrigated under Vested Water Right 2367-2 with a diversion rate of 1.14 cfs and priority date of January 1, 1905. These 80 acres should be removed from the authorized irrigated acreage included in Vested Water Right No. 319-2. The total irrigated acreage in Vested Water Right No. 319-2 should be reduced to 128 (208 acres minus 80 acres) acres with a diversion rate of 1.78 cfs ($2.9\text{cfs}/208\text{acres}=\text{NewRate}/128\text{acres}$) with a priority date of July 17, 1948 (Table 1).

The diversion rate of 1.14 cfs for the 80 acres in Vested Water Right 2367-2 is the maximum allowed by state law. A diversion rate of 1.78 cfs for the adjusted 128 acres in Vested Water Right 319-2 is very near the allowed maximum of 1.83 cfs. Eighty (80) of the 130 acres proposed for irrigation by the center pivot system are from Vested Water Right 2367-2 @ 1.14 cfs diversion rate and 50 acres are from adjusted Vested Water Right 319-2 @ 1.78 cfs diversion rate for 128 acres (Table 1).

To operate the proposed center pivot and remaining gravity irrigation systems without exceeding the diversion rates authorized by Vested Water Right Nos. 2367-2 and 319-2, individual diversion rates by acres irrigated should be interpolated proportionally to obtain adjusted diversion rates for the two systems. Interpolating proportionally for 80 acres at a 1.14 cfs diversion rate and for 50 of 128 acres at a 1.78 cfs diversion rate would give an adjusted diversion rate of 1.14 cfs plus 0.695 cfs

($1.78\text{cfs}/128\text{acres}=\text{NewRate}/50\text{acres}$) for the 50 acres to equal 1.84 cfs for the center pivot system. A diversion rate of 1.84 cfs for 130 acres is very near the maximum of 1.86 cfs allowed by state law. The adjusted diversion rate for the remaining gravity irrigated 78 acres from Vested Water Right 319-2 should be 1.08 ($1.78\text{cfs}/128\text{acres}=\text{NewRate}/78\text{acres}$) cfs which is very near the allowed maximum of 1.11 cfs (Table 1).

Water Right #	Priority Date	Diversion Point & Rate	Irrigated Land		Notes/Modifications
0134-2	01/01/1905	SW $\frac{1}{4}$ Sec 16 6 cfs	Section 21 SW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ Number of acres not listed		Incorporated into #2367-2 with abandoned portions cancelled.
319-2	07/07/1948	NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 21 2.9 cfs	Section 21 SW $\frac{1}{4}$ NE $\frac{1}{4}$ 20 acres SE $\frac{1}{4}$ NW $\frac{1}{4}$ 3 acres NW $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres** NE $\frac{1}{4}$ SW $\frac{1}{4}$ 22 acres SW $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres** SE $\frac{1}{4}$ SW $\frac{1}{4}$ 12 acres Total 137 acres	Section 28 NE $\frac{1}{4}$ NE $\frac{1}{4}$ 32 acres NW $\frac{1}{4}$ NE $\frac{1}{4}$ 20 acres SE $\frac{1}{4}$ NE $\frac{1}{4}$ 14 acres SW $\frac{1}{4}$ NE $\frac{1}{4}$ 5 acres Total 71 acres Grand Total 208 acres	Acreege and locations from 1996 inspection. Eighty (80) acres from 2367-2 removed from 319-2, adjusting 319-2 to 128 acres, diversion rate 1.78 cfs, and priority date 07/17/1948.
2367-2	01/01/1905	NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 21 1.14 cfs	Section 21 NW $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres** SW $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres**		Based on 0134-2. Changed Diversion Point to Same as #319-2. Same 80 acres included in #319-2.
2367A-2	01/01/1905 for 80 acres in Sec 21 irrigated by pivot 07/17/1948 for 50 acres irrigated by pivot Sec 21 and 78 acres gravity irrigated Sec 21 & 28	NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 21 1.14 cfs for 80 acres from 2367-2 1.78 cfs for 128 acres from 319-2 1.84 cfs for 130 acres center pivot irrigated	Acres from 2367-2 Pivot Irrigated Section 21 NW $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres** SW $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres** Total 80 acres Acres from 319-2 Pivot Irrigated Section 21 SW $\frac{1}{4}$ NE $\frac{1}{4}$ 6 acres NE $\frac{1}{4}$ SW $\frac{1}{4}$ 15 acres SE $\frac{1}{4}$ NW $\frac{1}{4}$ 3 acres SE $\frac{1}{4}$ SW $\frac{1}{4}$ 12 acres E $\frac{1}{2}$ SE $\frac{1}{4}$ 14 acres*** Total 50 acres Grand Total 130 acres	Acres from 319-2 <u>Gravity Irrigated</u> Section 21 NE $\frac{1}{4}$ SW $\frac{1}{4}$ 7 acres Total 7 acres Section 28 NE $\frac{1}{4}$ NE $\frac{1}{4}$ 32 acres NW $\frac{1}{4}$ NE $\frac{1}{4}$ 20 acres SE $\frac{1}{4}$ NE $\frac{1}{4}$ 14 acres SW $\frac{1}{4}$ NE $\frac{1}{4}$ 5 acres Total 71 acres Grand Total 78 acres	Eighty (80) acres from 2367-2 removed from 319-2, adjusting 319-2 to 128 acres, diversion rate 1.78 cfs, and priority date 07/17/1948. Diversion rate for the 50 acres from 319-2 included in the 130 acres irrigated by center pivot adjusted to 0.695 cfs. Diversion rate of 1.14 cfs for 80 acres from 2367-2 and 0.695 cfs for 50 acres from 319-2 gives a diversion rate of 1.84 cfs for the total 130 acres center pivot irrigated.

** Acres included in both 319-2 & 2367-2

*** Acres relocated from SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 21

Table 1. Water Rights and Acreage (All T3S R9E)



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2367A-2, Baker Cattle PTO**

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 Water Permit Application No. 2367A-2, Baker Cattle PTO, c/o Jim Baker, HCR 89 Box 293, Hermosa SD 57744.

The Chief Engineer is recommending APPROVAL of Application No. 2367A-2 because 1) the proposed diversion can be developed without unlawful impairment of existing rights, 2) the proposed use is a beneficial use and 3) it is in the public interest with the following qualifications:

1. Low flows as needed for downstream domestic use, including livestock watering and prior water rights must be by-passed.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Garland Erbele, Chief Engineer
March 12, 2001

REPORT ON WATER PERMIT APPLICATION 2367A-2
Baker Cattle PTO
HCR 89 Box 293, Hermosa, SD 57744
March 5, 2001

Water Permit Application No. 2367A-2, Baker Cattle PTO, proposes to change the location of 14 acres irrigated under Vested Water Right No. 319-2. The proposed acreage relocation is to accommodate the installation of a center pivot irrigation system on the property. Vested Water Right Nos. 319-2 and 2367-2 appropriate water from Battle Creek with the diversion point located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 T3S R9E to irrigate a total of 208 acres in portions of Sections 21 and 28 T3N R9E. The applicant intends to change the type of irrigation on a portion of this land from gravity to center pivot sprinkler irrigation by swapping 14 gravity-irrigated acres from the SW $\frac{1}{4}$ NE $\frac{1}{4}$ to the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 21 to allow for full rotational coverage of a 130-acre center pivot irrigator. The remaining 78 acres will continue to be irrigated by the in-place gravity system. The proposed project is located approximately 5 miles South East of Hermosa, Custer County, SD. No increase in the amount of water appropriated or acres irrigated by Vested Water Right Nos. 319-2 and 2367-2 are requested by this application. Attachment 1 shows the acreage and changes to the water rights involved in this proposed amendment.

History and Review of the Project

Original Water Right Filing No. 0134-2 was located by M.J. Everly on January 1, 1905 in the SW $\frac{1}{4}$ of Section 16 T3S R9E for 300 miners inches (6 cubic feet per second (cfs)) of water from Battle Creek for irrigation of land in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 21 T3S R9E. This water right was subsequently transferred to Arthur Kroth who assisted by Consulting Engineer Julian Staven of Rapid City filed for Water Right No. 319-2 in 1948. An inquiry to the State Engineer for advice on processing Mr. Kroth's application was made by Julian Staven who indicated that Mr. Kroth was presently diverting water from Battle Creek at a rate of 500 gallons per minute (gpm) (1.114 cfs) to irrigate 65 acres and had been doing so for some time. Mr. Kroth also wanted to increase the irrigated land to 200 acres and possibly to 400 acres at a later date.

Vested Water Right No. 319-2 was issued with a priority date of July 17, 1948 for a 2.9 cfs diversion rate from Battle Creek to irrigate 207.6 acres in Sections 21 and 28 T3S R9E. The maximum diversion rate allowed by state law to irrigate 207.6 acres is 2.97 cfs (one cubic foot of water per second for each 70 acres or the equivalent thereof). Eighty (80) acres from original Water Right Filing No. 0134-2 located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ (40 acres) and SW $\frac{1}{4}$ SE $\frac{1}{4}$ (40 acres) of Section 21 T3S R9E (Attachment 1) were included in the 207.6 acres listed in Vested Water Right No. 319-2.

The owner of the land in 1996, Alden Baker, filed an application for Vested Water Right No. 2367-2 based on original Water Right Filing No. 0134-2. Vested Water Right No. 2367-2 claimed 1.14 cfs of water from Battle Creek to irrigate 80 acres located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21 T3S R9E (Attachment 1), land that was already listed in Water Right Filing No. 319-2. The diversion rate of 1.14 cfs of water is the maximum allowed by state law to irrigate 80 acres (one cubic foot of water per second for each 70 acres or the equivalent thereof). Vested Water Right No. 2367-2 also changed the original Water Right Filing No. 0134-2 diversion point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16 T3S R9E to the same diversion point as Vested Water Right No. 319-2 from Battle Creek in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 T3S R9E. Vested

Water Right No. 2367-2 was issued to irrigate 80 acres located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21 T3S R9E with a diversion rate of 1.14 cfs and a priority date of January 1, 1905. Applicable portions of Water Right Filing No. 0134-2 were incorporated into Vested Water Right No. 2367-2 with abandoned portions being cancelled.

An onsite examination in 1996 by the Department of Environment and Natural Resources (DENR) Water Rights Program showed a total of 208 acres irrigated by gravity in Sections 21 and 28 T3S R9E as authorized by Vested Water Right Nos. 319-2 and 2367-2 (Attachment 1).

Proposed Change and Authorized Diversion Rates

Application No. 2367A-2 proposes to amend Vested Water Right Nos. 319-2 and 2367-2 by relocating 14 of 20 gravity-irrigated acres authorized by Vested Water Right No. 319-2 in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ to the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 21 T3N R9E to allow for full rotational coverage of a 130-acre center pivot irrigator. The remaining 6 of these 20 acres will be included in the 130 acres irrigated by the center pivot. Attachment 1 shows the acreage and changes to the water rights involved in this proposed amendment.

The location of the proposed center pivot making full rotation will cover approximately 14 acres not authorized by either Vested Water Right Nos. 319-2 or 2367-2 in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 21 T3S R9E. Installing the center pivot system and relocating the 14 acres will also change a total of 130 acres included in Vested Water Right Nos. 319-2 and 2367-2 from gravity to center pivot irrigation. The 80 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 T3S R9E originally authorized by Water Right Filing No. 0134-2 and listed in both Vested Water Right Nos. 319-2 and 2367-2 are included in the 130 acres to be irrigated by the proposed center pivot system (Attachment 1). No increase in the total acreage irrigated or diversion rate of water from Battle Creek is requested by this proposed amendment to Vested Water Right Nos. 319-2 and 2367-2.

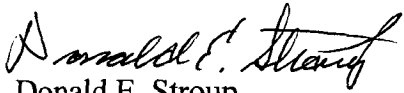
State law limits diversion rates to 1 cubic foot of water per second for each 70 acres irrigated or the equivalent thereof. Of the 207.6 acres listed in Vested Water Right No. 319-2, the 80 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 T3S R9E are the same acres listed as being irrigated under Vested Water Right 2367-2 with the maximum allowed diversion rate of 1.14 cfs and priority date of January 1, 1905. The diversion rate of 2.9 cfs for Vested Water Right 319-2 is very near the allowed maximum of 2.97 cfs to irrigate the actual 208 acres noted in the 1996 examination.

Diversion rates that do not exceed those authorized by Vested Water Right Nos. 319-2 and 2367-2 for the 130 acres irrigated by the proposed center pivot irrigator and the remaining 78 acres gravity irrigated can be obtained by proportionally interpolating the acreage and historical diversion rates involved in this proposed amendment. This can be done by the simple relational formula; *"New Rate is to New Acres as Old Rate is to Old Acres and solving for the New Rate"*.

Diversion rates of 1.84 cfs for the 130 acres center pivot irrigated and 1.08 cfs for the remaining 78 acres gravity irrigated are obtained by proportional interpolation that do not exceed the historical withdrawals from Battle Creek authorized by Vested Water Right Nos. 319-2 and 2367-2.

Conclusions

1. Baker Cattle PTO proposes to amend Vested Water Right Nos. 319-2 and 2367-2 by relocating 14 gravity-irrigated acres from the SW $\frac{1}{4}$ NE $\frac{1}{4}$ to the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 21 T3N R9E to allow for full rotation coverage of a 130-acre center pivot irrigator.
2. One hundred and thirty (130) acres will also be changed from irrigation by gravity to irrigation by the center pivot system with no increase in total acreage irrigated or diversion rate of water from Battle Creek.
3. Only 6 acres remain in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21 T3N R9E authorized for irrigation. The only acreage remaining in Section 21 T3N R9E irrigated by the gravity system is 7 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$. (Attachment 1)
4. Adjusted diversion rates for the 130 acres irrigated by the center pivot system and the 78 acres irrigated by gravity should be 1.84 and 1.08 cfs respectively.
5. The priority date for the 50 acres included in the 130 acres irrigated by the center pivot system and the 78 acres gravity irrigated as authorized by Vested Water Right No. 319-2 and listed on Attachment 1 should be July 17, 1948. The priority date for the 80 acres included in the 130 acres irrigated by the center pivot system as authorized by Vested Water Right 2367-2 and listed on Attachment 1 should be January 1, 1905.
6. This amendment to Vested Water Right Nos. 319-2 and 2367-2 will not change historical diversion amounts from Battle Creek or affect existing water rights.
7. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.


Donald E. Stroup
Natural Resources Engineer
DENR Water Rights Program

Reviewed by:


Mark D. Rath
Natural Resource Engineering Specialist
DENR Water Rights Program

References:

South Dakota Department of Environment and Natural Resources, Water Rights Program Records



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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

March 12, 2001

Gary Baker
Baker Cattle PTO
HCR 89 Box 293
Hermosa, SD 57744

Dear Mr. Baker:

Water Permit Application No. 2367A-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 Chronical 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 57501-3182
www.state.sd.us/denr

March 12, 2001

Custer County Chronicle
Box 551
Custer, SD 57730-0551

ATTENTION: Legal Public Notice

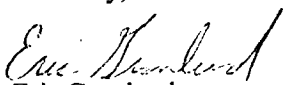
Enclosed is a Notice of Hearing on Application No. 2367A-2 to Appropriate Water to be published twice. Please publish the first notice on March 22, 2001 with the second publication 7 days later.

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 Gary Baker, Baker Cattle PTO, HCR 89 Box 293, Hermosa, SD 57744 (Ph # 605-255-4245).

Please send the Water Rights Program the first publication immediately. The publication is checked for accuracy so any corrections can be made in the second publication. You may use the form below or fax a copy of the first publication. Any fax should be sent to the attention of Karen Schlaak at (605) 773-4068. Publication errors can invalidate the public notice.

After the second publication, please send us an affidavit or use the enclosed Proof of Publication form. The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,


Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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

No. 2367A-2

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

Date _____

We are in receipt of your letter of March 12, 2001 enclosing Notice of Hearing to Appropriate Water by Application No. 2367A-2 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 22, 2001 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING on Application No. 2367A-2 to Amend Water Right Nos. 319-2 and 2367-2

Notice is given that Baker Cattle PTO, HCR 89 Box 293, Hermosa SD 57744 has filed an application proposing to change the location of 14 acres irrigated under Vested Water Right No. 319-2. Vested Water Right No. 319-2 and Vested Water Right No. 2367-2, combined, appropriates water from Battle Creek to irrigate 208 acres located in portions of the SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ Section 21 and NE $\frac{1}{4}$ Section 28; all in T3S-R9E. The point of diversion is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21, T3S, R9E. The proposed acreage relocation is to accommodate the installation of a center pivot irrigation system on the property and will change 130 acres from a gravity irrigation to a center pivot irrigation system. Fourteen of the 20 acres previously irrigated in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 21 will no longer be irrigated. The irrigation of those 14 acres will be transferred to the E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 21 to allow a center pivot to be set up and make a complete rotation. The remaining 78 acres will continue to be gravity irrigated. No increase in the diversion rate or number of acres irrigated is authorized by this application.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2367A-2 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) 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 April 20, 2001. 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 The Matthew Training Center, Foss Building, 523 E. Capitol Ave., Pierre, SD at 9:30 A.M. May 2, 2001. 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 May 2, 2001 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 20, 2001. 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 April 20, 2001, 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. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.

Affidavit of Publication

State of South Dakota)

)ss.

County of Custer)

Charles W. Najacht of said county, being duly sworn, on oath says that he is publisher of the Custer County Chronicle, a weekly newspaper printed and published in Custer City, said County of Custer and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein, mentioned, and was and is printed wholly or in part in an office maintained at said place of publication: that the

Gary Baker

Application # 2367B-2

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for 2 successive week(s), on which said newspaper was regularly published, to wit:

Feb. 12, 2003; Feb. 19, 2003;

_____, _____;

_____, _____;

_____, _____;

the full amount of the fees for the publication of the annexed notice is \$ 50.00.

Charles W. Najacht

Subscribed and sworn to me before this 19

of February, 2003;

Norma Najacht

NOTARY PUBLIC

MY COMMISSION EXPIRES: May 5, 2006

NOTICE OF APPLICATION NO.

2367B-2

TO APPROPRIATE WATER

Notice is given that Battle Creek Valley Ranch Limited Partnership, c/o Gary Baker, HCR 89 Box 293, Hermosa SD 57744 has filed a water permit application proposing to add a second diversion point and change the location of 90 irrigated acres authorized by Water Right Nos. 319-2, 2367-2 and 2367A-2. If approved, the application will accommodate the installation of a center pivot irrigation system on the property.

Water Rights Nos. 319-2, 2367-2 and 2367A-2, combined, appropriate 2.92 cubic feet of water per second from Battle Creek to irrigate 208 acres located in the E 1/2SW 1/4, SE 1/4, SE 1/4 NW 1/4 and SW 1/4 NE 1/4 of Section 21 and the NE 1/4 of Section 28; all in T3S, R9E. The diversion point from Battle Creek is located in the NE 1/4 SW 1/4 of Section 21, T3S, R9E. Presently, a center pivot irrigates 118 acres in a portion of the S 1/2 of Section 21, T3S, R9E. The applicant intends to change the location of the 90 remaining acres not irrigated by the existing center pivot. The applicant proposes to set up a center pivot in the SW 1/4 of Section 27 capable of irrigating 90 acres. The application also requests an additional diversion point from Battle Creek located in the NE 1/4 SW 1/4 Section 27, T3S, R9E to supply water to this pivot. No increase in the amount of water appropriated or acres irrigated are authorized by this application.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2367B-2 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on the application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider the application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting 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 March 3, 2003.

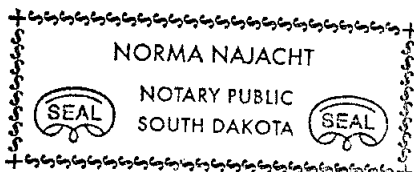
The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pimer, Secretary, Department of Environment and Natural Resources.

#53, 2/12, 2/19

RECEIVED

MAR - 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

March 13, 2001

TO: Battle Creek Water Right Holders

I am writing to make you aware of Water Permit Application No. 2367A-2 filed by Baker Cattle PTO. This application proposes to change the location of 14 irrigated acres authorized under their existing rights.

Enclosed is a copy of the notice of hearing on this application. The notice will be published in the Custer County Chronicle on March 22nd and 29th and schedules a May 2nd hearing before the Water Management Board.

This information is being sent to holders of Battle Creek water rights.

If you have any questions on this application, please contact Mark Rath or Don Stroup at (605) 773-3352.

Sincerely,

Eric Gronlund
Water Rights Program
(605) 773-3352

enclosure

*letter
returned*

Robert Borgmeyer
Rodales Ranches
1721 11th St
Rapid City, SD 57701

Doanld Kaiser
HCR 89 Box 303
Hermosa, SD 57744

Robert Wordemann
Custer Ranches
HCR 89 Box 298
Hermosa, SD 57744

Rittberger Brothers
HC 89 Box 302A
Hermosa, SD 57744

Leslie Petersen
Game Fish & Parks
Foss Building
Pierre, SD 57501

Edward & Betty Kanesky
Box 52
Caputa, SD 57725

Neugebauer Brothers
HCR 89 Box 209
Hermosa, SD 57744

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

Mike Vidal
Birdsall Sand and Gravel
PO Box 767
Rapid City, SD 57709-0767



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

JUN 06 2001

Gary Baker
Baker Cattle PTO
HCR 89 Box 293
Hermosa, SD 57744

Dear Mr. Baker:

Enclosed is Water Permit No. 2367A-2 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

An informational sheet *Common Water Right Questions?* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,

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

enclosures

**NOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USE**

Date 10-17-01

TO: Water Rights Program, DENR
523 E. Capitol
Pierre, SD 57501-3181

FROM: Baker Cattle
(name)
HR 89 Box 293
(address)
Hermosa, SD 57744
(city, state, zip)

605-255-4504
(phone)

I have completed the construction of the water use system and I have put the water to beneficial use to the maximum extent it is going to be used.

Water Permit No. 2367A-2 states that the water use system is to be constructed by May 2, 2006, and water is to be put to beneficial use by May 2, 2010.
(date) (date)

The water use system was completed on August 1, 2001.
(date)

Applying the water to beneficial use was completed on August 1, 2001.
(date)

You may schedule an investigation so that the water license may be issued.

Gary Baker, Trustee
(signature)



Rath, Mark

From: Gary Baker [gbaker@ENETIS.NET]
Sent: Saturday, September 07, 2002 6:03 PM
To: Mark.Rath@state.sd.us
Subject: Irrigation on Battle Creek

Dear Mark,

I haven't been in to talk to you about irrigating after the flow at Kaisers dropped below 3 cfs. We have not been pumping for over two weeks. We stoped pumping to cut what little hay we have. While we were haying I saw that the flow had dropped below the minimum so we have not pumped since. The pivot system is in sight of highway 40 and anyone could have seen the pivot hasn't moved. I don't know who is complaining but they are misinformed if they think we are pumping. You are welcome to come look at our system and see for yourself. I would like to have a note in our file stating that we have been complying with your rules on the minimum flow at Kaisers and the complaint is unfounded. If you look at the flows between the station at Hermosa and the one at Kaisers for the last two weeks, you will note that there was more flow at Kaiser than at the station at Hermosa for much of the time. If we were pumping I can't see how that could happen. We monitor the flow every day on my computer when we are using the water.

Thank you for your time!

I will try and call you next week.

Gary Baker

09/09/2002



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

NOTICE OF TRANSFER OF OWNERSHIP

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

No. 2367A-2

Date: _____

I/We request that Water Right/Permit No. 2367A-2

formerly owned by: Baker Cattle PTO

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:

14 acres - E 1/2 SE 1/4 Section 21-T3S-R9E

I/We understand that the validity of Water Right/Permit No. 2367A-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 L.P., the new owner, certify that the above information is true and correct.

Amy 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
PROG.

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

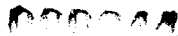
Date February 5, 20 03

RECEIVED OF Baker Cattle Limited Partnership, PCR 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. _____ 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>2367A-A 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. _____	2.50	
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	2.50

No.



By

Deborah E. Evers
Chief Engineer



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



**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.



December 14, 2004

2367A-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

Gary Baker
Battle Creek Valley Ranch Ltd Partnership
HCR 89 Box 291
Hermosa SD 57744

Dear Mr. Baker:

Thank you for sending in your 2004 irrigation questionnaires. I would like to take this opportunity to try and answer your question concerning the difference between Water Permit No. 2367A-2 and Vested Water Right No. 319-2.

Water Permit No. 2367A-2 authorized changing the location of 14 acres irrigated under Vested Water Right No. 319-2. The acreage relocation was to accommodate the installation of a center pivot irrigation system.

In answer to your question, both numbers cover the same irrigation system. When No. 2367A-2 was approved, it was given a completion date of May 2, 2006. When the system is completed and water applied to beneficial use, someone from our staff will be out to conduct an investigation for licensing purposes. A water license will subsequently be issued which covers the entire system and incorporates Nos. 319-2 and 2367A-2 together.

Until the license is issued which combines the two, you will still receive two separate irrigation questionnaires. It is perfectly acceptable to include all your irrigation information on one form.

Thank you for your inquiry and if I can answer anything further, let me know.

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
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.



2367A-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 Kanesky, 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.

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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:

2367A-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					12/29/1896	CU	PE	IRR	FOOS	HCR 89 BOX 317	HERMOSA	SD	57744	
2373-2					03/02/1896	CU	LC	IRR	RODALES RANCHES, INC.	8730 SHERIDAN LAKE RD	HERMOSA	SD	57702	9066
1209-2					09/29/1900	CU	LC	IRR	KANESKY	BOX 52	CAPUTA	SD	57725	
1221-2					09/29/1900	CU	LC	IRR	RITTEBERGER BROTHERS	15663 SD HWY 40	HERMOSA	SD	57744	
2367A-2					01/01/1905	CU	LC	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
2367A-2					01/01/1905	CU	PE	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
2367B-2	01/01/1905	07/17/1948			01/01/1905	CU	PE	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
187-2					09/11/1912	CU	LC	IRR	FOOS	PO BOX 317	HERMOSA	SD	57744	0317
1275-2					01/01/1935	CU	LC	IRR	KAISER	15745 SD HWY 40	HERMOSA	SD	57744	
319-2					07/17/1948	CU	LC	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
1170-2					01/28/1974	CU	LC	IRR	STOVALL	14829 SD HWY 40	HERMOSA	SD	57744	
1283-2					08/01/1975	CU	PE	COM	LIEN & SONS INC	PO BOX 440	RAPID CITY	SD	57709	0440
2054-2					03/15/1988	CU	LC	IRR	NEUGEBAUER BROTHERS	14197 SD HWY 40	HERMOSA	SD	57744	



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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