

WATER PERMIT NO. 2368A-2

Name of Applicant: Custer Ranch LLC c/o Robert Wordeman

Address: HC 89 Box 298, Hermosa SD 57744

Phone: 605 255-5096

Amount of Water Claimed: 0.58 (no add'l)

Total Acres: 41 acres (no add'l)

Source of Water Supply: Battle Creek

Water to be used for: irrigation

County: Custer

Type of Waste Disposal System:

Location: 9 miles southeast of Hermosa

PRIORITY

Date Received: 3-28-03

Application/License Fee: \$100

Corrected Application Received: 4-2-03

Period of Annual Use: April 1 – October 31

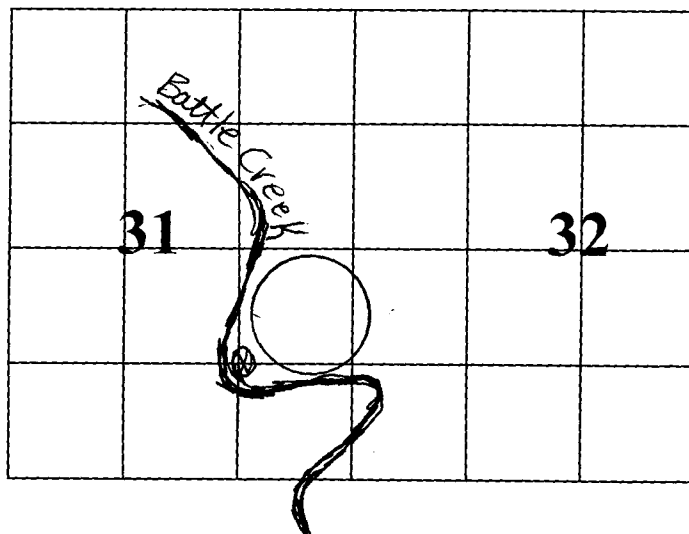
Remarks: add diversion pt and to change acres authorized by Vested Right No. 2368-2

Diversion Point: approximate center SE ¼ Sec 31-

T3S-R10E

Land to be Irrigated: N ½ SE ¼, SE ¼ SE ¼ Sec

31 and W ½ SW ¼ Section 32; all T3S-R10E



Depth of Well: NA

Well Driller: :

Remarks:

Type of Map: aerial

Prepared by: Ron Siers, NRCS

Reviewed and the Number Assigned on: 4-2-03

By: Karen Schlaak

Notice of Hearing - date to intervene: _____

April 1 - Oct 31

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>2368A-2</u>	Hydrologic Unit <u>10120109</u>
	Basin <u>Upper Cheyenne</u>	
	Newspaper <u>Custer County Chronicle, Custer</u>	

RECEIVED
MAR 28 2003
WATER RIGHTS
PROGRAM

Application For Permit To Appropriate Water For Irrigation

Type of Application: New Vested Right ☒ Amendment/Correction to Permit No. 2368-2
(Use predates Mar 2, 1955)

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

~~Change Diversion Point~~ Add Diversion Pt.
Change Acreage Custer Ranch LLC

1. Name of Applicant Robert Wordeman Phone 605-255-5096
(check one) ☒ Owner ☐ Tenant/lessee

Mailing Address HC 89 Box 298 Hermosa State SD 57744
(Street, RR, or Box and City) (Zip Code)

2. Amount of water claimed 0.58 *CFS or 330 **GPM ***AF Total Acreage 41
(*Cubic Feet per Second) (**Gallons per Minute) (**Acre Feet - storage capacity of dam/dugout or annual use if applicable)

3. Source of water supply Battle Creek

4. Location of point of diversion (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W) Battle Creek
Center of SE Quarter Section 31 Twn 35 Rng 10E
County Custer

5. County or counties where water will be used Custer

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

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
NE 1/4 SE 1/4 of section 31 T35 R10E	31	SE 1/4 SE 1/4 Sec 31-T35-R10E	
SW 1/4 SW 1/4 Section 31 T35 R10E	10	SE 1/4 NE 1/4 Sec 31-T35-R10E	
W 1/2			

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

Changing Location 41 Acres to fit Center Pivot
(41 Acre Pivot.) from 130 Acre Permit on S Half
Section 25 Twn 35 Rng 9E TO 41 ACRES SE Quarter of section 31 Twn 35
R 10E

STATE OF SOUTH DAKOTA) SS
County of Custer

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, Robert Wordeman, 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 Robert G Wordeman Custer Ranch LLC

Subscribed and sworn to before me this 27th day of March 20 03

Cathryn L. Ostad
Notary Public signature

**SOUTH DAKOTA
WATER PERMIT NO. 2368A-2**

Date of first receipt of application March 28, 2003.

Date of return to applicant for corrections, amendments or changes March 28, 2003.

Date of receipt of corrected application April 2, 2003.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 2368A-2 to Custer Ranch, LLC, HC 89 Box 298, 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. 2368A-2 authorizes an additional diversion point and changes the location of 41 acres authorized by Vested Water Right No. 2368-2. This amendment accommodates the installation of a center pivot irrigation system on the property.

Vested Water Right No. 2368-2 appropriates 1.85 cubic feet of water per second (cfs) from Battle Creek to irrigate 130 acres located in the SW ¼, W ½ SE ¼ Section 25 and NE ¼ NW ¼, NW ¼ NE ¼ Section 36; all in T3S-R9E. The diversion points from Battle Creek are located in the SW ¼ NW ¼ Section 27 and between points in the SW ¼ SW ¼ and SW ¼ SE ¼ Section 25; all in T3S-R9E. Presently, two center pivots irrigate 80 acres in the N ½ SW ¼, SE ¼ SW ¼, SW ¼ SE ¼ Section 25-T3S-R9E. This permit authorizes changing the location of 41 of the remaining acres to accommodate setting up a center pivot in the N ½ SE ¼, SE ¼ SE ¼, SE ¼ NE ¼ Section 31 and W ½ SW ¼ Section 32; all in T3S-R10E. The permit also authorizes an additional diversion point from Battle Creek located in the approximate center of the SE ¼ Section 31-T3S-R10E to supply water to this pivot. No increase in the amount of water appropriated or acres irrigated are authorized by this permit.

2. The amount of the appropriation may not exceed 2 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 – October 31.
3. The date from which applicant may claim right is October 14, 1886.
4. The date of approval of Permit No. 2368A-2 is June 9, 2003.
5. One-fifth of the construction is to be completed on or before December 9, 2005.
6. All construction is to be completed on or before June 9, 2008.
7. Water is to be put to beneficial use on or before June 9, 2012.
8. 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 bypassed.
2. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

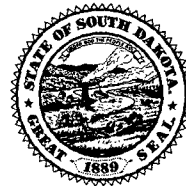
WATER MANAGEMENT BOARD

By: _____

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

JUN 30 2003

date



MAP NOT TO SCALE

THIS IS NOT AN OFFICIAL WETLAND MAP

OFFICIAL AGENCY
FILE COPY

BB4

T 651

Ron Sims
NRCS
341 S Chicago
Hot Springs, SD
57747

25

Current
37 AC

Current
43 AC
NHHL
3-9

BB4 current

Keep all of this

2368A-2

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date April 2, 2003

RECEIVED OF Custer Ranch LLC, HCR 89 Box 298, Hermosa SD 57744

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

Fee for Application for Permit No. <u>2368A-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>5368A-2</u>	50	00
Fee for Filing Transfer Form _____		
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	<u>\$100.00</u>

No.

000710

By

Darland Eide
Chief Engineer *gm*

REPORT ON WATER PERMIT APPLICATION 2368A-2

Custer Ranch, LLC

May 5, 2003

Water Permit Application No. 2368A-2, Custer Ranch, LLC, proposes to change the location of 41 acres irrigated under Water Right No. 2368-2 and add a diversion point. The proposed acreage relocation is to accommodate the installation of a center pivot irrigation system on the property. Water Right No. 2368-2 appropriates 1.85 cubic feet of water (cfs) from Battle Creek with the diversion points located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27 and between points in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, to irrigate a total of 130 acres in the SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Sections 25 and NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36; all in T3S-R9E.

The applicant intends to install center pivot irrigation and proposes to relocate 41 irrigated acres to the N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31 and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 32 and add an additional diversion point located in the SE $\frac{1}{4}$ of Section 31; all in T3S-R10E. The proposed project is located approximately 12 miles southeast of Hermosa, Custer County, SD. No increase in the amount of water appropriated or acres irrigated by Water Right Nos. 2368-2 is requested by this application.

Review of Proposed Changes and Existing Water Rights

The applicant plans to relocate 41 irrigated acres, and add a diversion point. The total authorized diversion rate for the existing water rights is 1.85 cfs. The allowable diversion rate for each diversion point should be prorated based upon the amount of land to be irrigated from that diversion point. The authorized diversion rate from the new diversion point located in the SE $\frac{1}{4}$ of Section 31 T3S-R10E should be 0.58 cfs for the irrigation of 41 acres and the combined diversion rate at the existing diversion points, should be 1.27 cfs for irrigation of 89 acres. The priority date for this project is October 14, 1886, as authorized by Vested Water Right 2368-2.

There are 16 existing water right/permits appropriating 20.53 cfs from Battle Creek. Of these, five existing water right/permits appropriating 3.77 cfs are located below this irrigation project. These proposed changes would not be expected to adversely effect existing water rights.

Conclusions

1. Custer Ranch, LLC proposes to amend Vested Water Right No. 2368-2 by adding a diversion point and relocating 41 irrigated acres.
2. If this permit is approved, the authorized diversion rate from the new diversion point located in the SE¼ of Section 31 T3S-R10E should be 0.58 cfs for the irrigation of 41 acres and the combined diversion rate at the existing diversion points, should be 1.27 cfs for irrigation of 89 acres.
3. There are 5 existing water right/permits appropriating 3.77 cfs are located below this irrigation project. These proposed changes would not be expected to adversely effect existing water rights.
4. Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.
5. The priority date for this project is October 14, 1886, as authorized by Vested Water Right 2368-2.



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**

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**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2368A-2, Custer Ranch, LLC**

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. 2368A-2, Custer Ranch, LLC, %Robert Wordeman, HC 89 Box 298, Hermosa SD 57744.

The Chief Engineer is recommending APPROVAL of Application No. 2368A-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
May 12, 2003



220

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March 28, 2003

Custer Ranch LLC
Robert Wordeman
HC 89 Box 298
Hermosa SD 57744

RECEIVED

APR - 2 2003

WATER RIGHTS
PROGRAM

Dear Mr. Wordeman:

Thank you for submitting the *Application for a Permit to Appropriate Water* to amend Water Permit No. 2368-2. In order to complete the application, the following are required.

- Enclosed are the two aerial photo maps submitted with the application. On the map, please outline the 41 acres you intend to irrigate with a center pivot. Also, mark the location of the additional Battle Creek diversion point with an "X".
- The application/license filing fee will be \$100.

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

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
605 773-3352

enclosures



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May 13, 2003

Custer County Chronicle
PO Box 551
Custer SD 57730-0551

ATTENTION: Legal Public Notice

Enclosed is a Notice of Hearing on Application No. 2368A-2 to Appropriate Water to be published twice. Please publish the first notice on May 21, 2003 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 Custer Ranch LLC, % Robert Wordeman, HC 89 Box 298, Hermosa SD 57744 (Ph # 605-255-5096).

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. 2368A-2

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

Date _____

We are in receipt of your letter of May 13, 2003 enclosing Notice of Hearing to Appropriate Water by Application No. 2368A-2 which was first published in our issue of _____. **ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.**

Name

Newspaper



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
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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.**

May 13, 2003

Custer Ranch LLC
% Robert Wordeman
HC 89 Box 298
Hermosa SD 57744

Dear Mr. Wordeman:

Water Permit Application No. 2368A-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). You will need to contact the newspaper and authorize publication of this notice. 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. Upon receiving authorization, 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 also 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.

Instruction to Newspaper - Publish first Notice on May 21, 2003 with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF APPLICATION NO. 2368A-2 to Amend Vested Water Right No. 2368-2

Notice is given that Custer Ranch, LLC c/o Robert Wordeman, HC 89 Box 298, Hermosa SD 57744 has filed an application proposing to add an additional diversion point and change the location of 41 acres authorized by Vested Water Right No. 2368-2. If approved, the application will accommodate the installation of a center pivot irrigation system on the property.

Vested Water Right No. 2368-2 appropriates 1.85 cubic feet of water per second (cfs) from Battle Creek to irrigate 130 acres located in the SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 25 and NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 36; all in T3S-R9E. The diversion points from Battle Creek are located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27 and between points in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 25; all in T3S-R9E. Presently, two center pivots irrigate 80 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 25-T3S-R9E. The applicant proposes change the location of 41 of the remaining acres to accommodate setting up a center pivot in the N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 31 and W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 32; all in T3S-R10E. The application also requests an additional diversion point from Battle Creek located in the approximate center of the SE $\frac{1}{4}$ Section 31-T3S-R10E to supply water to this pivot. No increase in the amount of water appropriated or acres irrigated are authorized by this application. If approved, the permit will retain a October 14, 1886 priority date.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2368A-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 June 9, 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. 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

Robert Wordeman
Notary of Application

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:

May 21, 2003; May 28, 2003;

_____, _____; _____, _____;
_____, _____; _____, _____;
_____, _____; _____, _____;

the full amount of the fees for the publication of the annexed notice is \$ 52.79.

Charles W. Najacht

Subscribed and sworn to me before this 28

of May, 2003;

Norma Najacht

NOTARY PUBLIC

MY COMMISSION EXPIRES: May 5, 2006

NOTICE OF APPLICATION

NO. 2368A-2

TO AMEND VESTED WATER RIGHT NO. 2368-2

Notice is given that Custer Ranch, LLC c/o Robert Wordeman, HC 89 Box 298, Hermosa SD 57744 has filed an application proposing to add an additional diversion point and change the location of 41 acres authorized by Vested Water Right No. 2368-2. If approved, the application will accommodate the installation of a center pivot irrigation system on the property.

Vested Water Right No. 2368-2 appropriates 1.85 cubic feet of water per second (cfs) from Battle Creek to irrigate 130 acres located in the SW 1/4, W 1/2 SE 1/4 Section 25 and NE 1/4 NW 1/4, NW 1/4 NE 1/4 Section 36; all in T3S-R9E. The diversion points from Battle Creek are located in the SW 1/4 NW 1/4 Section 27 and between points in the SW 1/4 SW 1/4 and SW 1/4 SE 1/4 Section 25; all in T3S-R9E. Presently, two center pivots irrigate 80 acres in the N 1/2 SW 1/4, SE 1/4 SW 1/4, SW 1/4 SE 1/4 Section 25-T3S-R9E. The applicant proposes change the location of 41 of the remaining acres to accommodate setting up a center pivot in the N 1/2 SE 1/4, SE 1/4 SE 1/4, SE 1/4 NE 1/4 Section 31 and W 1/2 SW 1/4 Section 32; all in T3S-R10E. The application also requests an additional diversion point from Battle Creek located in the approximate center of the SE 1/4 Section 31 -T3SR-10E to supply water to this pivot. No increase in the amount of water appropriated or acres irrigated are authorized by this application. If approved, the permit will retain a October 14, 1886 priority date.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2368A-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 June 9, 2003.

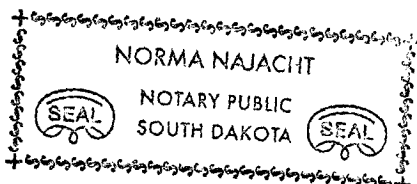
The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. 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.

#1467, 5/21/5/28,

RECEIVED

JUN - 2 2003

WATER RIGHTS PROGRAM





**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 30 2003

Custer Ranch LLC
%Robert Wordeman
HC 89 Box 298
Hermosa SD 57744

Dear Mr. Wordeman:

Enclosed is Water Permit No. 2368A-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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 14, 2004

NOTICE

TO: CUSTER RANCH LLC, ROBERT WORDEMAN, MGR, HC 89 BOX 298, HERMOSA, SD 57744

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

SUBJECT: Reporting Requirement for 2003 Irrigation Questionnaires

Our records indicate that the 2003 Irrigation Questionnaires have not been submitted for Permit Nos. 2368A-2, 2368-2. The request for the Questionnaires was dated October 17, 2003. The Water Management Board has directed that owners of water permits who have not submitted the 2003 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 2368-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2368A-2 qualification:

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

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

1. Suspend or cancel Permit No(s) 2368A-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 2368-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

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

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



2368A-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 22, 2004

2368-2
2368A-2

Robert Wordeman, Mgr
Custer Ranch LLC
HC 89 Box 298
Hermosa SD 57744

Dear Mr. Wordeman:

I am writing to acknowledge receipt of your 2003 irrigation questionnaires. You may disregard the January 14, 2004, "Notice" concerning reporting requirements for Water Permit/Right Nos. 2368-2 and 2368A-2.

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

If you have any questions, please contact me.

Sincerely,

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 20, 2004

NOTICE OF SHUTOFF ORDER

TO: CUSTER RANCH, LLC
ROBERT WORDEMAN, MGR
HCR 89 BOX 298
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. 2368-2(2368A-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 appropriate 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.



2368A-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 20, 2005

NOTICE

TO: CUSTER RANCH LLC, ROBERT WORDEMAN, MGR, HC 89 BOX 298, HERMOSA, SD 57744

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

SUBJECT: Reporting Requirement for 2004 Irrigation Questionnaires

Our records indicate that the 2004 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 22, 2004. The Water Management Board has directed that owners of water permits who have not submitted the 2004 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 2368-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2368A-2 qualification:

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

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

1. Suspend or cancel Permit No(s) 2368A-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 2368-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

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

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



2368A-2

Track & Confirm

Current Status

You entered 2301 0370 0000 7541 4784

Your item was delivered at 11:23 am on January 27, 2005 in HERMOSA, SD 57744. The item was signed for by R WORDEMAN.

[Shipment Details >](#)

Notification Options

► Track & Confirm by email

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U.S. Postal Service Signature Confirmation Receipt

SIGNATURE CONFIRMATION NUMBER:
2301 0370 0000 7541 4784

CUSTER RANCH LLC
ROBERT WORDEMAN, MGR
HC 89 BOX 298
HERMOSA SD 57744

Postmark
Here

POSTAL CUSTOMER:

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

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(See Reverse)

PS Form 153, February 2001



2368A-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 22, 2005

2368-2
2368A-2

Robert Wordeman, Mgr
Custer Ranch LLC
HC 89 Box 298
Hermosa SD 57744

Dear Mr. Wordeman:

I am writing to acknowledge receipt of your 2004 irrigation questionnaires. You may disregard the January 20, 2005, "Notice" concerning reporting requirements for Water Permit No. 2368A-2 and Water Right No. 2368-2.

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

If you have any questions, please contact me.

Sincerely,

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 18, 2005

NOTICE OF MODIFICATION TO 1990 BATTLE CREEK ORDER

TO: Battle Creek Water Users

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program

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

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

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

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

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

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

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

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

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

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

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



23684-2
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.



2368A-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

October 26, 2006

2368-2
2368A-2

Robert Wordeman
Custer Ranch LLC
15445 SD Hwy 40
Hermosa SD 57744

Dear Mr. Wordeman:

Enclosed is a "Notice" dated October 20, 2006 concerning the 2006 irrigation questionnaire. The notice was originally mailed to HC 89 Box 298, Hermosa SD. The post office notified us that your address has changed and I will update our records accordingly.

If you have any questions, please contact me.

Sincerely,

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

enclosures



2368A - 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:

2368A-2

PERMIT_NO	PTL_PRIOR1	PTL_PRIOR2	PRIORDATE	COUNTY	ST	USE	FIRST_NAME	LAST_NAME	ADDRESS2	CITY	STATE	ZIP	PLUS4
2163-2			05/01/1982	CU	LC	IRR		NEUGEBAUER BROTHERS DAIRY	14197 SD HWY 40	HERMOSA	SD	57744	
969-2			05/01/1982	CU	LC	IRR		NEUGEBAUER BROTHERS	14197 SD HWY 40	HERMOSA	SD	57744	
2366-2			10/14/1987	CU	LC	IRR		CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
2368A-2			10/14/1987	CU	PE	IRR		CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
0421-2			10/27/1994	CU	PE	IRR		JD RANCH REAL ESTATE LLC	HCR 89 BOX 298	HERMOSA	SD	57744	
0170-2			12/29/1995	CU	PE	IRR	CLARENCE	FOOS	HCR 89 BOX 317	HERMOSA	SD	57744	
2373-2			03/02/1996	CU	LC	IRR		RODALES RANCHES, INC.	8730 SHERIDAN LAKE RD	RAPID CITY	SD	57702	9066
1209-2			09/29/1900	CU	LC	IRR	EDWARD/BETTY S	KANESKY	BOX 52	CAPUTA	SD	57725	
1221-2			09/29/1900	CU	LC	IRR		RITBERGER BROTHERS	15663 SD HWY 40	HERMOSA	SD	57744	
2367-2			01/01/1905	CU	LC	IRR		BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
2367A-2			01/01/1905	CU	PE	IRR		BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
2367B-2			01/01/1905	CU	PE	IRR		BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
187-2		01/01/1905	07/17/1948	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	PETE	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	



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 7, 2010

2368-2
2368A-2

Harold Hulm
27619 Brook Dr
Hot Springs SD 57747

Dear Mr. Hulm:

Thank you for contacting us regarding the ownership change needed for Vested Water Right No. 2368-2 and Water Permit No. 2368A-2. They are currently listed in the name of Custer Ranch LLC (See enclosed copies).

Enclosed are partially completed Notice of Transfer of Ownership forms for filing an ownership change. Please review the forms and complete as needed. Upon completion, please sign and return them to our office with a required filing fee of \$50.00 each (total of \$100.00). The check or money order for the fee can be made payable to the Water Rights Program.

When you spoke with Garland Erbele, our Chief Engineer, you mentioned three water rights that should be transferred. I was only able to find two rights held by Custer Ranch LLC or Robert Wordeman. If after reviewing the enclosed copies you still feel there is another water right not accounted for, give me a call with the legal description and I will check further. It is possible that it is in a different name than what I checked under.

If you have any questions, please contact me.

Sincerely,

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

enclosures

2368A-2

RECEIVED

JAN 20 2010

WATER RIGHTS
PROGRAM

**Rush Creek Resources
27619 Brook Drive
Hot Springs, SD 57747
605-745-6381
605-745-6386 (Fax)**

January 16, 2010

Genny McMath
Department of Environment and Natural Resources
Joe Foss Building
PMB 2020
523 East Capitol
Pierre, South Dakota 57501-3182

RE: 2368-2 and 2368A-2

Dear Ms. McMath:

Thank you for your quick response to our request for transfer forms. Enclosed please find the following documents.

Vested Water Right # 2368-2:

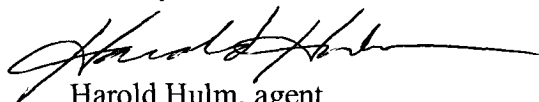
One (1) original signed Notice of Transfer of Ownership
Check # 7293 in the amount of \$50.00

Water Permit # 2368A-2:

One (1) original signed Notice of Transfer of Ownership
Check # 7294 in the amount of \$50.00

If you have any questions or need anything else to complete these transfers please let me know.

Thank you,



Harold Hulm, agent
Rush Creek Resources

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 1/20, 20 10

RECEIVED OF Rush Creek Resources 27619 Brook Dr Hot Springs SD 57747

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	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. _____	
Fee for Filing Transfer Form <u>2368A-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 50 00

No. 04387

By *Laurel Erbe*
Chief Engineer

NOTICE OF TRANSFER OF OWNERSHIP

RECEIVED

JAN 20 2010

WATER RIGHTS
PROGRAM

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

No. 2368A-2

Date: Jan. 14, 2010

I/We request that Water Permit No. 2368A-2

formerly owned by: Custer Ranch LLC, Robert G Wordeman

be transferred to: (name & address) Wyoming Dakota Railroad Properties, Inc., a Delaware corporation

140 North Phillips Avenue, Sioux Falls, SD 57104

Telephone No. 605-782-1200

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

41 acres – SE ¼ SE ¼, SE ¼ NE ¼ Section 31, W ½ SW ¼ Section 32, T3S, R10E

I/We understand that the validity of Water Permit No. 2368A-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 Fifty Dollars (\$50.00) 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 Vern Graham, the new owner, certify that the above information is true and correct.



(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.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 27, 2010

2368-2
2368A-2

Vern Graham
Wyoming Dakota Railroad Properties Inc
140 N Phillips Ave
Sioux Falls SD 57104

Dear Mr. Graham:

I am writing to acknowledge receipt of the ownership changes and filing fees submitted for transferring Vested Water Right No. 2368-2 and Water Permit No. 2368A-2. The transfers have been completed. Nos. 2368-2 and 2368A-2 formerly listed in the name of Custer Ranch LLC are now listed as "**Wyoming Dakota Railroad Properties Inc., a Delaware Corporation**".

Rush Creek Resources in Hot Springs, SD sent payment for the ownership changes. I am forwarding Receipt Nos. 04387 and 04388 to them for their records.

Each year in October we mail out an irrigation questionnaire to all irrigators in the state with the exception of those with water spreading systems. The purpose is to obtain information on how much water was used during that year. For informational purposes, I am enclosing a copy of an irrigation questionnaire submitted in 2004 by Robert Wordeman for some of the property irrigated. It will give you an idea of what type of records to keep track of during the irrigation season and how to complete the questionnaires next fall.

If you have any questions, please contact me.

Sincerely,

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

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

enclosures

c: Harold Hulm, Rush Creek Resources



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 21, 2011

NOTICE

TO: WYOMING DAKOTA RAILROAD PROPERTIES INC, VERN GRAHAM, 140 N PHILLIPS AVE, SIOUX FALLS, SD 57104

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

SUBJECT: Reporting Requirement for 2010 Irrigation Questionnaires

Our records indicate that the 2010 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 15, 2010. The Water Management Board has directed that owners of water permits who have not submitted the 2010 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 2368-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2368A-2 qualification:

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

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

1. Suspend or cancel Permit No(s) 2368A-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 2368-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

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

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

McMath, Genny

From: David Drach [David_Drach@cpr.ca]
Sent: Friday, February 04, 2011 5:13 PM
To: McMath, Genny
Subject: Irrigation Questionnaire - Permits 2368-2, 2368A-2



SD077



SD077

02-04 - Ques - 202-04 - Ques - 2

David S. Drach
Director, Real Estate Marketing, U.S.
Canadian Pacific
501 Marquette Avenue South, Suite 1525
Minneapolis, Minnesota 55402

} address
change

(Office) (612) 904-6139
(Fax) (612) 904-6147
david_drach@cpr.ca<mailto:david_drach@cpr.a>



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 7, 2011

2368-2
2368A-2

David S Drach, Director
Real Estate Marketing
Wyoming Dakota Railroad Properties Inc
501 Marquette Ave S Ste 1525
Minneapolis MN 55402

Dear Mr. Drach:

I am writing to acknowledge receipt of the 2010 irrigation questionnaires for Wyoming Dakota Railroad Properties Inc.

You may disregard the January 21, 2011, "Notice" concerning reporting requirements for Vested Water Right No. 2368-2 and Water Permit No. 2368A-2. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

I have also updated our records to reflect the change of address. Thank you and if you have any questions, please contact me.

Sincerely,

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



2368A-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 24, 2012

NOTICE

TO: WYOMING DAKOTA RAILROAD PROPERTIES INC, DAVID S DRACH, 501 MARQUETTE AVE STE 1525, MINNEAPOLIS, MN 55402

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

SUBJECT: Reporting Requirement for 2011 Irrigation Questionnaires

Our records indicate that the 2011 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 14, 2011. The Water Management Board has directed that owners of water permits who have not submitted the 2011 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 2368-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2368A-2 qualification:

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

The hearing will be held at **10:00 am, March 7, 2012** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

1. Suspend or cancel Permit No(s) 2368A-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 2368-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaire(s) is (are) received in this office on/or before **March 2, 2012**, you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link:
<http://denr.sd.gov/iq.aspx>

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 6, 2012

2368-2
2368A-2

David S Drach
Wyoming Dakota Railroad Properties Inc.
401 Marquette Ave Ste 1525
Minneapolis MN 55402

Dear Mr. Drach:

I am writing to acknowledge receipt of your 2011 irrigation questionnaires.

You may disregard the January 24, 2012, "Notice" concerning reporting requirements for Vested Water Right No. 2368-2 and Water Permit No. 2368A-2. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

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

McMath, Genny

From: Tieman, Aaron
Sent: Tuesday, June 19, 2012 11:31 AM
To: Erbele, Garland; Rath, Mark; McMath, Genny
Subject: Water Right Nos. 2368-2 and 2368A-2

I have tracked down the manager of the ranch and have included the contact information below, thank you.

Travis Bies
25813 South Fork Road
Fairburn, SD 57738

Cell phone: (605) 390-0889

Aaron Tieman
Engineer II, Water Rights Program

State of South Dakota
Department of Environment & Natural Resources
2050 West Main, Suite 1
Rapid City, SD 57702-2493

Office Phone: (605) 394-2229
Office Fax: (605) 394-5317
<http://denr.sd.gov/des/wr/wr.aspx>



236BA-7
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

DAVID S DRACH
WYOMING DAKOTA RAILROAD PROPERTIES INC
120 S 6TH ST - 9TH FLOOR
MINNEAPOLIS, MN 55402

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



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

TRAVIS BIES
25813 SOUTH FOR ROAD
FAIRBURN, SD 57738

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.

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

NOTICE OF SHUTOFF ORDER
July 2, 2012

TO: TRAVIS BIES, OPERATOR
WYOMING DAKOTA RAILROAD PROPERTIES INC
25813 SOUTH FOR ROAD
FAIRBURN SD 57738

FROM: GARLAND ERBELE, Chief Engineer
SD DENR Water Rights Program

SUBJECT: Battle Creek Water Rights Shutoff Order

Shutoff Order for Water Right Nos. 2368-2 **2368A-2**

To protect the senior priority water rights, the department is issuing shutoff orders to Battle Creek water right. Effective immediately, diversions of water from Battle Creek will not be allowed until further notice.

Flow in Battle Creek has declined to the point where domestic use of water, which includes livestock watering from the river, has become a concern. This order will be rescinded as soon as conditions improve.

If conditions do not improve, this order will remain in effect until **December 31, 2012**.

The USGS maintains a website where you can view real-time stream flow measurements at several sites along the river, the web address is:

<http://waterdata.usgs.gov/sd/nwis/rt>

I am asking for your cooperation in complying with this shutoff order. The ongoing drought is creating hardship for all the water right holders along the creek.

If you have any questions, please contact Mark Rath (605- 773-3352) or Aaron Tieman (605- 394-6831) with the Water Rights Program. Thank you



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

NOTICE OF SHUTOFF ORDER
July 2, 2012

TO: DAVID S DRACH
WYOMING DAKOTA RAILROAD PROPERTIES INC
120 S 6TH ST - 9TH FLOOR
MINNEAPOLIS MN 55402

FROM: GARLAND ERBELE, Chief Engineer
SD DENR Water Rights Program

SUBJECT: Battle Creek Water Rights Shutoff Order

Shutoff Order for Water Right Nos. 2368-2 2368A-2

To protect the senior priority water rights, the department is issuing shutoff orders to Battle Creek water right. Effective immediately, diversions of water from Battle Creek will not be allowed until further notice.

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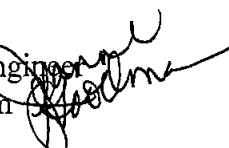
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

NOTICE OF SHUTOFF ORDER
JUNE 26, 2013

TO: WYOMING DAKOTA RAILROAD PROPERTIES INC
DAVID S DRACH
120 S 6TH ST - 9TH FLOOR
MINNEAPOLIS MN 55402

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

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

Shutoff Order for Water Right Nos. 2368-2(2368A-2)

The flow in Battle Creek is below 1.5 cubic feet per second (cfs) at the USGS gaging station below Hermosa, SD. Therefore, to protect domestic use, the department is issuing shutoff orders to Battle Creek water rights. Effective immediately, diversions of water from Battle Creek will not be allowed until further notice.

Flow in Battle Creek has declined to the point where domestic use of water, which includes livestock watering from the river, has become a concern. This order will be rescinded as soon as conditions improve.

If conditions do not improve, this order will remain in effect until **December 31, 2013**.

The USGS maintains a website where you can view real-time stream flow measurements at several sites along the river, the web address is:

<http://waterdata.usgs.gov/sd/nwis/rt>

I am asking for your cooperation in complying with this shutoff order. The ongoing drought is creating hardship for all the water right holders along the creek.

If you have any questions, please contact Lynn Beck (605-773-3352), Mark Rath (605-773-3352) or Aaron Tieman (605-394-6831) with the Water Rights Program. Thank you.



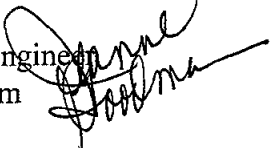
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

NOTICE OF SHUTOFF ORDER
JUNE 26, 2013

TO: TRAVIS BIES
25813 SOUTH FOR ROAD
FAIRBURN SD 57738

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

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

Shutoff Order for Water Right Nos. 2368-2 2368A-2

The flow in Battle Creek is below 1.5 cubic feet per second (cfs) at the USGS gaging station below Hermosa, SD. Therefore, to protect domestic use, the department is issuing shutoff orders to Battle Creek water rights. Effective immediately, diversions of water from Battle Creek will not be allowed until further notice.

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I am asking for your cooperation in complying with this shutoff order. The ongoing drought is creating hardship for all the water right holders along the creek.

If you have any questions, please contact Lynn Beck (605-773-3352), Mark Rath (605-773-3352) or Aaron Tieman (605-394-6831) with the Water Rights Program. Thank you.

CERTIFICATION

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

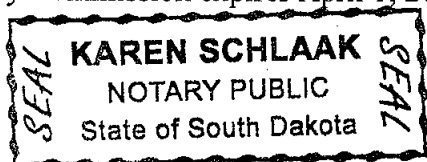
NEUGEBAUER BROTHERS DAIRY	STANLEY NEUGEBAUER	14197 SD HWY 40	HERMOSA	SD	57744
WYOMING DAKOTA RAILROAD PROPERTIES INC	DAVID S DRACH	120 S 6TH ST - 9TH FLOOR	MINNEAPOLIS	MN	55402
TRAVIS BIES		25813 SOUTH FOR ROAD	FAIRBURN	SD	57738
JD RANCH REAL ESTATE LLC		HCR 89 BOX 298	HERMOSA	SD	57744
RUSHMORE VIEW RANCH	ROBERT J BORGMEYER	1721 ELEVENTH ST	RAPID CITY	SD	57701
EDWARD AND BETTY KANESKY		BOX 52	CAPUTA	SD	57725
RITTBERGER BROTHERS		15663 SD HWY 40	HERMOSA	SD	57744
BATTLE CREEK VALLEY RANCH	GARY BAKER, GENERAL PTR	15199 BAKER RD	HERMOSA	SD	57744
CLARENCE FOOS		15810 SD HWY 40	HERMOSA	SD	57744
JOHN AND DARLENE STOVALL		14829 SD HWY 40	HERMOSA	SD	57744
PETE LIEN & SONS INC	KYLE FRISINGER	PO BOX 440	RAPID CITY	SD	57709


Gail Jacobson
Secretary/Water Rights

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

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


Karen Schlaak
Notary Public
My Commission expires April 1, 2019





DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES

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

July 12, 2016

denr.sd.gov

Dear Water Right Holder;

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

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in cursive script, reading "Jeanne Goodman". The signature is written in dark ink and is positioned above the printed name and title.

Jeanne Goodman, Chief Engineer
DENR, Water Rights Program

Report of Examination of Works and/or Application of Water to Beneficial Use For Permit No. 2368A-2

I have this day, June 2, 2016 made a thorough examination of the water use system constructed by Canadian Pacific Railways, 120 So. Sixth St. Suite 900, Minneapolis, Mn 55402, % David Drach of Permit No. 2368A-2, bearing priority of 10/14/1886 authorizing the diversion of 0.58 cu. ft. per second of water of Battle Creek for irrigation purposes in Custer County.

Inspection contact & relationship to permit holder :

Rick Fox, lease holder

14363 Hasselstrom Place, Hermosa SD 57744

605-391-8215 (cell)

A. Works used to divert the water:

Pump:

- 1) Make Berkeley
- 2) Model B4JRMBH
- 3) Size 4X5 10.87" imp
- 4) Capacity 600 – 1200 max gpm

Power:

- 1) Source diesel
- 2) Horsepower rating 85 hp

The diesel engine powers the centrifugal pump and the generator which powers the electric drive pivot.

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

- 1) Type PVC pipe
- 2) Size 8 inches
- 3) Length 1,005 feet

C. Works used to apply water to beneficial use:

Center Pivot:

- 1) Make Reineke Electrogator
- 2) Overall length 683 feet
- 3) Number of towers 4 End Gun Yes
- 4) Capacity 250 – 300 max gpm
- 5) Acres 41

D. Chemigation Equipment:

- 1) Does chemigate no

E. Compliance with Permit Requirements:

- 1) Permit qualifications being abided by Yes
2) Irrigation Questionnaires checked to determine if permit owner started irrigation by the end of construction period Yes
3) List any extended period of nonuse: none
4) Exceptions to compliance are: none

F. Condition and Location:

1. The system is in good condition with the point of diversion located as follows:
1,126' N and 893' W of the SE corner Section 31 T3S R10E (43.740997, - 102.962941).
2. The works are capable of diverting and conveying to the place of use 0.58 cu. ft. per second of water (261 gpm) which is to be used for sprinkler irrigation. Water has been put to beneficial use to the maximum extent as follows:

Section 31 T3S R10E:

NE ¼ SE ¼ 26.4 acres

SE ¼ SE ¼ 2.8 acres

Section 32 T3S R10E:

NW ¼ SW ¼ 11.3 acres

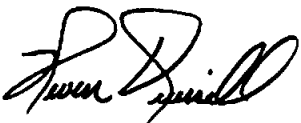
SW ¼ SW ¼ 0.5 acres

comprising a total of 41 acres of land and the license should be issued for 0.58 cfs.

All structures, wells and lands on map: Yes

G. Comments or other permits associated with the project:

Water Permit 2368A-2 authorizes an additional diversion point and changes location of 41 acres authorized by vested water right 2368-2. Vested Water Right 2368-2 appropriates 1.85 cfs from Battle Creek to irrigate 130 acres. No increase in the amount of water appropriated or acres irrigated are authorized by Permit 2368A-2. The authorized diversion rate for 2368-2 of 1.85 cfs for 130 acres is prorated for the 41 acres located in the SE ¼ Section 31 and SW ¼ Section 32 all in T3S R10E and the authorized diversion rate is 0.58 cfs.



Steven Quissell
Water Rights Inspector
DENR, Water Rights Program

Date report completed: 7/5/2016



Battle Creek diversion 6/2/2016

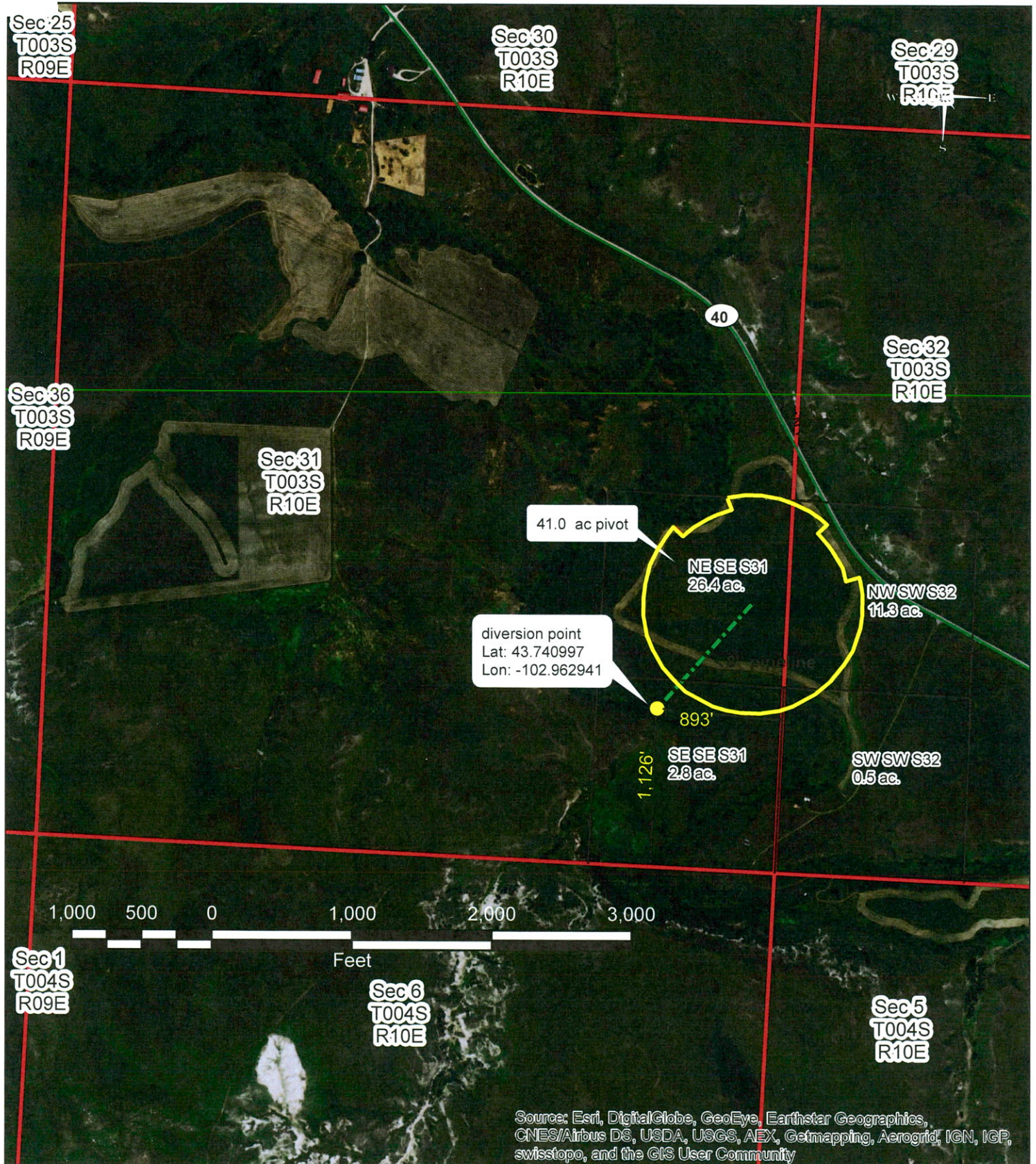


Pivot



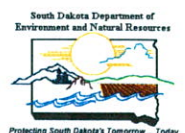
Diesel pump and generator

Water Right #2368A-2
Canadian Pacific Railways
6/2/2016



Steven Quissell

Steven Quissell
Water Rights Inspector
DENR Water Rights Program



McMath, Genny

From: David Drach <David_Drach@cpr.ca>
Sent: Thursday, March 30, 2017 8:54 AM
To: McMath, Genny
Subject: RE: Water Permit No. 2368A-2

Wyoming Dakota Railroad Properties, Inc. is the correct name.

WDRPI is wholly owned by Dakota, Minnesota & Eastern Railroad Corporation, which in turn is wholly owned by Canadian Pacific.

David S. Drach | Director Real Estate - U.S. | 700 Canadian Pacific Plaza, 120 South Sixth Street, Minneapolis, MN 55402
O 612 904 6139 | F 612 904 6147 | C 612 834 1064 CP

From: McMath, Genny [<mailto:Genny.McMath@state.sd.us>]
Sent: Thursday, March 30, 2017 8:52 AM
To: David Drach
Subject: Water Permit No. 2368A-2

Mr. Drach,

Last summer, a staff person from our program met with Rick Fox (Hermosa SD) who leases the irrigated land in Custer County, South Dakota from Wyoming Dakota Railroad Properties.

We are currently in the process of licensing the permit to reflect the system as it operates. One thing our water right inspector pointed out was that the current permit is listed in the name of "Wyoming Dakota Railroad Properties" and it should be under "Canadian Pacific Railways". I realize this may just be a name change and no ownership change has actually occurred, however I wanted to ask the question of which name you prefer the water permit be licensed under. If it should be changed to Canadian Pacific Railways, I can email you a partially completed form for use in filing the name change.

Please let me know how you wish to proceed.

Genny McMath
Water Rights Program
605.773.5455

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STATE OF SOUTH DAKOTA WATER LICENSE NO. 2368A-2

(1) Custer Ranch LLC made Application No. 2368A-2, March 28, 2003 for a water permit to add a diversion point location and change the location of 41 acres originally authorized under Vested Water Right No. 2368-2. The additional diversion point location on Battle Creek and the acreage to be irrigated are in Custer County, South Dakota. Permit No. 2368A-2, with a priority date of October 14, 1886 was approved June 9, 2003 and issued to the applicant for diversion of water with construction of the described water supply system to be completed on or before June 9, 2008 and for the application to beneficial use of said water on or before June 9, 2012.

Vested Water Right No. 2368-2 appropriated 1.85 cubic feet of water per second (cfs) from Battle Creek for irrigation of 130 acres. No. 2368A-2 transferred 41 of those acres to other lands to accommodate setting up a center pivot. Based on the statutory limit of one cfs per 70 acres, a diversion authority of 0.58 was authorized.

On January 28, 2010, ownership of Water Permit No. 2368A-2 was transferred from Custer Ranch LLC to Wyoming Dakota Railroad Properties Inc, a Delaware Corporation.

Water Permit No. 2368A-2 was originally issued for an annual volume limitation of 2 acre feet per acre per year. Since the acreage and diversion authority were severed from Vested Right No. 2368-2 with a priority date of October 14, 1886, the water right holder is entitled to 3 acre feet of water per acre per year.

(2) It is certified that the permit holder has complied with the provisions of South Dakota State Law relating to completion of the construction of the water supply system and is entitled to divert 0.58 cubic feet of water per second for beneficial use. The location of the diversion point is 1,126'N and 893'W of the SE corner of Section 31, T3S, R10E (SE ¼ SE ¼).

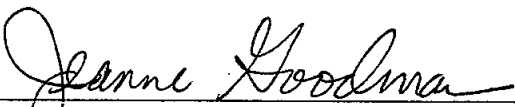
(3) The permit holder has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to irrigate the following land:

Section 31, T3S, R10E		Section 32, T3S, R10E	
NE ¼ SE ¼	26.4 acres	NW ¼ SW ¼	11.3 acres
SE ¼ SE ¼	2.8 acres	SW ¼ SW ¼	0.5 acres
Total – 41 acres			

(4) Pursuant to South Dakota Water Law 46-5-30.1 Wyoming Dakota Railroad Properties Inc., 120 South Sixth St, Suite 900, Minneapolis MN 55402 the holder and/or owner of Water Right No. 2368A-2 is issued a license to appropriate water, the right to use 0.58 cubic feet of water per second from Battle Creek with a priority date of October 14, 1886 from the location specified in (2) of this license for irrigation purposes.

This license is subject to South Dakota Water Law, any limitations or conditions listed in Water Right No. 2368A-2 and subject to the following qualifications:

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



Jeanne Goodman, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

JUN 21 2017

date





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

JUN 21 2017

2368A-2

David Drach, Director of Real Estate
Wyoming Dakota Railroad Properties Inc
120 S Sixth St, Suite 900
Minneapolis MN 55402

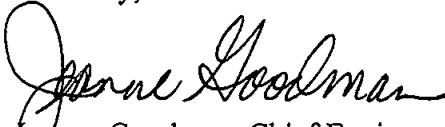
Dear Mr. Drach:

Enclosed is Water License No. 2368A-2. This is the final water right document completing your process of obtaining a Water Right. Included with your license is a map prepared by the staff engineer who conducted the field investigation.

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

Please note that one of the qualifications in the water right is the requirement to submit the annual irrigation questionnaire. It is our understanding that Rick and Theresa Fox of Hermosa SD rent the irrigated property. The annual questionnaire will be directed to them for completion. If the lease arrangement should change or you would like the annual form to be sent directly to Wyoming Dakota Railroad Properties, please contact our office.

Sincerely,


Jeanne Goodman, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

c: Rick & Theresa Fox, PO Box 35, Hermosa SD 57744 w/attachments



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

July 11, 2017

Dear Water Right Holder;

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

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

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

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

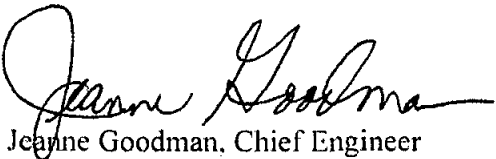
South Dakota water law gives the highest priority to domestic use, which includes livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses, including irrigation, will

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanne Goodman". The signature is fluid and cursive, with the first name "Jeanne" written in a larger, more prominent script than the last name "Goodman".

Jeanne Goodman, Chief Engineer
DENR, Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

August 16, 2022

WYOMING DAKOTA RAILROAD PROPERTIES INC
120 S 6TH ST - 9TH FLOOR
MINNEAPOLIS, MN 55402

Dear Battle Creek Water Right Holder:

I am writing to remind Battle Creek water right holders and operators of the bypass qualification that was placed on your water permit by the Water Management Board in 2005:

A minimum flow of 1.5 cubic feet of water per second (cfs) shall be maintained at the SD Highway 40 gage to insure flows for domestic use and prior existing water rights.

Recently, creek flows measured at the USGS gaging station at the SD Highway 40 bridge have been dropping below the 1.5 cfs cutoff and when it does, diversion of water for irrigation purposes shall cease. This 1.5 cfs limit is in place to protect domestic use, including livestock watering and those water rights that are most senior.

Realtime flows in the in Battle Creek can be monitored by going to the following website:

<https://waterdata.usgs.gov/sd/nwis/current/?type=flow>

USGS Stream Gage No. 06406500 – Battle Creek below Hermosa, SD

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

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

WYOMING DAKOTA RAILROAD PROPERTIES INC

2368A-2

DAVID S DRACH

120 S 6TH ST - 9TH FLOOR

MINNEAPOLIS, MN 55402

April 15, 2026

Dear Battle Creek Water Right/Permit Holder:

I am writing to remind Battle Creek water right/permit holders and operators of the bypass qualification that was placed on your water permit by the Water Management Board in 2005:

A minimum flow of 1.5 cubic feet of water per second (cfs) shall be maintained at the SD Highway 40 gage to insure flows for domestic use and prior existing water rights.

Recently, creek flows measured at the USGS gaging station at the SD Highway 40 bridge have been near 2.5 cfs and this winter and spring have been very dry. We are closely monitoring the gage. When flow past the gage drops to the 1.5 cfs cutoff or less, diversion of water from the creek shall cease. This 1.5 cfs limit is in place to protect domestic use, including livestock watering and those water rights that are most senior.

Realtime flows in the in Battle Creek can be monitored by going to the following website:

<https://waterdata.usgs.gov/monitoring-location/USGS-06406500/#dataType=daily-00060-0&period=PLY&showFieldMeasurements=true>

USGS Stream Gage No. 06406500 – Battle Creek below Hermosa, SD

Thank you for your cooperation. If you have any questions, please contact Nakaila Steen or another member of the DANR-Water Rights Program at (605) 394-2229 (Rapid City Office) or (605) 773-3352 (Pierre Office). We would appreciate it if you would call Nakaila in our Rapid City office and provide an up-to-date phone number and email for faster communication on this matter.

Sincerely,

Adam Mathiowetz, PE
Acting Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

Notice of Shutoff Order

June 18, 2026

To: WYOMING DAKOTA RAILROAD PROPERTIES INC
DAVID S DRACH
120 S 6TH ST - 9TH FLOOR
MINNEAPOLIS, MN 55402

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

Adam Mathiowetz

Subject: Shutoff Order for Water Right No. 2368A-2

To protect domestic users, the department is issuing shutoff orders to Battle Creek water rights/permit holders. Effective immediately, diversions of water from Battle Creek will not be allowed until further notice.

Flow in Battle Creek has declined to the point where domestic use of water, which includes livestock watering from the creek, has become a concern. This order will be rescinded if conditions improve. If a runoff event temporarily raises flow at the SD Highway 40 gage above 1.5 cubic feet of water per second (cfs), the Water Rights Program can be contacted to see if temporary permission to utilize water from the creek can be allowed while the gage is above 1.5 cfs.

If conditions do not improve, this order will remain in effect until **December 31, 2026**.

The USGS maintains a website where you can view real-time stream flow measurements at several sites along the creek, the web address is:

<https://waterdata.usgs.gov/state/south-dakota/>

USGS Stream Gage No. 06406500 – Battle Creek below Hermosa, SD

I am asking for your cooperation in complying with this shutoff order. The ongoing drought is creating hardship for all the water right holders along the creek.

If you have any questions, please contact Nakaila Steen or another member of the DANR-Water Rights Program at (605) 394-2229 (Rapid City Office) or (605) 773-3352 (Pierre Office).

CC: Rick & Theresa Fox PO BOX 35 HERMOSA SD 57744 0035