

NO. 319-2

Water Division No. 2

Battle Creek

(Blanks to be filled by the State Engineer.)

RECEIVED
JUL 14 1948

APPLICATION FOR PERMIT

To appropriate water within the State of South Dakota

ALDREN E. BAKER & JEANETTE

ALDREN E. & JEANETTE J. BAKER

HERMOSA, S. D.

HERMOSA, S. D. 57749

(NOTE—Draw a line through items not applicable.)

1. Name of applicant Arthur H. Kroth

5-4-53 - Transferred to W. M. Miller + W. H. Miller, Snyder, Texas

Postoffice address Hermosa, County Custer, State South Dakota

I. If a corporation

(a) Name of same

(b) Date and place of incorporation

(c) Amount of capital stock

(d) Amount paid in

(e) Names and address of directors

(NOTE—A certified copy of articles of incorporation must accompany the application.)

II. Method of accomplishing the work and financial resources of the applicant

(a) Method of accomplishing work (Whether by contract, employment of others, or by direct labor) Contract Ditches and pipe installations Pump by owner

(b) Cash on hand, \$ Adequate

(c) Treasury stock, \$

(d) Bonds to be issued, \$

(e) Other resources, \$

2. Name of diversion work A. H. Kroth Diversion

3. Quantity of water claimed 2.97 cubic feet per second.

4. Source of water supply Battle Creek

5. Location of point of diversion in the NE 1/4 SW 1/4 Sec. 21, T3S, R9E, B.H.M. at a point of 3083.6' N 37° 0.4' E. of the SW corner of Sec. 21 on Right bank.
(Right or left bank looking down stream.)

6. Annual periods during which water is to be used April through September

7. To be used for:

I. Irrigation or domestic use

(a) Number of acres to be irrigated 208 acres

(b) Legal subdivisions to be irrigated See attached sheet

(NOTE—A list of lands to be irrigated, giving each subdivision and fraction with average thereof, should be written here, or may be appended as a part of this application. Same must also be shown on accompanying map.)

(c) Statement as to domestic use (giving location, etc.) None

II. Mining, power, manufacturing, transportation, or other purposes:

(a) Nature of use

(b) Amount of power to be generated horse power

(c) Location of plant

(d) Method of developing power

(e) Point where water will be returned to stream

8. Estimated cost of works:

- (a) Head gates, \$ 350.00 (b) Pumping plant, \$ 2000.00
(c) Fluming, \$ 6.00/L.F. (d) Canal-earth, \$ 2.00/L.F. Rock, \$
(e) Other structures \$ Total, \$

9. Description of diversion works:

I. Nature of works: (Reservoir, dam, ditch, flume, pumping plant, etc.)

Pumping Plant

II. Dimensions of works:

- (a) Dam: Height feet; length at bottom feet; length at top feet; thickness at bottom feet; thickness at top feet; slope of front (water) face; slope of back face; material used in construction
(b) Reservoir: Capacity when filled acre feet. Surface area at highwater mark acres.

DEPTH AT OUTLET-FEET	SURFACE AREA AT EACH DEPTH AT OUTLET-ACRES	FEET OF DEPTH	CAPACITY ACRE-FEET

- (c) Head gate: Width 4.0 feet; height 1.5 feet;
Material Steel Plate

- (d) Canal: Total length miles.

LOCATION BELOW HEADGATE	DEPTH	BOTTOM WIDTH	WIDTH AT WATER LINE	GRADE PER MILE
At Miles	feet	feet	feet	feet
At Miles	feet	feet	feet	feet
At Miles	feet	feet	feet	feet
At Miles	feet	feet	feet	feet
At Miles	feet	feet	feet	feet
At Miles	feet	feet	feet	feet

(Give dimensions where reductions in size are made.)

10. Time required for completion of work 1 years.
11. Time required for complete application of water to the proposed beneficial use 1 years.
12. Choice of newspaper for publication of notice of intention to appropriate Custer Chronical and/or Rapid City Daily Journal.

STATE OF SOUTH DAKOTA

County of Pennington ss.

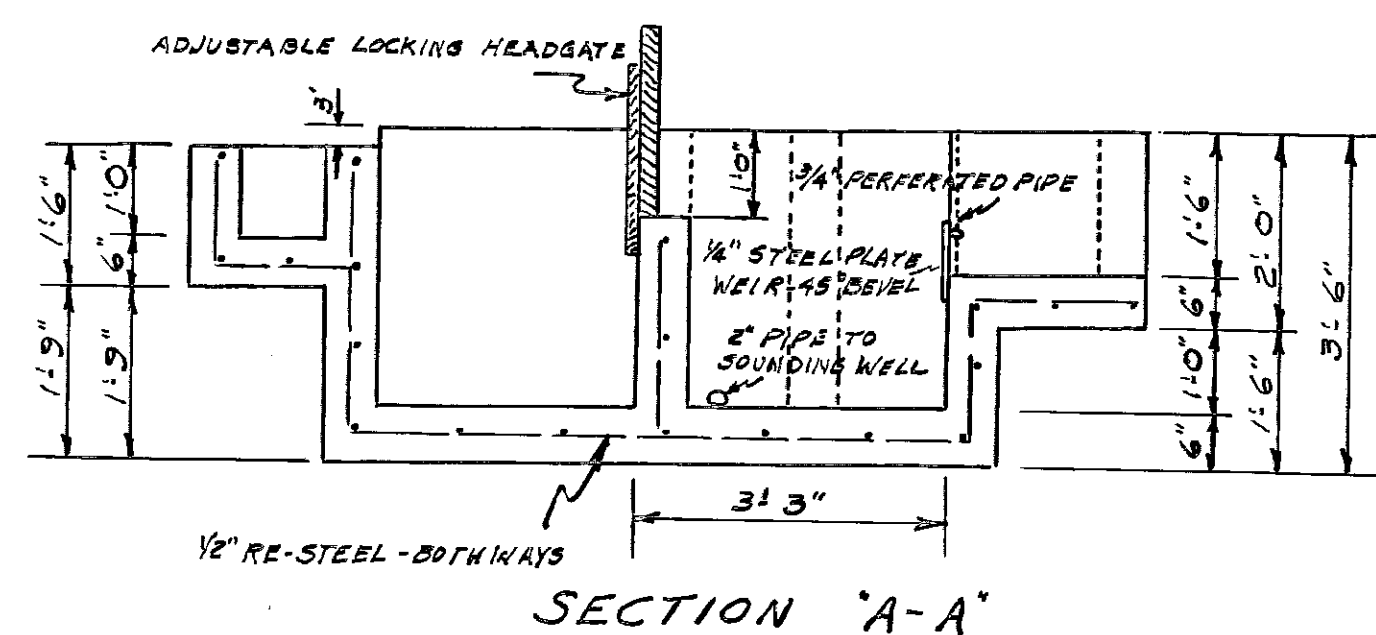
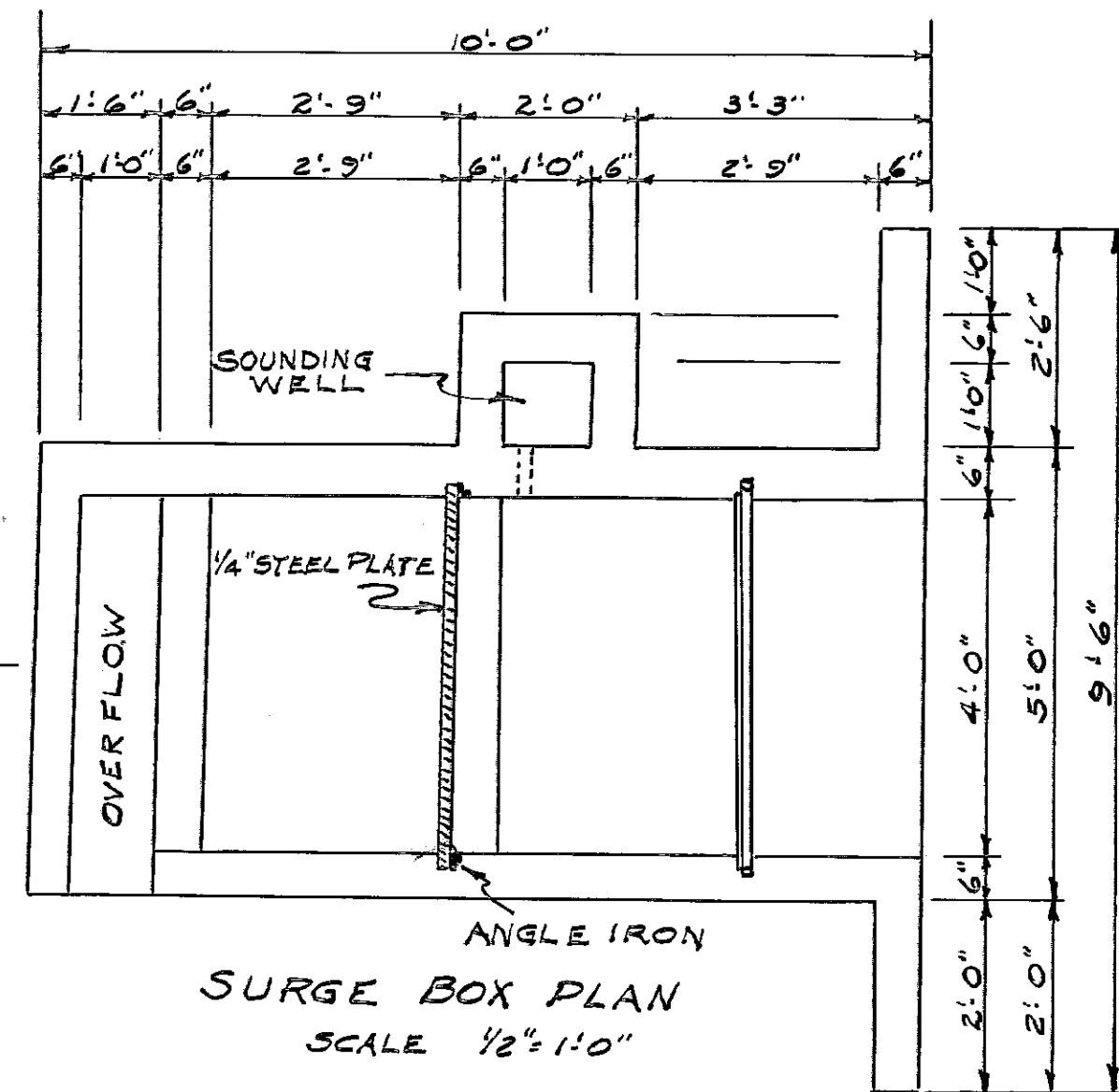
I, Arthur H. Kroth, being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of Owner, that I have read the above and foregoing statement, and examined the map accompanying the same, and that I know of my own personal knowledge that the matters herein stated and shown are true.

Signed

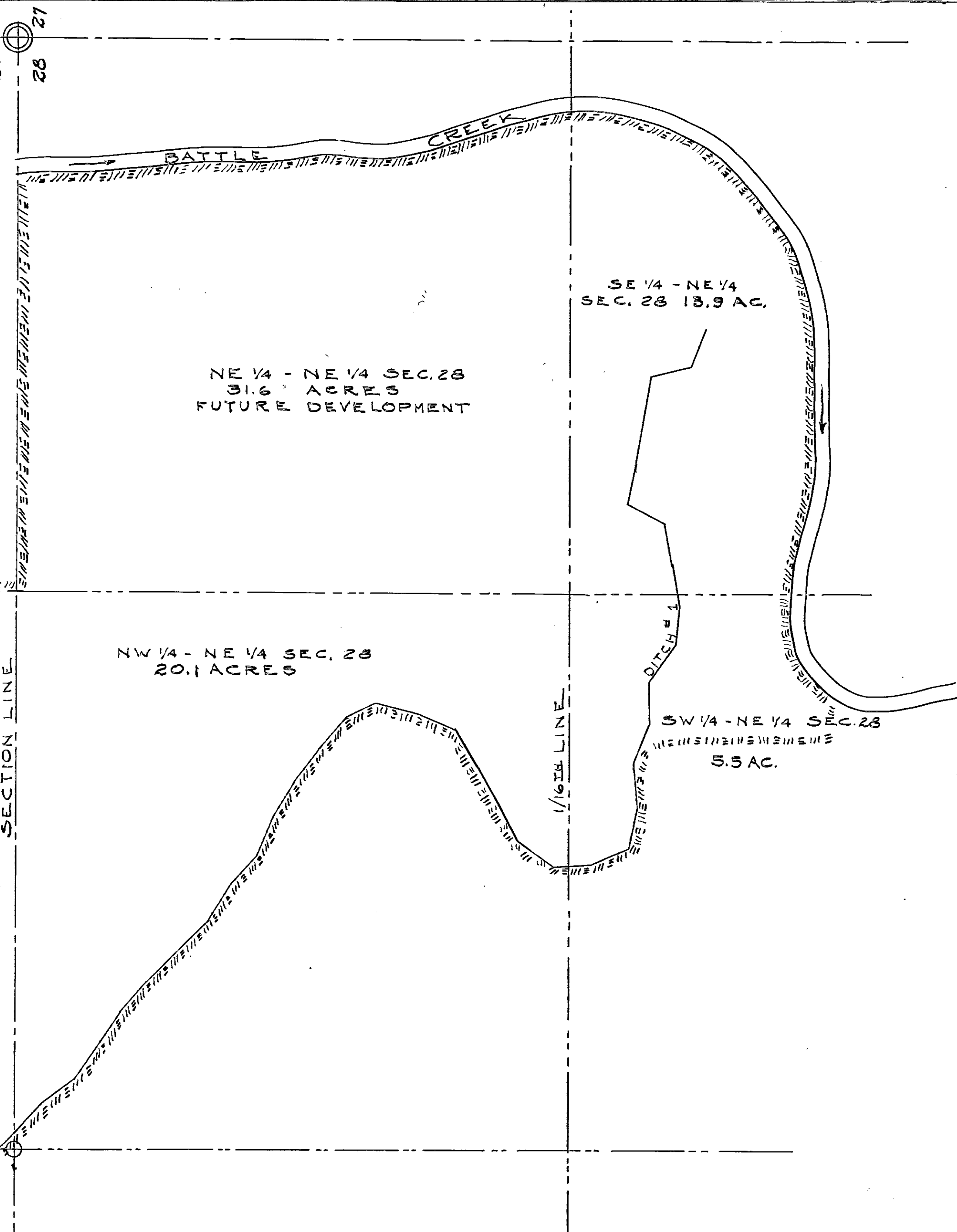
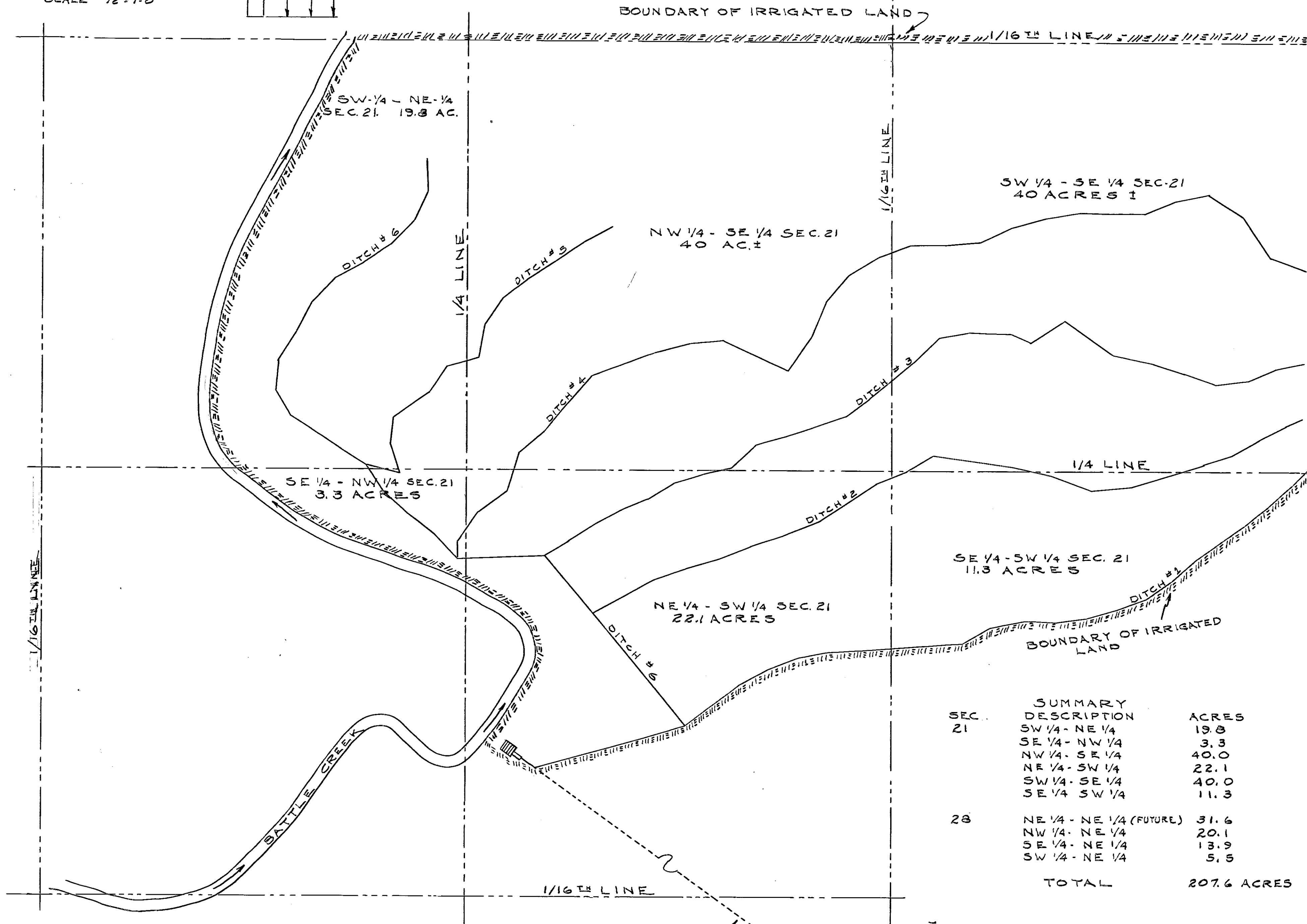
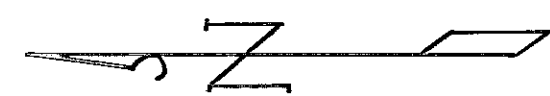
Arthur H. Kroth

Subscribed and sworn to before me this 14th day of July, 1948

Notary Public (or other qualified officer.)



A. H. KROTH DIVERSION
PROPOSED LAYOUT FOR IRRIGATION
IN SECTIONS 21 & 28 T.35-R.9E., B.H.M.
 SCALE 1"=200'
 A. H. KROTH - OWNER.



3083.6 FT. N 37° 04' E
 FROM THE SW. COR. OF SECTION
 21 TO THE POINT OF
 DIVERSION.

SEC.	SUMMARY DESCRIPTION	ACRES
21	SW 1/4 - NE 1/4	19.8
	SE 1/4 - NW 1/4	3.3
	NW 1/4 - SE 1/4	40.0
	NE 1/4 - SW 1/4	22.1
	SW 1/4 - SE 1/4	40.0
	SE 1/4 - SW 1/4	11.3
28	NE 1/4 - NE 1/4 (FUTURE)	31.6
	NW 1/4 - NE 1/4	20.1
	SE 1/4 - NE 1/4	13.9
	SW 1/4 - NE 1/4	5.5
	TOTAL	207.6 ACRES

SURVEYOR'S CERTIFICATE

I, JULIAN STAVEN, A REGISTERED LAND SURVEYOR, DO HEREBY CERTIFY THAT AT THE REQUEST OF A. H. KROTH I, SURVEYED THE TRACT OF LAND SHOWN IN THE ABOVE MAP. THE LOCATION WITH REFERENCE TO U. S. LAND SURVEY SUBDIVISIONS OF THE PROPOSED WATER DIVERSION POINT, PRINCIPAL DITCHES & AREA TO BE IRRIGATED ARE SHOWN IN THE ABOVE MAP.

IN WITNESS WHERE OF, I HAVE SET MY HAND & SEAL THIS 3 DAY OF July AD, 1948.

Julian Staven
 REG. LAND SURVEYOR.

ACKNOWLEDGEMENT

COUNTY OF PENNINGTON
 STATE OF SOUTH DAKOTA SS

BE IT REMEMBERED THAT ON THIS 3rd DAY OF July 1948, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC WITHIN & FOR THE COUNTY AND STATE AFORESAID, PERSONALLY APPEARED JULIAN STAVEN, KNOWN TO ME TO BE THE PERSON WHO EXECUTED THE WITHIN & FOREGOING INSTRUMENT & ACKNOWLEDGED TO ME THAT HE EXECUTED SAME.

MY COMMISSION EXPIRES June 26, 1949

V. L. Rupp
 NOTARY PUBLIC

(W. A. ...)
 ...

Remarks by State Engineer:

STATE OF SOUTH DAKOTA

County ofHUGHES.

85.

Pierre, South Dakota, September 27, 1948

This is to certify that the foregoing application was received at this office at8:15..... o'clock
a. m. upon the17th..... day ofJuly....., 1948 and that after examination it
was found to conform to the state water laws, was advertised as required by law
and no protests received.

Number of permit 319-2

Deen-H. Loucks

State Engineer.

Date of first receipt of application July 17 , 19 48.

Date of return to applicant for correction _____, 19____

Date of receipt of corrected application _____, 19____

Date from which applicant may claim right July 17 19 48

Approved September 27, 1948, Recorded in Book II Page 594-595

This is to certify that I have examined the foregoing application for a permit to appropriate water of the state of South Dakota, and I hereby grant the same as stated herein, subject, however, to the following limitations and conditions:

1st. The equivalent of at least one-fifth, of the work above specified is to be completed on or before March 27, 1942

2nd. The whole of said work is to be completed on or before September 27, 1942

3rd. The limit of time for proof of beneficial use of water appropriated in accordance herewith is September 27, 1949.

4th. The water appropriated shall be used for the purpose of irrigation

5th. The prior right of all persons who, by compliance with the laws of the State of South Dakota, have acquired a right to the use of water must not be injuriously affected by this appropriation.

6th. The amount of the appropriation herein granted shall not exceed 2.9 cubic feet of water per second of time; neither shall it exceed the capacity of the above described system of diversion works, nor the least amount of water that experience may hereafter indicate as necessary for the production of crops in the exercise of the best husbandry; and further, said appropriation must be limited to not more than one-seventieth (1/70) of one cubic foot of water per second of time for each acre of land to which water is actually and beneficially applied for irrigation on or before September 27, 1949; said water to be used during the following described annual period:

April to September, Inc.

Witness my hand this 29th day of September 1948

Dear Mr. Loucks,

State Engineer.

No. 319

Division No. 2

Battle Creek

District

PERMIT

to appropriate water from

Battle Creek

Quater County, South Dakota

5-4-53

Transferred to W. M. Miller & W. H. Miller

Name of applicant Arthur H. Kroth

Hermosa, S. Dak.

Name of diversion works

A. H. Kroth Diversion

Date of first receipt at office of State

Engineer 7/17/48 19

Returned to applicant for Correction

19

Corrected application received

19

Date of water right

July 17, 1948

Recorded in Book 2 Page 594-595

One-fifth of work to be completed

March 27 1949

Whole work to be completed

Sept. 27, 1949

Final proof of use of water

Sept. 27, 1949

Approved Sept. 29, 1948

Dean W. Loucks State Engineer.

Amended, 2/24/50

Form 20.

NOTICE OF TRANSFER OF WATER PERMIT

RECEIVED
JUN - 5 1973

STATE WATER RESOURCES COMM.
PIERRE, SOUTH DAKOTA

TO: Water Resources Commission
State Office Building No. 2
Pierre, South Dakota 57501

Date May 15, 1973

This is to notify you that title to the lands described as follows:

Sec. 21 T35 R9E Custer Co. S.D.

formerly owned by Norris Grain Co Chicago, Ill.
(Western Cattle Co)

has been transferred to Allen E. Baker & Jeanette J. Baker

together with any rights to the beneficial use of water thereon as evidenced by Water Right Permit No.

319-2 as provided for in Section 61.0127 of the 1960 Supplement to the South Dakota Code of 1939.

You are therefore hereby requested to file this "Notice of Transfer of Water Permit" in its appropriate file at the Office of Water Resources Commission as evidence of the change of ownership.

A fee of one dollar is hereto attached to cover filing fees as required under Section 61.0159 of the 1960 Supplement to the South Dakota Code of 1939.

FLORIDA
STATE OF ~~SOUTH DAKOTA~~)
County of MARION) ss.

I, Joseph H. Sharpe being first duly sworn on my oath depose and say: That my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and I know of my own personal knowledge that the information herein stated is true.

NORRIS GRAIN COMPANY
By: Joseph H. Sharpe v.p.
(Signed)

Suscribed and sworn to before me this 25th day of May, 19 73

Bruce B. Biggs
(Notary Public)

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES NOV. 6, 1976
BONDED THRU GENERAL INSURANCE UNDERWRITERS

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA }
County of Custer } ss.

Rev. A. Sundstrom being duly sworn, deposes and says the annexed printed copy of Notice of Intention to appropriate Water was taken from the Custer County Chronicle a newspaper which during the whole time of publication of said notice herein- after stated, has been and is printed and published in the City of Custer County of Custer and State of South Dakota; that the said notice was published in said newspaper on the following dates:

August, 5, 1948
August, 12, 1948
August, 19, 1948
August, 26, 1948

in each and every issue of the full number thereof, the first publication being made on the 5th day of August 1948 and the last publication on the 26th day of August 1948, upon which days or times of publication aforesaid the newspaper was regularly published, and that during the whole time of said publication he was Publisher the proprietor and publisher of the said newspaper.

Subscribed and sworn to before me this 26th day of August A. D. 1948.

Notary Public Custer County, S. D.

NOTICE OF INTENTION TO APPROPRIATE WATER

No. 319-2
(First Publication Aug. 5, 1948)
Appropriation of Water
Office of State Engineer,
Pierre, So. Dak., July 22, 1948.

Notice is hereby given that Arthur H. Kroth, whose post-office address is Hermosa, So. Dak., has made an application in accordance with the provisions of the water laws of South Dakota

for a permit to appropriate beneficial use 2.9 cubic feet of water per second of time from the Battle Creek through the A. H. Kroth Diversion, the point of diversion of which is to be located on the right bank of said stream in the NE 1/4 of the SW 1/4 of Section 21 Twp. 3S Range 9E. Said water to be used for the purpose of providing irrigation from A. H. Kroth Diversion to lands located in Sec. 21 & 28 in T. 3S, R. 9E.

This application will be taken up by the State Engineer at his office at Pierre for consideration upon the 7th day of Sept., 1948, at 10:00 A. M. All persons who believe that their prior rights would be injuriously affected, or that the allowance of the permit would be detrimental to the public welfare shall file such protest with the State Engineer in writing prior to the above date and may appear on the day above mentioned in person for the purpose of discussing further the information presented.

Appropriate action will be taken by the State Engineer after suitable time has elapsed for the

consideration of any or all information presented.
DEAN W. LOUCKS,
State Engineer

0458-A-26

RECEIVED
Sept 1, 1948

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

(First) Publication 194.....

APPROPRIATION OF WATER

Office of State Engineer,

Pierre, So. Dak., July 20, 1948

Notice is hereby given that Arthur H. Kroth whose postoffice address is Harmosa So. Dak., has made an application in accordance with the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use 2.9 cubic feet of water per second of time from the Little Creek through the A. H. Kroth Diversion, the point of diversion of which is to be located on the right bank of said stream in the NE 1/4 of the SW 1/4 of Section 21 Twp. 38 Range 9E. Said water to be used for the purpose of providing irrigation from April through Sept. to lands located in Sec. 21 + 26 in T 38, R 9E.

This application will be taken up by the State Engineer at his office at Pierre for consideration upon the 7th day of Sept., 1948, at 10:00 A.M. All persons who believe that their prior rights would be injuriously affected, or that the allowance of the permit would be detrimental to the public welfare shall file such protest with the State Engineer in writing prior to the above date and may appear on the day above mentioned in person for the purpose of discussing further, the information presented.

Appropriate action will be taken by the State Engineer after suitable time has elapsed for the consideration of any or all information presented.

DWL:EM
cc: J. Staven

Dean W. Loucks
State Engineer

Permit No. 319-2

Water Division No.

Water District

Notice of Application of Water to Beneficial Use

(This blank must be filled out by holder of permit and forwarded to the State Engineer at least 60 days before the time set for application of water.)

(P. O.)

Hermosa South Dakota

(Date)

Dec. 28 1949

TO THE STATE ENGINEER OF SOUTH DAKOTA, PIERRE:

DEAR SIR: Notice is hereby given that on the _____ day of _____

19____ at _____ County of Perimington State of South Dakota,

before

Julian Stuenkel
(Examining Engineer or Officer)

proof will be submitted of the application to beneficial use

of 2.1 cubic feet per second of the waters of Battle Creekin accordance with the terms and conditions of Permit No. 219-2

heretofore issued by the State Engineer of South Dakota.

1. The name and postoffice address of the person or corporation holding said permit are

Arthur H. Kroth, Hermosa South Dakota

2. The use to which said water has been applied is

irrigation

3. The amount applied to beneficial use is

approximately 1300 gal. per minute

4. The place where said water is used is (if for irrigation, give full and accurate description of the lands ir-

rigated) SW $\frac{1}{4}$ -NE $\frac{1}{4}$ SE $\frac{1}{4}$ -NW $\frac{1}{4}$ NW $\frac{1}{4}$ -SE $\frac{1}{4}$ NE $\frac{1}{4}$ -SW $\frac{1}{4}$
SW $\frac{1}{4}$ -SE $\frac{1}{4}$ SE $\frac{1}{4}$ -SW $\frac{1}{4}$ NE $\frac{1}{4}$ -NE $\frac{1}{4}$ NW $\frac{1}{4}$ -NE $\frac{1}{4}$
SE $\frac{1}{4}$ -NE $\frac{1}{4}$ SW $\frac{1}{4}$ -NE $\frac{1}{4}$ Sec 21, + 28, T. 35, R. 9, E.
B. H. M.

5. The name of the canal or ditch or other works by which said water is conducted to such place of use is

A. H. Kroth Diversion6. The right to take the water from such works is based upon permit No. 319-2

7. The source of supply from which such water is diverted is

Battle Creek

8. The date of priority which said user is prepared to establish is

Aug 21 1948

(Sign)

Arthur H. Kroth

Permit No. 319-2

Water Division No.

Water District

Notice of Completion of Works

(This blank must be filled out by the holder of permit and forwarded to the State Engineer at least 60 days before the time set for completion of works.)

(P. O.)

Harrison S. Mark

(Date)

Dec 26 1949

TO THE STATE ENGINEER OF SOUTH DAKOTA, PIERRE:

DEAR SIR: Notice is hereby given of the completion of the works for the diversion of 2.9second feet of the waters of the state from April 1stthrough the Month of Septemberfor Irrigation purposes

in accordance with the terms and conditions of a certain permit heretofore issued by the State Engineer of the State of South Dakota.

1. The name of the person or corporation holding said permit is Arthur H. Kroth2. The postoffice address of such person or the place of business of such corporation is HarrisonCounty of CusterState of South Dakota3. The number of such permit is 319-2and the date set for the completion of such work is Nov. 1st 19494. Said water to be used for Irrigation

purposes.

5. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conducting to the place of intended use, in accordance with the plans accompanying the application for such permit, is 2.9 second ft cubic feet per second.

6. The amount of land for which said water is available is 207.6 acres,

particularly described as follows:

SW $\frac{1}{4}$ - NE $\frac{1}{4}$ SE $\frac{1}{4}$ - NW $\frac{1}{4}$ NW $\frac{1}{4}$ - SE $\frac{1}{4}$
NE $\frac{1}{4}$ - SW $\frac{1}{4}$ SW $\frac{1}{4}$ - SE $\frac{1}{4}$ SE $\frac{1}{4}$ - SW $\frac{1}{4}$ NE $\frac{1}{4}$ - NE $\frac{1}{4}$
NW $\frac{1}{4}$ - NE $\frac{1}{4}$ SE $\frac{1}{4}$ - NE $\frac{1}{4}$ SW $\frac{1}{4}$ - NE $\frac{1}{4}$ Sec 21 & 28
T.35. - R.9E. - P.4M.

(In case of all canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well known and competent engineer.)

I hereby certify that the facts set forth in the above notice are

(Signature.)

Arthur H. Kroth
Arthur H. Kroth, Owner

Permit No. 319-2

Water Division No. 2 Battle Creek Water District

Certificate of Construction of Works.

TO ALL WHOM IT MAY CONCERN:

This is to Certify, That ARTHUR H. KROTH

of Hermosa County of Custer and State of
 South Dakota the holder of Permit No. 319-2, issued upon Application
 No. 319-2, bearing date of priority of July 17, 1948, authorizing the diversion of
 2.9 second-feet of the waters of Battle Creek
 County of Custer State of South Dakota, at a point 3083.6 ft.
 N. 37° 04' E. from the Southwest corner of Sec. 21
 for irrigation

purposes, has fully complied with the provisions of the laws of the State of South Dakota relating to proof of
 completion of the works of diversion set out and described in said Permit; that said works are adequate for divert-
 ing and conveying to the place of intended use 2.9

second-feet of water; and that the lands proposed to be irrigated by the use of said water are described as follows,
 to-wit:

Sec. 21 SW $\frac{1}{4}$ NE $\frac{1}{4}$ 19.8ASE $\frac{1}{4}$ NW $\frac{1}{4}$ 3.3ANW $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0ANE $\frac{1}{4}$ SW $\frac{1}{4}$ 22.1ASW $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0ASE $\frac{1}{4}$ SW $\frac{1}{4}$ 11.3ASec. 28 NE $\frac{1}{4}$ NE $\frac{1}{4}$ 31.5ANW $\frac{1}{4}$ NE $\frac{1}{4}$ 20.1ASE $\frac{1}{4}$ NE $\frac{1}{4}$ 13.5ASW $\frac{1}{4}$ NE $\frac{1}{4}$ 5.5A

207.6A

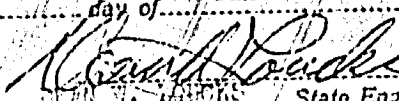
Witness my hand this

16

day of

June

A. D. 1950



State Engineer of South Dakota.

A. H. KROTH WATER DIVERSION
LEGAL DESCRIPTION OF PARCELS OF LAND
AND AMOUNTS TO BE IRRIGATED
All in Twp. 3 South, Range 9 East, F.R.M.

SEC.

DESCRIPTION

ACRES TO BE IRRIGATED

21

SW 1/4	NE 1/4	19.8
SE 1/4	NW 1/4	3.3
NW 1/4	SE 1/4	40.0
NE 1/4	SW 1/4	22.1
SW 1/4	SE 1/4	40.0
SE 1/4	SW 1/4	11.3

28

NE 1/4	NE 1/4	31.6
NW 1/4	NE 1/4	20.1
SE 1/4	NE 1/4	13.9
SW 1/4	NE 1/4	5.5

TOTAL 207.6

STATE OF SOUTH DAKOTA

WATER LICENSE NO. 319-2

WHEREAS, On the 17 day of July A. D. 19 48

ARTHUR H. KROTH

of Hermosa County of Custer and State of

South Dakota duly made application (No. 319-2) to me for a permit to use 2.9

cubic feet per second of the waters of the Battle Creek

County of Custer State of South Dakota, for irrigation

purposes; and

WHEREAS, On the 27 day of September A. D. 19 48

Permit No. 319-2 was issued to said applicant for the diversion of said water, and providing for the com-

pletion of the works of diversion therein described on or before the 27 day of

September A. D. 19 49 and for the application to beneficial use of said

water on or before the 27 day of September A. D. 19 49

and

WHEREAS, On the 26 day of December A. D. 19 49

the holder of said permit duly made proof of the completion of adequate works for the diversion of 2.9

cubic feet per second of said waters, as evidenced by my Certificate No. 319-2

dated January 3, 1950 confirming the completion of works of sufficient capacity for

diverting and conveying to the place of intended use 2.9 cubic feet per second of water

with date of priority of July 17, 1943 and

WHEREAS, On the 26 day of December A. D. 19 49

proof was duly made of the application to beneficial use of 2.9 cubic feet per second of

said water:

NOW, THEREFORE, By virtue of the authority vested in me by the laws of the State of South Dakota, I hereby grant and confirm to Arthur H. Kroth of Hermosa, South Dakota the holder and owner of said permit No. 319-2 a water right, dating from July 17, 1919 to the use of 2.9 cubic feet per second of the waters of the Battle Creek in the County of Custer and State of South Dakota, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at a point 3083.6 feet N. 37° - 0.4' E. of the SW Corner of Sec. 21, T38, R9E. and conducted to and upon SW 1/4 NE 1/4, SE 1/4 NW 1/4, NW 1/4 SE 1/4, NE 1/4 SW 1/4, SW 1/4 SE 1/4, and SE 1/4 SW 1/4, Sec. 21; also NE 1/4 NE 1/4, NW 1/4 NE 1/4, SE 1/4 NE 1/4, and SW 1/4 NE 1/4, Sec. 28, T38, R9E.

for the purpose of irrigation

subject, however, to the laws of the State of South Dakota applicable to a license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Pierre, South Dakota, this 6 day of July A. D. Nineteen Hundred and 50

DEAN W. LOUCKS

State Engineer

STATE OF SOUTH DAKOTA

Water License No. 319

To Arthur H. Kroth

Hermosa, South Dakota

Transferred to
M. Miller & W. H. Miller
Landers, Sioux Falls

Source of Supply

Battle Creek

County

Custer

Am't

2.9

Sec. Feet

Point of Diversion a point 3083.6 ft. N. 37° - 0.4' E. of the SW Corner of Sec. 21, T38, R9E.

Place of Use SW 1/4 NE 1/4, SE 1/4 NW 1/4, NW 1/4 SE 1/4, NE 1/4 SW 1/4, SW 1/4 SE 1/4, and NE 1/4 NW 1/4, Sec. 28, T38, R9E.

Purpose irrigation

Date of Priority July 17, 1918

Recorded September 27, 1918

In Book 2 of W.R. Page 594-595

Permit No. 319-2

Form No. 23

DEC 31 1959

NOTICE OF TRANSFER OF WATER PERMIT

STATE WATER RESOURCES COMMISSION
PIERRE, SOUTH DAKOTA

December 22, 1959

TO: Office of State Water Resources Commission
Pierre, South Dakota

This is to notify you that W. C. Miller and Winifred Miller, husband and wife,
and W. C. Miller and Billie Marie Miller, Snyder, Texas,
who previously owned the land described below has sold his interests to Bruce A. Norris
of Libertyville, Illinois - Western Cattle Company

together with any rights to the beneficial use of water thereon as evidenced by State Water Permit No. 319-2
and as provided for in section 61.0141 of the SDC of 1939 and elsewhere on the SW 1/4, SE 1/4,
E 1/4 SW 1/4, W 1/4 SE 1/4, Section 21; and the NE 1/4 Section 28, Township 3 South,
Range 9 East, Black Hills Principle Meridian

You are therefore hereby requested to file this "Notice of Transfer of Water Permit" in its appropriate file at
the OFFICE OF WATER RESOURCES COMMISSION as evidence of the change of ownership.

A fee of one dollar is hereto attached to cover filing fees as required under Section 55.18603 of the SDC of 1939.

STATE OF Illinois ~~SOUTH DAKOTA~~

County of Cook

SS.

Bruce A. Norris

being first duly sworn on my

oath depose and say: That my relation to the above described undertaking is that of Owner, that I have read the
above foregoing statement, and I know of my own personal knowledge that the information herein stated is true.

Signed Bruce A. Norris

Subscribed and sworn to before me this 19

day of December

1959

William F. Foman
Notary Public

My Commission Expires Dec. 27, 1962

(State Engineer's Copy)

Permit No. 319-2

Water Division No. 2 BATTLE CREEK Water District

CERTIFICATE OF APPLICATION OF WATER TO BENEFICIAL USE

DEPOSITION OF HOLDER

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. Arthur H Kroth Custer Co. South Dakota
P.O. Address, Hermosa, So. Dakota.

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business (If a foreign corporation, give name and postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans. Personal, Arthur H Kroth Diversion

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. July 17, 1948 (No 319-2) Water use date May 23, 1948.

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. BATTLE CREEK SUPPLY DIT POINT 3083.6 FT N 37° 04' E FROM
THE SO. WEST CORNER OF SECTION 21 TO THE POINT OF DIVERSION.

Ques. 5. Describe your works of diversion, and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use.

Ans. Water is pumped by a John Deere power unit.
Developing approximately 36 horse power with an eight inch
Fairbanks Morse centrifugal pump, which will pump approximately
1425 gal per minute at full capacity.

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have ACTUALLY been irrigated with said water.)

Ans. Irrigation only. Irrigation ditches for each tract as follows.
SW 1/4 NE 1/4 ditch No. 6 19.8 acres SE 1/4 NW 1/4 3.3 acres ditch No. 6
NW 1/4 SE 1/4 40 acres ditch No 4 and No 5 N.E. 1/4 SW 1/4 22.1 acres ditch No 1, SW 1/4 SE 1/4
40 acres ditch No 4, SE 1/4 SW 1/4 11.3 acres ditch No 1 and No 2 all above tracts
in Sec. 21 Town 38 Range 9 East. also NW 1/4 NE 1/4 20.1 acres ditch No 1,
SE 1/4 NE 1/4 13.7 acres ditch No 1 SW 1/4 NE 1/4 35.5 acres ditch No 1
located in Sec. 28 Town 38 Range 9 East.

Ques. 7. If for other than irrigation purpose, state how applied, amount of horse power generated, etc.

Ans. Irrigation only

Ques. 8. What is the minimum amount of water required for the use specified above?

Ans. With the amount of water allotted 2.9 cuft. I need
it all to cover this acreage

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans. I am the person.

Ques. 10. State when, how, in what amount and to what extent the water diverted under above mentioned permit has been used.

Ans. I have pumped continuously from April 1st until haying around June 15th except when it was extremely cold. Then after paying first crop of alfalfa I watered again for alfalfa seed and expect to do same each year then as soon as seed crop or hay crop is off in fall, I expect to wet up again.

(Sign.) Arthur H. Kroth

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Hermosa, County of Converse

State of South Dakota, on this 26 day of June A.D. 19 60

J. L. Mills
Notary Public

Permit No. _____

Proof of Application of Water to
Beneficial Use.

DEPOSITION OF HOLDER.

Amount of water. _____ second feet

Source. _____

County. _____

Purpose. _____

Place of Use. _____

Date of priority. _____

Received and filed _____

Permit No. 319-2..

Water Division No. 2..... Battle Creek Water District

Certificate of Examination of Works

Report of Examining Engineer

To the State Engineer, Pierre, South Dakota:

Dear Sir: I hereby certify that in accordance with your letter of authorization dated Jan. 3, 1950, I have this day made a thorough examination of the diversion works constructed by Arthur H. Krohn, of Hermosa, Custer County, South Dakota, holder of permit No. 319-2, issued upon application No. 319-2, bearing date of priority of July 17, 1948, authorizing the diversion of 2.9 second feet of the waters of Battle Creek for irrigation purposes. I have to report on the condition of the same as follows:

The diversion works comprise: A concrete diversion box with adjustable locking gate and overflow weir.

and the system is in the following condition: very good

The point of diversion is located 3083.6 Ft. N., 37°-04'E from the S. West corner of Section 21.

The works are capable of diverting and conveying to the place of use 2.9 second-feet of water, which is to be used for irrigation

The legal sub-divisions to be irrigated are: Sec. 21 SW $\frac{1}{4}$ -NE $\frac{1}{4}$, 19.8A. SE $\frac{1}{4}$ -NW $\frac{1}{4}$, 3.3A. NW $\frac{1}{4}$ -SE $\frac{1}{4}$, 40.0A. NE $\frac{1}{4}$ -SW $\frac{1}{4}$, 22.1A. SW $\frac{1}{4}$ -SE $\frac{1}{4}$, 40.0A. SE $\frac{1}{4}$ -SW $\frac{1}{4}$, 11.3A. Sec. 28. NE $\frac{1}{4}$ -NE $\frac{1}{4}$, 31.6A. NW $\frac{1}{4}$ -NE $\frac{1}{4}$, 10.1A. SE $\frac{1}{4}$ -NE $\frac{1}{4}$, 13.9A. SW $\frac{1}{4}$ -NE $\frac{1}{4}$ 5.5A.

comprising a total of 207.6 acres of land.

The domestic use intended comprises

The utilization for power, mining, or other beneficial uses comprises:

Witness my hand, this 15 day of June A. D. 1950

Examining Engineer.

Municipal Engineering
Valuations, Dams
Land Surveys

Julian Staven
CONSULTING ENGINEER
Rapid City, South Dakota

623 1/2 St. Joe Street
Post Office Box 508
Telephone 222

Mr. Dean W. Loucks.....Page 2

I realize that it will be necessary for him to make two applications for water right: one to cover the tract of 65 acres more or less, which he intends to enlarge to approximately 100 acres, and also for the proposed diversion to irrigate the 200 acres last mentioned. Both of these points of diversion will be from Battle Creek.

Inasmuch as we have several more clients in the offing who are contemplating the application for water rights, please send us eight sets of the necessary forms and oblige.

Very truly yours,

Julian Staven

V. L. Rugg
By V. L. Rugg
Office Engineer

VLR:cl

Municipal Engineering
Valuations, Dams
Land Surveys

Julian Staven
CONSULTING ENGINEER
Rapid City, South Dakota

623 1/2 St. Joe Street
Post Office Box 508
Telephone 222

October 29, 1945

Mr. Dean W. Loucks
Office of State Engineer
Pierre, South Dakota

Dear Mr. Loucks:

We have a client who desires to make application for a water right on Battle Creek, approximately ten miles south of Hermosa. He is in a peculiar situation for the following reasons:

1. At one point he is diverting water with a 4-inch pump at the probable rate of about 500 gallons per minute, from which he is irrigating approximately 65 acres. He has been doing this for a considerable period of time and this practice has been followed by the party from whom he purchased the ranch under the impression that there has been, in some time past, a water right filed to cover this diversion. He desires to increase this irrigated acreage to about 100 acres and increase his pumping capacity proportion.

2. He has purchased, for use in diverting water at another point, a large pump of approximately 2,500 gallons per minute capacity. He proposes to apply for the right to divert water to irrigate approximately 200 acres in a location different from that described above. He proposes to engage in irrigating this 200 acres and if the plan seems feasible, he wishes to enlarge to an estimated amount of 400 acres.

The point I wish to be sure of now is namely: Is it permissible to apply for a right to divert water in the amount necessary to irrigate the proposed 400 acres at this time and construct only enough diversion facilities to handle the 200 acres and then enlarge the facilities either by the purchase of a larger pump or additional pumping capacity at some later date? Or will it be necessary for him to make application at this time for only the approximately 5.6 cubic feet per second, of which his present pump is capable and make application to extend or enlarge the said water right at a later date by means of a supplementary application?

October 31, 1946

Julain Staven,
Consulting Engineer,
Rapid City, So. Dak.

Battle
Re: Spring-Creek
Water Rights.

ATTENTION: V. L. Rugg, Office Engineer.

Dear Mr. Staven:

This will acknowledge receipt of your letter of October 29th, in which you state that you have a client who desires to make application for a water right on Battle Creek. Our records show some 35 water rights on Battle Creek with a total appropriation of 429.82 cu. ft. per sec. We also have some 18 permits on Squaw Creek. No water rights have been granted on Battle Creek since 1914, for the reason that according to the record, the stream is already over appropriated. Before any further rights can be granted on this stream, it will be necessary to make an investigation of the rights now on record and to establish the fact that they have not been all or partially used for the last three years of normal water flow on the stream and may, therefore, be considered all or partially abandoned. It would be my guess that it will be found that many of the rights on record in this office have been technically abandoned and would only require documentary evidence.

If you would care to make such an investigation for this office and satisfactory arrangements could be made, I will furnish you with the recorded water permits and such other information as would be necessary to establish the present active water rights on the stream.

It is possible that the best way to proceed would be to make an investigation and determine any and all uses of water from Battle Creek, the points of diversion and authority that have been active during the last three years of normal flow in stream. Also, it would be necessary to determine the amount of water normally available from Battle Creek.

If, after this investigation is made and it is found that there is any unused water on the Creek, the application of your client would then be in order.

Relative to the inquiry in the second paragraph of your letter, I would call your attention to certain limitations as to the amount of water to be used as set up in the State Water Code. First, the use of water is limited to 1 cu. ft. for each 70 acres of land irrigated. Time for construction and beneficial use is also limited. Upon proper application, the owner

319-2

Oct. 31, 1946
Page 2 (Continued)

may apply for an extension of time in which to complete the construction of the project, giving the reasons for the request. If consideration shows the extension to be justifiable, it may be issued by the State Engineer but not in extent to exceed five years from the date of the approval of the application and the water must be put to beneficial use not exceeding four years in addition thereto.

If you care to go into this matter, I would be glad to hear from you further.

Very truly yours,

DEAN W. LOUCKS,
State Engineer.

DWL/ep
Enclosure

P.S. We are enclosing, herewith, application blanks as requested.

MUNICIPAL ENGINEERING
VALUATIONS, DAMS
LAND SURVEYS

Julian Staven
CONSULTING ENGINEER
Rapid City, South Dakota

January 17, 1949

Dean W. Loucks, State Engineer
Pierre
South Dakota

223 1-2 ST. JOE STREET
POST OFFICE BOX 508
TELEPHONE 222

OFFICE OF STATE ENGINEER
PIERRE, S. DAK.

Subject: Water Rights, Battle Creek, Custer County

Dear Mr. Loucks:

Reference is made to a letter from your office dated October 31, 1946, dealing with over-appropriation of water from Battle Creek. At that time it was suggested that we undertake an investigation of the water rights to determine those which were active and those which were inactive or only partially used. The result of such survey, which we have completed, is shown by the enclosed sheets which deal only with those rights which have not been utilized at all in excess of three years. These water rights carry the numbers by which they were identified in the list of water rights you sent us at that time.

As you may note, it was nearly impossible to arrive at the amount of water actually cancelled out because practically all of the users interviewed simply used a temporary diversion wing dam usually made of a few logs and stones faced with a mixture of dirt and straw to divert the water into ditches which were entirely devoid of any head gate or metering device whatsoever.

A large proportion of the active users use the water for flooding wild hay land bottoms adjacent to the stream, so there is no doubt but that a good share of this water, minus evaporation of course, is later recovered by the stream a little lower down and reused by others. It was therefore assumed that the authorized amounts of water originally set up for these inactive water rights would be cancelled out and made available for appropriation by others.

The following were investigated and the data certified by either the owners or employees of the owners to have been inactive, as indicated by the enclosed statements which are listed as follows:

No.	Location	C.F./sec.	Inactive For
0134-2	Sec. 10, 3S. 9E.	6	8 years
0421-2	Sec. 31, 3S. 10E.	16	6 years
50-2	Sec. 3, 4S. 10E.	0.4	10 years
187-2	Sec. 11, 4S. 10E.	2.28	5 years
188-2	Sec. 19, 4S. 11E.	1.14	5 years
0359-2	Sec. 27, 3S. 9E.	20	4 years
0233-2	Sec. 21, 3S. 9E.	20	5 years

Total, by enclosed statements

65.82

Dean W. Loucks--Page 2

In addition, the following information was gathered from long-time residents of the vicinity concerning water rights with diversion points located as listed below. These people were neither owners nor employees, and absentee owners were not available for interview; but the data is herewith forwarded to you for your consideration:

<u>No.</u>	<u>Location</u>	<u>C.F./sec.</u>	<u>Inactive for</u>
0360-2	Sec. 21, 3S. 9E.	20	6-7 years
199-2	Sec. 11, 2S. 6E.	25	15-20 years
0237-2	Sec. 31, 2S. 7E.	40	8 years
		Total...95	

The result of the above investigation would indicate that approximately 150 cubic feet per second of water, formerly appropriated, may now be considered as abandoned.

As you may recollect, the above activities were instigated by the fact that we have been trying to arrange for the grant of a water right to Mr. Art Kroth of Hermosa.

Kindly advise me as to your reactions to the above information and your opinion as to whether Mr. Kroth may now be entitled to a water right in the amount of approximately five cubic feet per second.

Sincerely yours,

JULIAN STAVEN

By

V. L. Rugg
V. L. Rugg
Office Engineer

VLR:cl

317-2
November 19, 1940

Julien Steven, Consulting Engineer
Rapid City
South Dakota

Dear Sir:

I hereby request the State of South Dakota to make necessary investigations as to the water rights on Battle Creek. This investigation is to show the number of second feet of water now being used by miners, ranchers, and farmers adjacent to Battle Creek in Custer County.

If investigation shows that the water in Battle Creek is not being used at the present time, I wish to make a request for water rights on Battle Creek in Custer County.

Very truly yours,

Arthur Kroth

Arthur Kroth

51172
November 14, 1916

Julian Staver,
Consulting Engineer,
Rapid City, So. Dak.

Re: Battle Creek
Water Rights.

Dear Mr. Staver:

Mr. Horowitz, we are enclosing a list of Water Rights on Battle Creek in accordance with your letter of November 5. I believe you have literature, relative to Water Rights, on file in your office. In order that the rights listed may be considered as abandoned, it will be necessary to have witnesses sign a document to the effect that to their knowledge the water has not been used over a period of three successive years, for each right in question.

Very truly yours,

DEAN W. LOUCKS,
State Engineer.

DW/sp
Enclosure

Municipal Engineering
Valuations, Dams
Land Surveys

Julian Staven

CONSULTING ENGINEER

Rapid City, South Dakota

317-2
623 1/2 St. Joe Street
Post Office Box 500
Telephone 222

RECEIVED
OFFICE OF FISH ENGINEER
PIERRE, S. DAK.

November 5, 1946

Dean Loucks, State Engineer
Pierre
South Dakota

Re: Water Rights on Battle Creek.

Dear Mr. Loucks:

This will acknowledge your letter of October 31. I was very much interested to learn that the water permits issued for Battle Creek total more than the average flow of the stream.

In line with your suggestion that an investigation be made to determine which permits are active and which permits have been technically abandoned, it is requested that you furnish this office with the recorded water permits and such information as is necessary for us to conduct such an investigation and establish the present active water rights on the stream.

Thanking you for this and past courtesies,

I am

Sincerely yours,

Julian Staven

V. L. Rugg
By V. L. Rugg
Office Engineer

VLR:cl

January 29, 1946.

Julian Staven, Consulting Engineer,
Rapid City, S. Dak.

Attention: V. L. Rugg, Office Engineer.

Re: Battle Creek,
Custer County,
Water Rights.

Dear Mr. Staven:

Replying further to your letter of January 17th in regard to the problem of additional water rights on Battle Creek, I have gone through the files and read the old water rights on the first ten having highest priority. I am listing same herewith.

You will note that only one of these ten upper priority rights have been possibly eliminated through your investigation. There is still something over seventy second feet of water granted from Battle Creek by these rights. The ones that should be given major attention are 014-2, which according to my records would have first priority of six cubic feet; the next two, namely 0148-2 and 0150-2 are very questionable since they were rights for reservoirs for mining purposes. Possibly these two could be disregarded. The next one in importance is 0149-2 which claims all surplus water from Battle Creek. It is quite possible that this right has not used all surplus water and would therefore be entitled to only that portion which they have actually beneficially used. The next right is 0254-2, which has a claim for four second feet and 0285-2, which has a claim for five second feet and 0384-2, which has a claim for ten second feet.

Just how far to go down these priorities would depend upon how much flow there is in Battle Creek to be appropriated. As far as I know there are no stream flow records on Battle Creek. The flow would have to be arrived at from information and investigations in the field. This should be done prior to any new appropriations.

In summary, I still believe we lack considerable information before we would be in position to approve any additional appropriations.

Very truly yours,

Dean W. Loeck,
State Engineer.

DWL/mh

July 10, 1950

Lee Wilsey
Hermosa, S. Dak.

Re: Battle Creek, 0421-2
Herman N. Steele
(Ching Arnold)
30 + 31 Twp. 3S, R. 10E
Custer County

Dear Sir:

I have your letter of July 7, 1950, relative to the above water right. In 1947 at the time the Kroth application was filed we hired an engineer to get information on the Battle Creek Rights. Among the material that he was able to get is a statement signed by a resident of that water shed to the effect that no water had been used during the six years previous. During those six years there was at least one or two years of comparatively heavy run-off. Also we have a statement from the engineer to the effect that there was considerable water running below the points of diversion of most of the rights.

This information was taken into consideration in approving the Kroth right. However, no right is canceled if it has not been abandoned by non-use for the period of time required by the Water Code. If you can file good and reliable proof that the right has not been automatically abandoned by non-use, it will be considered by this office to still be in effect.

Very truly yours,

DEAN W. LOUCKS
State Engineer

DNL:tt

AGREEMENT

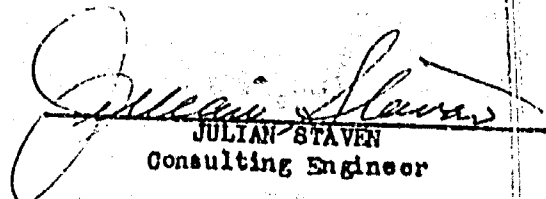
THIS AGREEMENT made the 1st day of November in the year Nineteen Hundred and Forty-six by and between the State of South Dakota through its duly authorized agent, the State Engineer, and Julian Staven hereinafter called the Engineer.

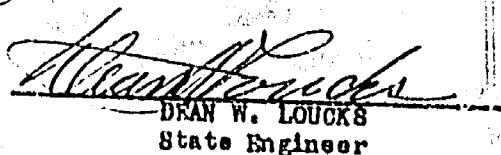
WITNESSETH, that whereas the State of South Dakota through its Office of State Engineer is required to make water investigations to determine the availability of water in Battle Creek to satisfy certain water applications made to that office. And whereas such investigations are to be made with funds appropriated by the State Legislature at their 1947 Session.

NOW THEREFORE, the State of South Dakota, acting through the Office of State Engineer and the Engineer, for the consideration hereinafter named and in accordance with duties and authority as set up in the South Dakota Code of 1939, do agree as follows:

The Engineer agrees to make the water investigations on Battle Creek as required by the State Engineer.

The State of South Dakota, through its duly authorized agent, agrees to approve for payment to the Engineer for such services at the rate of \$25.00 per 8 hour day for field research to determine status of old water rights, at the rate of \$18.00 per 8 hour day for office work and \$18.75 per man day for survey work to determine stream flow.


JULIAN STAVEN
Consulting Engineer


DEAN W. LOUCKS
State Engineer

 **Department of
Water & Natural Resources**

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

August 15, 1990

NOTICE OF ORDER

TO: Battle Creek Water Users

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

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

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

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

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

Irrigation Water Right Owners and Domestic Users
Battle Creek

Stanley Neugebauer, Neugebauer Dairy, Inc., RR 1, Box 96, Hermosa
SD 57744
Clarence Foos, RR 4, Box 27, Hermosa SD 57744
Herb Kaiser, HCR 89, Box 303, Hermosa SD 57744
Gene Baker, RR 4, Box 11, Hermosa SD 57744
Ed Kanesky, Box 52, Caputa SD 57725
H. J. Borgmeyer, 1721 11th St, Rapid City SD 57701
Keith Robertson, HCR 89, Box 294, Hermosa SD 57744
John & Darlene Stovall, HCR 89, Box 317, Hermosa SD 57744
Clarence Werner, HCR 89, Box 297, Hermosa SD 57744
Fred Rittberger, Rittberger Beef & Dairy, Inc, HCR 83, Box 13,
Hermosa SD 57744
Donald Kaiser, RR 4, Box 18, Hermosa SD 57744
Louis Freiberg, Attorney, First Federal Plaza, 909 St. Joe St.
#420, Rapid City SD 57701



319-2

DEPARTMENT OF WATER & NATURAL RESOURCES

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

May 3, 1991

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

Dear Mr. & Mrs. Foos:

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

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

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

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

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

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

Page 2

Foos

May 3, 1991

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

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

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

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

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

Page 3
Foos
May 3, 1991

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

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

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

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

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

Very truly yours,



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

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

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

Number	Name	Diversion Rate (cfs)	Priority Date
Water Right No. 969-2	Neugebauer Bros.	1.73	5/1/1881 & 6/11/1968
Water Right No. 2153-2	Neugebauer Bros.	0.33	5/1/1881
Water Permit No. 2054-2	Neugebauer Bros.	1.71	3/15/1988
Water Right No. 1170-2	John Stovall	3.00	1/28/1974
Water Permit No. 319-2	Gene Baker	2.90	7/17/1948
WR Filing No. 0359-2	Keith Robertson & Dr. Borgmeyer	1.47	3/3/1895
WR Filing No. 0422-2	Spanish 5 Ranch	1.82	10/14/1886
WR Filing No. 0421-2	Spanish 5 Ranch	1.80	10/27/1893
Water Right No. 1209-2	Edward Kanesky	1.07	9/29/1900
Water Right No. 1221-2	Rittberger Bros.	1.14	9/29/1900
Water Right No. 1275-2	Donald Kaiser	0.70	1935
Water Right No. 187-2	Clarence Foos	0.86	9/11/1912
Total		18.53	cfs

2000 WATER MANAGEMENT BOARD IRRIGATION QUESTIONNAIRE

Please fill out and return before December 1, 2000

319-2
ALDEN BAKER
HCR 89 BOX 293
HERMOSA SD 57744 9708

Baker cattle

CHANGES TO ADDRESS LABEL, IF ANY:

Telephone No. 605-255-4245

COMPLETE AND RETURN THIS FORM TO THE WATER RIGHTS PROGRAM AT 523 E CAPITOL, PIERRE, SD 57501-3181 (605) 773-3352

1. Is the system constructed? *yes X no _____

*Type of system used (check all that apply):

center pivots _____ towlines _____ big gun _____

flood X sprinklers _____ other _____

2. Did you irrigate in 2000? *yes X **no _____

*If yes, number of acres irrigated 200

**If no, list reason(s) in comment section:

Comment Section:

3. Source of water: Battle Creek

4. Is land enrolled in CRP? yes _____ no X

*If yes, through what year? _____

5. Did you apply chemicals or fertilizer through the system in 2000? *yes _____ no X

* If yes, a separate chemigation form is NOT needed.

Office use only



The portion of the form for reporting acres irrigated is on the back of this page. Listed below are two examples of how to complete the form:

EXAMPLE 1: In June & July, 130 acres were irrigated using a pivot system (70 acres of corn & 60 acres of alfalfa). The pump rate of the pivot is 800 gallons per minute and you pumped 8 days (@ 24 hours per day) on the corn and 22 days on the alfalfa:

MONTH	CROP	ACRES	PUMP RATE	# DAYS	AVE/HRS DAY
JUNE	CORN	70	800 GPM	8	24
	ALFALFA	60	800 GPM	10	24
JULY					
	ALFALFA	60	800 GPM	12	24

EXAMPLE 2: In June, 40 acres of alfalfa were irrigated (using gated pipe @ 3000 gpm) for 5 days - 24 hours per day; 60 acres of beans were irrigated (using big gun @ 380 gpm) for 10 days at 24 hours per day:

JUNE	ALFALFA	40	3000 GPM	5	24
	BEANS	60	380 GPM	10	24

For ease in calculating water use, please specify if actual irrigation hours or kilowatt hours are being reported. For kilowatt hours, include depth to water & system pressure in comment section.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

December 27, 2000

No. 319-2

Baker Cattle
HCR 89, Box 293
Hermosa SD 5744-9708

Dear Sir:

Thank you for returning the yearly irrigation questionnaire. Since the name on the form was crossed off and Baker Cattle inserted, it appeared that a name change or a transfer of ownership had occurred. Enclosed is a partially completed "Notice of Transfer" form for use in filing an ownership change. The water right is currently listed in the name of Aldren/Jeanette Baker.

The transfer form should be checked over for accuracy and signed by the new owner in the presence of a notary public. Upon completion, return the form to our office with a required filing fee of \$2.50.

South Dakota Water Law 46-5-30.3 requires Notice of any sale, grant, lease, conveyance or other transfer of a water permit or water right to appropriate water to be filed with this office within ninety days.

If you have any questions, please contact me.

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
605 773-3352

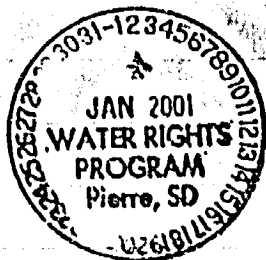
enclosure

We have signed the
transfer of owner ship.

But we are not sure that is
necessary. The only thing
that has changed is the
name. There has been no
transfer of owner ship.

Thank you

Jenneth Baker





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 2, 2001

No. 319-2

Jeanette Baker
Baker Cattle
HCR 89, Box 293
Hermosa SD 5744-9708



Dear Ms. Baker:

Thank you for returning the "Notice of Transfer" form. We understand there has been no ownership change, just a name change. In order for us to keep our records accurate, this form needs to be submitted for a name change as well as an ownership change.

Upon receipt of \$2.50 from you, our records will be changed to reflect this name change. If you have any questions, please contact me.

Sincerely,

Karen Schlaak
Water Rights Program
605 773-3352

NOTICE OF TRANSFER OF OWNERSHIP

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

No. 319-2

Date: 12-29-00

We request that Water Right No. 319-2

formerly owned by: Aldren/Jeanette Baker

be transferred to: (name & address) BARRE CATTLE HERD 59 Box 243
HERMOSA S.D. 57744 Telephone No. (605) 255-4245

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

207.6 acres located in portions of SW ¼ NE ¼, SE ¼ NW ¼, W ¼ SE ¼, E ¼ SW ¼ Sec 21; NE ¼ Sec 28; all in T3S-R9E

I/We understand that the validity of Water Right No. 319-2 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

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

A fee of Two Dollars and Fifty Cents (\$2.50) is attached to cover the filing fees as required under SDCL 46-2-13.

STATE OF SOUTH DAKOTA)

County of Custer

IPNo Deborah Baker being first duly sworn on my oath depose and say that my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and that I know of my own personal knowledge that the information herein stated is true.

Jeannette Baker
(Signed)

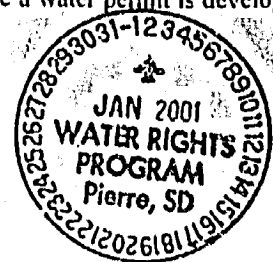
Subscribed and sworn to before me this 29th day of December, 19 2000

My Commission Expires 8/7/2002

Kyla G. Robertson
(Notary Public)

NOTE: Water permits may be cancelled for nonconstruction within the five year construction period. 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.



RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

No 416728

Pierre, January 9, 2001

RECEIVED OF Baker Cattle PTO, HCR 89 Box 297, Hermosa SD 57444
the following amount in fees for services rendered as provided for by law:

(Aldren/Jeanette Baker)

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

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

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

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

Fee for Filing Transfer Form 319+2

Fee for Filing Extension Request _____

Fee for _____

2 50

Total

2 50

(Any Other Work Provided by Law)

By Harold E. Eide
Chief Engineer



January 31, 2001

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

319-2

Jeanette Baker
Baker Cattle
HCR 89 Box 293
Hermosa, SDE 57744

Dear Ms. Baker:

Thank you for following up on the name change for Water Right No. 319-2. The water right is now listed in the name of Baker Cattle.

Enclosed is your Receipt No. 416728 in the amount of \$2.50. You may keep this for your records.

Sincerely,

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

enclosure



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 29, 2003

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

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

Dear Mr. Baker:

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

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

If you have any questions, please contact me.

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
605 773-3352

enclosures

NOTICE OF TRANSFER OF OWNERSHIP

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

No. 319-2

Date: _____

I/We request that Water Right/Permit No. 319-2

formerly owned by: Baker Cattle

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

HCR 89 Box 293, Hermosa SD 57744

Telephone No. 605 255-4504

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

207.6 acres located in portions of SW 1/4 NE 1/4, SE 1/4 NW 1/4, W 1/2 SE 1/4, E 1/2 SW 1/4 Section 21;

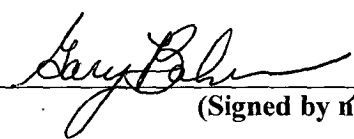
NE 1/4 Section 28; all in T3S-R9E

I/We understand that the validity of Water Right/Permit No. 319-2 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

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

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

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

 General Partner
(Signed by new owner)

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

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

RECEIVED

FEB - 5 2003

WATER RIGHTS
PROGRAM

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date February 5, 2003

RECEIVED OF Baker Cattle Limited Partnership, HCR 89 Box 293, Hermosa SD 57744

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	2	50
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>319-2</u>		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law)	TOTAL	2.50

No.

000042

By

Darland Ebele

Chief Engineer

gm



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 7, 2003

319-2
2367-2
2367A-2

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

Dear Mr. Baker:

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

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

Sincerely,

Karen Schlaak

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

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 20, 2004

NOTICE OF SHUTOFF ORDER

TO: BATTLE CREEK VALLEY RANCH
GARY BAKER, GENERAL PTR
HCR 89 BOX 291
HERMOSA SD 57744

FROM: *for* GARLAND ERBELE, Chief Engineer
Water Rights Program

SUBJECT: Shutoff Order for Battle Creek Water Rights

Shutoff Order for Water Right Nos. 2367-2 2367A-2 2367B-2 319-2

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

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

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



December 14, 2004

319-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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

Dear Mr. Baker:

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

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

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

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

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

Sincerely,

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 18, 2005

NOTICE OF MODIFICATION TO 1990 BATTLE CREEK ORDER

TO: Battle Creek Water Users

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program

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

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

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

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

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

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

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

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

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

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

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



319-2
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 14, 2006

TO: John and Darlene Stovall, 14829 SD Hwy 40, Hermosa SD 57744
Edward and Betty Kanasky, Box 52, Caputa SD 57725
Rittberger Brothers, HC 89, Box 302A, Hermosa SD 57744
Donald Kaiser, HCR 89, Box 303, Hermosa SD 57744
Clarence and Carol Foos, PO Box 317, Hermosa SD 57744
Neugebauer Brothers, HC 89, Box 209, Hermosa SD 57744
Battle Creek Valley Ranch, c/o Gary Baker, 15299 Baker Rd, Hermosa SD 57744
Custer Ranch, LLC, c/o Robert Wordeman, HC 89 Box 298, Hermosa SD 57744
Rodales Ranch, Inc., c/o Robert Borgmeyer, 6770 North Longfellow Dr, Tucson AZ 84717-2420
Birdsall Sand and Gravel, c/o Kyle Frisinger, PO Box 767, Rapid City SD 57709

FROM: Garland Erbele, Chief Engineer
Water Rights Program DENR *Garland Erbele*

SUBJECT: Battle Creek Bypass Order

On March 2nd, the Water Management Board considered a request for a declaratory ruling on the April 2005 order that modified the bypass at the USGS gaging station below Hermosa from 3.0 cubic feet of water per second (cfs) to 1.5 cfs. The Board after hearing all the testimony affirmed the modified order of the 1.5 cfs bypass. The Board will now adopt finding of fact, conclusions of law and a final decision at their May 3rd meeting. The final decision is then subject to appeal to the courts.

Under the 2005 Order, diversion of water from Battle Creek must cease if flow at the Highway 40 gage east of Hermosa is 1.5 cfs or less. Real time gage readings can be accessed at USGS website <http://waterdata.usgs.gov/sd/nwis/>. This order applies to all Battle Creek water rights.

If drought conditions continue, it is likely that Battle Creek water right holders are facing a year where very limited diversions may be allowed based on the 1.5 cfs bypass. At our meeting last May in Rapid City, it was agreed that permit holders would coordinate their withdrawals from the creek to maintain the 1.5 cfs flow at the gaging station below Hermosa and limit withdrawals to a single user each day. I again encourage similar cooperation. If you desire to be included in the effort to coordinate diversions, it is your responsibility to make your interest known. If the cooperative effort fails, diversions will be based on priority when sufficient flows exit at the Hwy 40 gaging station.

Please contact Don Stroup or Eric Gronlund at (605) 773-3352 if you have questions about the Board's action.



319-2

**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:

319-2

PERMIT NO	PTL	PRIOR1	PTL	PRIOR2	PRIORDATE	COUNTY	STATUS	FIRST NAME	LAST NAME	ADDRESS2	CITY	STATE	ZIP	PLUS4
2153-2					06/01/1882	CU	LC	IRR	NEUGEBAUER BROTHERS DAIRY	14197 SD HWY 40	HERMOSA	SD	57744	
969-2					05/01/1882	CU	LC	IRR	NEUGEBAUER BROTHERS	14197 SD HWY 40	HERMOSA	SD	57744	
2368-2					10/14/1887	CU	LC	IRR	CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
2368A-2					10/14/1887	CU	PE	IRR	CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
0421-2					10/27/1894	CU	PE	IRR	JD RANCH REAL ESTATE LLC	HCR 89 BOX 298	HERMOSA	SD	57744	
0170-2					12/29/1895	CU	PE	IRR	FOOS	HCR 89 BOX 317	HERMOSA	SD	57744	
2373-2					03/02/1896	CU	LC	IRR	RODALES RANCHES, INC.	8730 SHERIDAN LAKE RD	RAPID CITY	SD	57702	9066
1209-2					09/29/1900	CU	LC	IRR	EDWARD/BETTY S KANESKY	BOX 52	CAPUTA	SD	57725	
1221-2					09/29/1900	CU	LC	IRR	RITBERGER BROTHERS	15663 SD HWY 40	HERMOSA	SD	57744	
2367-2					01/01/1905	CU	LC	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
2367A-2					01/01/1905	CU	PE	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
2367B-2	01/01/1905		07/17/1948		01/01/1905	CU	PE	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
187-2					09/11/1912	CU	LC	IRR	FOOS	PO BOX 317	HERMOSA	SD	57744	0317
1275-2					01/01/1935	CU	LC	IRR	KAISER	15745 SD HWY 40	HERMOSA	SD	57744	
319-2					07/17/1948	CU	LC	IRR	BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
1170-2					01/28/1974	CU	LC	IRR	JOHN/DARLENE STOVALL	14829 SD HWY 40	HERMOSA	SD	57744	
1283-2					08/01/1975	CU	PE	COM	LIEN & SONS INC	PO BOX 440	RAPID CITY	SD	57709	0440
2054-2					03/15/1988	CU	LC	IRR	NEUGEBAUER BROTHERS	14197 SD HWY 40	HERMOSA	SD	57744	

319-2

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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



JUN 20 2007

2367B-2

Battle Creek Valley Ranch Limited Partnership
15199 Baker Rd
Hermosa SD57744

Dear Sir:

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

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

Sincerely,

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

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

enclosures