

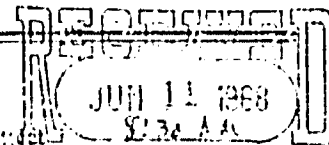
969-2

1. Considered 7-17, 1968
2. Name of Applicant WALTER NEUGEBAUER
3. Post Office Address HERMOSA
4. Amount of water claimed 1.73
5. Source of water supply BATTLE CREEK & DRY DRAW
6. Water to be used for IRRIGATION
- Acres to be irrigated 121.7
7. Water to be diverted and used in CLUSTER county
about 14 1/2 miles of HERMOSA
8. Proof of Publication Received _____
Not received 1/2
9. Application Approved _____
Subject to _____
Not Approved _____
Action deferred _____

10. Remarks:

No. 969-2Water Division No. 2 BATTLE CREEK

(Blanks to be filled by the Engineer for the W. R. C.)

STATE WATER RESOURCES COMMISSION
PIERRE, SOUTH DAKOTA

APPLICATION FOR PERMIT

To Appropriate Water within the State of South Dakota

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

1. Name of applicant LLOYD WALTER NEUGEBAUER Brothers
 Postoffice address HARMOSA, NEBRASKA, County BUCKINGHAM, State NEBRASKA

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 addresses 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)

Self and employment of others

- (b) Cash on hand, \$ Sufficient (c) Treasury stock, \$ _____
 (d) Bonds to be issued, \$ _____ (e) Other resources, \$ _____

2. Name of diversion work W2 NEUGEBAUER IRRIGATION PROJECT, NO. 13. Amount of water claimed 1.73 cubic feet per second4. Source of water supply BATTLE CREEK

5. Location of point of diversion _____

_____ on _____ bank _____ County.

6. Annual period or periods during which water is to be used April through November

7. To be used for:

1. Irrigation or domestic use: Gravity, overhead sprinkling or combination system? Gravity(a) Number of acres to be irrigated 121.7 ac.
NE 1/4 SW 1/4, 14.6 ac; NW 1/4 SW 1/4, 18.4 ac; SW 1/4 SW 1/4, 19.8 ac; SW 1/4 NW 1/4, 17.5 ac; SE 1/4 NW 1/4, 36.6 ac;(b) Legal subdivisions to be irrigated NE 1/4 NW 1/4, 14.8 ac; all in Sec 31 - 12S - 48E

(NOTE—A list of lands to be irrigated, giving each subdivision and fraction and acreage thereof, should be written and attached to the application as a part of this application. Same must also be shown on accompanying map.)

(c) Statement as to domestic use (giving location, etc.) _____

8. Stockwatering, mining, milling, power, fish culture, fire protection and public recreation:

(a) Nature of use _____
 Name any of the above uses claimed

(b) Amount of power to be generated _____ horse power.

Amount claimed for engine cooling _____

(c) Location of plant _____

(d) Method of developing power _____

(e) Point where water will be returned to stream _____

MAP A/C 838-2

8. Estimated cost of work:

(a) Head Gates, \$-----

(c) Fluming, \$-----

(e) Other structures -----

Enlarge reservoir

(d) Canals, \$-----

Pipeline -----

(b) Pumping plant, \$----- on hand

Rock, \$-----

Total, \$ 3000

9. Description of diversion works:

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

Pumping from Battle Creek to reservoir

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 at front water face -----; slope at back face -----

material used ----- 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	ACRE-Feet CAPACITY
0	0	0
2	2.9	3.9
4	5.7	12.5
6	7.7	25.9
8	10.3	43.9

(c)* Head gate: Width ----- feet; height ----- feet;

Material -----

(d) Canal: Total length ----- miles.

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

(Give dimensions where reductions in size are made.)

10. Time required for completion of work ----- years.

11. Time required for complete application of water to the proposed beneficial use ----- years.

12. Choice of newspaper for publication of notice of intention to appropriate -----

CUSTER COUNTY CHRONICLE

STATE OF SOUTH DAKOTA.

County of FERRINGTON

I, WALTER NEUBAUER,

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, examined the map accompanying the same, and that I know of my own personal knowledge that the matters therein stated and shown are true.

Signed

Walter Neubaer

Subscribed and sworn to before me this 10th day of JULY 1968.

Notary Public (or other qualified officer.)

Remarks by State Water Resources Commission: DIVERSIONS OF FLOWS FROM BATTLE CREEK

FOR DIRECT APPLICATION TO THE LAND BEAR A PRIORITY OF MAY 1, 1881.
WHEN SUCH DIVERSIONS ARE BEING MADE, LOW FLOWS AS NEEDED FOR DOWNSTREAM
DOMESTIC USE SHALL BE BY-PASSED.

DIVERSIONS OF FLOWS FROM BATTLE CREEK FOR STORAGE HAVE A PRIORITY
OF JUNE 11, 1968, WHEN SUCH DIVERSIONS ARE BEING MADE, SUFFICIENT WATER
SHALL BE ALLOWED TO PASS YET DIVERSION BEING TO SATISFY DOWNSTREAM
DOMESTIC USE AND PRIOR WATER RIGHTS.

STATE OF SOUTH DAKOTA

County of HUGHES ss.

Pierre, South Dakota, AUGUST 13, 1968

This is to certify that the foregoing application was received by the Commission at 8:30 o'clock

2 m. upon the 11TH day of JUNE, 1968

State Water Resources Commission

By:

Durston
Chief Engineer, Executive Officer

Number of permit 969-2

Date of first receipt of application JUNE 11, 1968

Date of return to applicant for correction, amendments or changes required as follows: _____, 19____

Date of receipt of corrected application _____, 19____

Date from which applicant may claim right DIRECT DIVERSION MAY 1, 1881
DIVERSION FOR STORAGE JUNE 11, 1968

Approved JULY 17, 1968, Recorded in Book 10 Page 239

This is to certify that we have examined the foregoing application for a permit to appropriate water of the State of South Dakota, and we 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 _____

JANUARY 17, 1971

2nd. The whole of said work is to be completed on or before JULY 17, 1973

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

JULY 17, 1977

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 1.73 cubic feet per second; neither shall it exceed the capacity of the above described system of diversion works, nor the less 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 JULY 17, 1977; said water to be used during the following described annual period:

APRIL THRU NOVEMBER

Witness my hand this 13TH day of AUGUST, 1968.

State Water Resources Commission

By:

Durston
Chief Engineer, Executive Officer

Certificate of Construction Issued

JANUARY 5, 1971

Water License Issued

JANUARY 5, 1971

WATER LICENSE NO. 969-2

(1) WHEREAS, On the 11th day of June A. D. 19 68

Walter Neugebauer

made Water Right Application No. 969-2 for a permit to use 1.73 cubic feet per second of the waters of Battle Creek

County of Custer State of South Dakota, for irrigation

purpose and

(2) WHEREAS, On the 13th day of August A. D. 19 68

Permit No. 969-2 with a date of priority of May 1, 1881 and June 11, 1968

was issued to said applicant for the diversion of said water, and provided for the completion of construction of the water

supply system therein described on or before the 17th day of July A. D. 19 73 and for the

application to beneficial use of said water on or before the 17th day of July A. D. 19 77

and, Whereas, on the 19th day of March, 1970, the Permit was transferred to

Lloyd Neugebauer

and:

(3) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to completion of the construction of the water supply system and is entitled to divert 1.73 cubic feet per second of water for beneficial use and.

(4) WHEREAS, It is hereby certified that the applicant has complied with the provisions of the laws of the State of South Dakota relating to the application of water to beneficial use of the following extent.

for irrigating the following land in Section 31, T2S, R8E

	<u>Acres</u>
<u>NE$\frac{1}{4}$ SW$\frac{1}{4}$</u>	<u>14.6</u>
<u>NW$\frac{1}{4}$ SW$\frac{1}{4}$</u>	<u>18.4</u>
<u>SW$\frac{1}{4}$ SW$\frac{1}{4}$</u>	<u>19.8</u>
<u>SW$\frac{1}{4}$ NW$\frac{1}{4}$</u>	<u>17.5</u>
<u>SE$\frac{1}{4}$ NW$\frac{1}{4}$</u>	<u>36.6</u>
<u>NE$\frac{1}{4}$ NW$\frac{1}{4}$</u>	<u>14.8</u>
<u>Total</u>	<u>121.7 Acres</u>

(5) NOW, THEREFORE, By the virtue of the authority vested in us by the laws of the State of South Dakota, We hereby grant and confirm to Lloyd Heugebauer of Oral, S.D.

the holder 1968 and owner 1968-2 of said permit No. 969-2 a water right, dating from May 1, 1881 and June 11, 1968 to use of 1.73 cubic feet per second of the waters

of 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 800 ft. East and 200 ft. South of the W. Corner, Section 31, T2S, R8E

and conduct to and upon portions of Section 31, T2S, R8E, described on the face of this license

for the purpose of irrigation

Subject to any limitation listed in Water Right Permit No. 969-2 and subject to the laws of the State of South Dakota.

WITNESS, My hand and seal of our office at Pierre, South Dakota
this 5th day of January A. D.
Nineteen Hundred and Seventy-one

WATER RESOURCES COMMISSION

By:

Chief Engineer, Executive Officer, J. E. GRUBBS

Form 15.

Permit No. 969-2

Water Diversion No. 2 BATTLE CREEK Water District

CERTIFICATE OF CONSTRUCTION

This is to Certify, That Lloyd Neugebauer

_____ the holder _____ of
Permit No. 969-2, issued upon Application No. 969-2, bearing date of priority of May 1, 1961 and
June 11, 1968 authorizing the diversion of 1.72 cu. ft. per second of the waters of _____
Battle Creek County of Custer, State of South Dakota at _____
a point 800 ft. East and 200 ft. South of the W $\frac{1}{2}$ Corner, Section 31, T2S, R8E
_____, for irrigation

_____ purposes, he has 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 found in satisfactory
condition for diverting and conveying to the place of intended use 3.0 cu. ft. per second of water.

Date January 5, 1971

WATER RESOURCES COMMISSION

By:

J.W. GRIMES, Executive Officer

on or before June 20, 1968
(First Publication _____)

APPROPRIATION OF WATER

Office of State Water Resources Commission,

Pierre, S. Dak., June 11, 1968

Notice is hereby given that Walter Neugebauer whose postoffice address is Hermosa S. Dak., has made an application in accordance with **change the point of diversion under water right** the provisions of the water laws of South Dakota for a permit to appropriate for beneficial use 1.73 **0254-2** cubic feet of water per second of time from the xx Battle Creek and a dry draw through the **Neugebauer Irrigation Project #1** the point of diversion of which is to be located on the right bank of said stream in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 31 Twp. 2S Range 3E portions of Said water to be used for the purpose of providing irrigation on the following described land:
N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ ESW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 31, T2S, R3E

~~WHEREAS~~ purpose

This application will be taken up by the State Water Resources Commission at their office at Pierre for consideration upon the 17th day of July, 1968 at 2:00 P.M. All interested persons may appear and be heard.

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

State Water Resources Commission

By:

cc: Walter Neugebauer, Hermosa, S.D.

~~Chief Engineer, Executive Officer~~
BURTON P. JONES
Water Rights Specialist

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA }
County Custer } ss.

Jay J. Evans being duly sworn, deposes and says the annexed printed copy of Notice of Intention to Appropriate Water was taken from the

The Custer Weekly 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 City County of Custer and State of South Dakota;

that the said notice was published in said newspaper on the following dates:

June 19, 1968 June 26, 1968

July 3, 1968 July 10, 1968

in each and every issue of the full number thereof, the first publication being made on the 19th day of June

1968 and the last publication on the 10th day of

July 1968, upon which days or times of publication aforesaid the newspaper was regularly published, and that during the whole time of said publication he

was Jay J. Evans the printer and publisher of the said newspaper.

Jay J. Evans

Subscribed and sworn to before me this 11th day of July A. D. 1968

Jay Caswell
Notary Public Custer County, S. D.

APPROPRIATION OF WATER

Office of State Water
Resources Commission
Pierre, S. Dak.
June 11, 1968

Notice is hereby given that Walter Neugebauer, whose post office address is Hermosa, S. Dak., has made an application in accordance with the provisions of the water laws of South Dakota for a permit to change the point of diversion under water right 0551-2 appropriate for beneficial use 1.5 cubic feet of water per second of time from Battle Creek and a dry draw through the Neugebauer Irrigation Project No. 11, the point of diversion of which is to be located on the right bank of said stream on the NW 1/4 of the SW 1/4 of Section 31, Twp. 28 Range 5 E. Said water to be used for the purpose of providing irrigation on portions of the following described land: N 1/2 SW 1/4, SW 1/4 SW 1/4, S 1/2 NW 1/4 and NE 1/4 NW 1/4, Section 31, T 28, R 5 E.

This application will be taken up by the State Water Resources Commission at their office at Pierre for consideration upon the 17th day of July, 1968, at 2:00 P.M. All interested persons may appear and be heard.

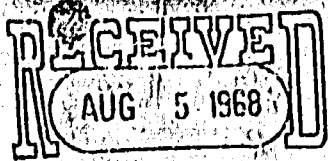
Appropriate action will be taken by the Water Resources Commission after suitable time has elapsed for the consideration of any or all information presented.

State Water Resources Commission
By: HORTON, Secretary
Water Rights Section
Publish June 19, 1968 July 3, 1968

RECEIVED
AUG 13 1968

STATE WATER RESOURCES COM.
PIERRE, SOUTH DAKOTA

My Comm. Expires July 24, 1969



STATE WATER RESOURCES COM. I.
PIERRE, SOUTH DAKOTA

Hermosillo, S. D.
Aug. 3, 1968

255-2278

Office of State Water Resources Comm.
Pierre, S. D.

Dear Sir:

I am writing this in the hope that something can be done to stop the tremendous amount of water being taken from Battle Creek by Walter Hengabauer. I live on the place directly below him and the water level is diminishing rapidly as his dam is being filled from time to time. It is difficult to see how much water he is taking since it is being pumped through a pipe which is underground. It just doesn't seem right that one man can take a whole creek when

There are twenty ranchmen below
him on the same creek who
depend on it for watering livestock.
There is a big advantage in
living on a creek but not if it
is dry.

I understand a hearing was
held in Pierre last month
concerning this. Why is it
that this ^{notice} was published in
a small newspaper which has
approximately six subscribers
in an area where over two
hundred families get their mail.

Irrigation permit or no-
irrigation permit it would seem
that a man would possess a
sufficient amount of integrity to
refrain from literally stealing
the creek from his neighbors.
I cannot with a clear conscience
sit back and let this continue

without at least trying to
stop it. Surely there must
be some law to stop this
deleterious situation from
continuing or at least to keep
it under some measure of
control. Is there no limit
to the amount of water he is
lawfully permitted to use?

I suggest that an investi-
gation be made of this
situation before our creek
is all moved to a large
dam to be pumped on
one more corner.

Very truly yours,
David J. Gillan

969-2

COMMISSION

John M. Garhart, Spearfish
Lester Brue, Parker
Carl Cronin, Gettysburg
Lauren A. Davis, Belle Fourche
Milton E. Fischer, Milbank
Richard Lommen, Harrisburg
Clarence D. Mortenson, Hayes
Dick Fisher, Cresbard

South Dakota

WATER RESOURCES COMMISSION

State Office Building

PIERRE, SOUTH DAKOTA 57501

J. W. GRIMES

Chief Engineer
and
Executive Officer

PHONE
224-5911 Ext. 343
Area Code 605

August 6, 1968

Mr. David J. Allan
Hermosa, South Dakota 57744

Dear Mr. Allan:

Reference is made to your letter of August 3, 1968 inquiring about Walter Neugebauer's water right on Battle Creek.

Mr. Neugebauer's water right is designated as Water Permit No. 969-2. Water Permit No. 969-2 contains two portions. Both portions pertain to the irrigation of the same 121.7 acres of land.

One portion is based on a water right filing made in May of 1881. This gives Mr. Neugebauer the first right to the use of the flows of Battle Creek for irrigation purposes. Under this portion he may divert up to 1.73 cubic feet per second of water to irrigate up to 121.7 acres of land. However, South Dakota Statutes specify that the domestic use of water is the highest use of water and takes precedence over the use of water for irrigation purposes. Thus this portion of Water Permit No. 969-2 specifies that Mr. Neugebauer is to by-pass flows of Battle Creek as are needed downstream for domestic use, including livestock watering.

The second portion of Water Permit No. 969-2 authorizes Mr. Neugebauer to divert flows of Battle Creek into a storage dam to be used later for irrigation purposes. This is the

August 6, 1968

latest water right on Battle Creek and for this reason this portion of water permit No. 969-2 specifies Mr. Neugebauer is to by-pass flows of Battle Creek as are needed for downstream domestic use, including livestock watering and prior water right use. Water Permit No. 969-2 allows up to 43.9 acre-feet of water to be held in storage.

Your letter of August 3, 1968 states that the water level of Battle Creek at your place is diminishing rapidly. Mr. Neugebauer, under Water Permit ~~969-2~~ ⁹⁶⁸⁻² does have the right to divert water from Battle Creek so that there is a diminishing of flow downstream. However neither portions of water permit No. 969-2 authorizes Mr. Neugebauer to divert for irrigation purposes, water which you need for domestic use, including livestock watering.

As soon as the work load allows, representatives of this Office will obtain information about active water right use and Creek flow conditions on Battle Creek.

Sincerely,

J.W. GRIMES
Chief Engineer and
Executive Officer

JWG/DD/bw

NOTICE OF TRANSFER OF WATER PERMIT

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

Date March 10, 1970

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

Portions of the N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 31, T2S, R8E,
described in Water Permit 969-2

formerly owned by Walter Neugebauer, Hermosa, S.D.

has been transferred to Lloyd Neugebauer, Oral, S.D.

together with any rights to the beneficial use of water thereon as evidenced by Water Right Permit No. 969-2 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.

STATE OF SOUTH DAKOTA)
County of Fall River) ss.

I, Lloyd Neugebauer 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.

Lloyd Neugebauer
(Signed)

Subscribed and sworn to before me this 17 day of March, 19 70

Mary K. Hornsby
(Notary Public)



STATE WATER RESOURCES COM.
PIERRE, SOUTH DAKOTA

Permit No.

969-2

Water Division

2 BATTLE CREEK

Water District

REPORT OF EXAMINATION OF WORKS
AND/OR APPLICATION OF WATER TO BENEFICIAL USE

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

I have this day made a thorough examination of the water use system constructed by LLOYD NEUGEBAUER of ORAL holder of Permit No. 969-2, bearing date of priority of MAY 1, 1881 JUNE 11, 1968, 19____ authorizing the diversion of 1.73 cu. ft. per second of the waters of BATTLE CREEK for IRRIGATION purposes, in CLUSTER County.

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

The Water Use System consists of,

A. Works used to divert the water:

WATER PUMPED FROM BATTLE CREEK FOR STORAGE IN 43.9 ACRE FOOT CAPACITY DAM - FAIRBANKS MORSE 6" PUMP, POWERED BY 20HP LINCOLN ELECTRIC MOTOR 10" BURIED PIPELINE TO DAM - 1100'

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

8" BURIED PIPELINE FROM DAM TO 1700' DITCH ON SOUTH UNIT - APPROX 200' OF DITCH ON N UNIT. ALSO BURIED 10" PIPELINE FROM PUMPING POINT TO DITCH

C. Works used to apply water to beneficial use.

54PHO J TUBES FROM DITCH TO LEVELED LAND

The system is in the following condition: EXCELLENT

The point of diversion is located 800' E & 200' S. OF THE N 1/4 CORNER, SECTION 31, T2S, R8E

The works are capable of diverting and conveying to the place of use 3.0

cu. ft. per second of water which is to be used for IRRIGATION

Water has been put to beneficial use to the maximum extent as follows: ALL IN SEC 31, T2S, R8E

NE ⁴ SW ⁴	14.6 AC.	SE ⁴ NW ⁴	36.1/2 AC.
NW ⁴ SW ⁴	18.4 "	NE ⁴ NW ⁴	14.8 "
SW ⁴ SW ⁴	19.8 "		
SW ⁴ NW ⁴	17.5 "		

comprising a total of 121.7 acres of land.

Date

OCTOBER 15, 1970

(Signature)

Fulton J. [Signature]

WATER RIGHT SPECIALIST

WATER RESOURCES COMMISSION



1142-2
769-2

Department of
Natural Resource
Development
WATER RIGHTS
COMMISSION
Office Building 2
Pierre, SD. 57501
Ph. 224-3151

November 2, 1973

This letter was sent to the following:

Dr. Perry Rahn, S.D. School of Mines and Technology, Rapid City, S D. 57701
Mr. Donald Knapp, Hermosa, S.D. 57741
Mr. Wayne S. O'Neill, Hermosa, S.D.
Mr. David Allan, Hermosa, S.D.
Mr. Curtice Randall, Hermosa, S.D.
Mr. and Mrs. Jim Lintz, Hermosa, S.D.

You were present at the July 18, 1973 meeting of the Water Rights Commission.

The Water Rights Commission at its July 18, 1973 meeting deferred action on Water Right Application No. 1142-2 of Neugebauer Brothers to divert up to one cubic foot per second of water from a 35 foot deep well to irrigate up to 70 acres of land, pending investigation by the Commission Staff.

At the same meeting the Commission instructed its Staff to review the Neugebauer Battle Creek water permits and Battle Creek situation.

Enclosed for your information are copies of reports pertaining to both of these matters.

These reports will be considered by the Water Rights Commission at its office in Pierre, South Dakota at 3:30 P.M., C.S.T., on November 14, 1973.

Sincerely,

DONALD DRISCOLL
Chief Engineer
Water Rights Commission

DD/bw
Encl: As stated



969-2

Department of
Natural Resource
Development
WATER RIGHTS
COMMISSION
Office Building 2
Pierre, SD. 57501
Ph. 224-3151

November 29, 1973

Neugebauer Brothers
Hermosa
South Dakota 57744

Gentlemen:

Water License No. 969-2 is recorded as being held by Lloyd Neugebauer of Oral, South Dakota. However you have indicated that you, Neugebauer Brothers, are owners of the involved land and are the actual irrigators of the land authorized to be irrigated in Water License No. 969-2 and that you intend to submit to the Water Rights Commission a NOTICE OF TRANSFER OF WATER PERMIT of Water License No. 969-2 from Lloyd Neugebauer to Neugebauer Brothers.

Enclosed with a letter to you dated November 1, 1973 was a copy of a report entitled "NEUGEBAUER BROTHERS - BATTLE CREEK IRRIGATION". As recommended in this report the Water Rights Commission at its meeting on November 14, 1973 made and passed a motion that the following instructions be issued to Neugebauer Brothers:

1. That the diversion of water under Water Permit No. 969-2, when there is not an excess flow from the diversion point to the Cheyenne River, shall not exceed 1.73 c.f.s. or be limited to the daily number of pumping hours as determined by the following equation - 1.73 c.f.s. divided by the actual diversion rate in c.f.s. times 24 hours;
2. That no land is to be irrigated south of Battle Creek until a proper vested right record for such irrigation has been filed with the Water Rights Commission;

November 29, 1973

3. That if such proper vested right record is filed, when there is not an excess flow to the Cheyenne River, the diversion rate for the lands irrigated south of Battle Creek shall not exceed 0.33 c.f.s. or be limited to the daily number of pumping hours as determined by the following equation $0.33 \text{ c.f.s.} \div \text{actual diversion rate in c.f.s.} \times 24 \text{ hours}$ (for 1 c.f.s. actual diversion rate the allowable number of daily pumping hours would be 8 hours).

Sincerely,

DONALD DRISCOLL

Chief Engineer
Department of Natural Resource Development
Water Rights Commission

DD/bw

cc: Lloyd Neugebauer, Oral, S.D. 57766

NEUGEBAUER BROTHERS - BATTLE CREEK IRRIGATION

At its July 1973 meeting the Water Rights Commission instructed the Commission staff to review the Neugebauer Battle Creek water permits and Battle Creek situation.

On April 19, 1956 the Water Resources Commission received a "Notice of Transfer of Water Permit" stating that Water Permit No. 0254-2, originally filed by O.H. Klein had been transferred from Henry Schoemaker to Walter Neugebauer. Water Permit No. 0254-2 had been filed in 1881 stating 200 miners inches of water (4 cubic feet per second of water) was to be diverted from Battle Creek for irrigation purposes.

On July 17, 1968 the Water Resources Commission considered Water Right Application No. 969-2 of Walter Neugebauer to irrigate 121.7 acres of land by diversion of water from Battle Creek and to store up to 43.9 acre feet of water by pump diversion of water from Battle Creek plus runoff water. The 121.7 acres of land was all located north of Battle Creek, and it was indicated to the Commission that this 121.7 acres was the same land that was being irrigated under Water Permit No. 0254-2. The action of the Commission was to authorize the diversion of 1.73 c.f.s. of water from a new diversion point for either direct application to the land or storage of water, with the irrigation diversion having the 1881 priority and the storage diversion having a June 11, 1968 priority. Low flows that would otherwise be used for downstream domestic use, including livestock watering, should be by-passed. Water laws specify that permit diversion rates shall not exceed

one c.f.s. for each 70 acres irrigated. This is the basis for the 1.73 diversion rate.

When Battle Creek has an excess flow from the Neugebauer Place to the Cheyenne River, water laws specify that the water may be diverted at a rate greater than the 1.73 c.f.s. authorized in Water Permit No. 969-2.

The Commission at the July 17, 1968 meeting cancelled Water Permit No. 0254-2, considering that all pertinent portions of the No. 0254-2 Permit had been incorporated in Water Permit No. 969-2.

The Commission staff estimates that the pump authorized in Water Permit No. 969-2 has an average pumping rate of about 2.8 c.f.s. Neugebauer Brothers indicate they will obtain a new pump that can be operated at the 1.75 c.f.s. diversion rate. In other cases where the pump diversion rate was larger than the authorized diversion rate, during low flow periods the allowable pumping time per day has been reduced in proportion to the two rates. Using this method, the existing Neugebauer pumping time would be limited to about 15 hours per day.

The Commission staff checked the Neugebauer system three times during the summer and fall of 1973. The pump was only being operated once during these inspections. At that time there was an excess flow in Battle Creek.

Neugebauer Brothers showed the Commission staff 23 acres of land that they irrigate south of Battle Creek. The water is diverted from Battle Creek by a tractor driven centrifugal pump. It has a pumping rate of about 1 c.f.s. Neugebauer Brothers are certain that this 23 acres has been irrigated for a long period

of time under Water Permit No. 0254-2. Inasmuch as Water Permit Number 0254-2 was cancelled on July 17, 1968, the Commission staff believes Neugebauer Brothers should file with the Commission a vested right record together with affidavits or other information showing that the 23 acres they irrigate south of Battle Creek is entitled to be irrigated under the 1881 priority of the cancelled Water Permit No. 0254-2.

The recommendation of the Commission staff is that the following instructions be issued to Neugebauer Brothers:

1. That the diversion of water under Water Permit No. 969-2, when there is not an excess flow from the diversion point to the Cheyenne River, shall not exceed 1.73 c.f.s. or be limited to the daily number of pumping hours as determined by the following equation - 1.73 c.f.s. divided by the actual diversion rate in c.f.s. times 24 hours;
2. That no land is to be irrigated south of Battle Creek until a proper vested right record for such irrigation has been filed with the Water Rights Commission;
3. That if such proper vested right record is filed, when there is not an excess flow to the Cheyenne River, the diversion rate for the lands irrigated south of Battle Creek shall not exceed 0.33 c.f.s. or be limited to the daily number of pumping hours as determined by the following equation - 0.33 c.f.s. divided by the actual diversion rate in c.f.s. times 24 hours (for 1 c.f.s. actual diversion rate the allowable number of daily pumping hours would be 8 hours).

Water Rights Division - DWNR

File No. 969-2
1191-2

Conversation or File Documentation

NAME OF PERSON OR FILE: Nengebauer BrothersADDRESS: RR 1 Box 96 Hermosa COUNTY ClusterDATE: 6/25/85 TELEPHONE 255-4212RE: Complaints on pumping from Battle Creek

COMMENTS:

I received two complaints on June 24, 1985 concerning the Nengebauer pumping from Battle Creek. Gene Baker & John McInerney both live downstream and called about the low flow conditions for domestic use & prior water rights. They said Nengebauers were pumping into their dam and wanted it stopped. I called Stan Nengebauer and he said they would stop pumping into the dam, but wanted to pump some water onto their corn from the 1881 priority date. I told him they would have to be careful and be sure to allow enough water by-passed for downstream domestic use. We sent them a copy of their permits and a letter explaining the qualifications.

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

NAME: Timothy M. Schall



Department of Water & Natural Resources

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

Water Rights Division
605 773-3352

696-2

June 25, 1985

Neugebauer Brothers
ATTN: Stanley Neugebauer
RR 1 Box 96
Hermosa SD 57744

Dear Mr. Neugebauer:

This letter is a follow up to your telephone conversation June 24, 1985 with Tim Schaal concerning the complaints we have received about your irrigation pumping.

Enclosed are copies of your permits along with other correspondence in your file. The qualifications on your permits are as follows:

1. Diversions of flows from Battle Creek for direct application to the land have a priority 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 your dam have a priority 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.
3. Diversion of water from Battle Creek when there is not an excess flow from the diversion point to the Cheyenne River shall be limited to a daily number of pumping hours according to the following formula: a diversion rate of 1 cfs per 70 acres irrigated divided by the actual diversion rate in cfs times 24 hours (see permit for actual qualifications).

The complaints we received indicated you were pumping into your dam when sufficient flows were not available for domestic use and prior water rights. According to the qualifications of your permit you may not make diversions into your dam under present flow conditions. Also, with the current low flow conditions of Battle Creek any direct diversion from the Creek, must be limited to allow water for downstream domestic use. Failure to comply with the qualifications will be a violation of your permits and subject to action by the Water Management Board.

Very truly yours,

JOHN HATCH, Chief Engineer
Water Rights Division

TS:JH:ks
enclosures

Equal Opportunity Employer



**Department of
Water & Natural Resources**

Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501

Division of Water Rights
605 773-3352

No. 969-2

February 14, 1986

Neugebauer Dairy
Hermosa, South Dakota 57744

Dear Sir:

Please find enclosed a copy of a Notice of Transfer of Water Permit form. This form must be signed by the owner before a notary and returned to this office with a filing fee of \$2.50.

Upon receipt of the enclosed form and the \$2.50 filing fee the permit will be transferred to the proper name. 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.

Please advise if you have any questions.

Sincerely,

Maxine Stirling
Staff Assistant

ms/
Enc.

NOTE: This transfer notice is being sent to you in response to the 1985 Irrigation Questionnaire returned by Lloyd Neugebauer which indicated the Water Right should be listed as "Neugebauer Dairy".

D\WNR-82CA-8/83

Department of Water & Natural Resources

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

September 2, 1986

Second Notice
Permit No. 969-2

Neugebauer Dairy
Hermosa, South Dakota 57744

Dear Sirs:

On February 14, 1986 notice was sent to you concerning the transfer of Water Permit No. 969-2 in the name of Neugebauer Brothers which covers irrigation of 121.7 acres in the N 1/2 SW 1/4, SW 1/4 SW 1/4, S 1/2, NW 1/4, and NE 1/4 NW 1/4 Section 31, T2S, R8E. To date, we have not heard from you on this matter.

A transfer form was previously sent to you, enclosed please find an additional form. Please sign, have notarized and return the form to this office with the required filing fee of \$2.50. The permit can then be transferred to your name. If you are not the present owner of the land covered under this Permit, please notify this office. It is very important that ownership records be kept current. South Dakota Water Law 46-5-30.3 required 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 us.

Very truly yours,



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

S509.WR

Water Rights Division - DWNR
Conversation or File Documentation

File No. 969-2

NAME OF PERSON OR FILE: Stanley Neugebauer

ADDRESS: Hermosa, SD COUNTY

DATE: September 10, 1986 TELEPHONE

RE: transfer of water right 969-2

COMMENTS:

Mr. Neugebauer called concerning the second notice letter he received for transfer of the water right. He stated that he understood where the confusion arose, but the water right should remain in Neugebauer Brothers and there is no need for a transfer. His brother Lloyd farms at Oral and the water rights Stanley has does not have anything to do with Lloyd's operation. He stated sometimes he sends his questionnaires marked Neugebauer Dairy, or Neugebauer Brothers or Neugebauer Dairy Partnership, it is all the same operation.

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

NAME: Benny McMath

4/82

SOUTH DAKOTA Department of
Water & Natural Resources

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

March 23, 1987

NEUGEBAUER BROTHERS, Stanley Neugebauer
RR 1 BOX 96
HERMOSA, SD 57744

NOTICE

Re: Violation of Requirement To Submit 1986 Irrigation
Questionnaire

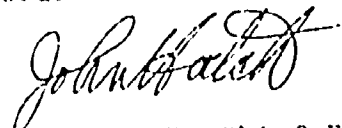
Our records indicate that the 1986 Irrigation Questionnaire has not been submitted for Permit No(s). 969-2, 1191-2. The request for the Questionnaire was dated November 3, 1986. The Water Management Board has directed that owners of water permits who have not submitted 1986 Irrigation Questionnaires be given notice of hearing(s) to be held by the Board to determine if any action is to be taken concerning the violation.

The hearings will be held at 2:00 pm, May 6, 1987 in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to procedures contained in SDCL 1-26. Following the hearing(s), the Water Management Board can:

1. Amend Permit No(s). 969-2, 1191-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action;
3. Take no action.

The hearing(s) 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.



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

NOTE: If the questionnaire(s) is received in this office before the hearing date, your name will be deleted from the agenda for the hearing.

SOUTH DAKOTA
Department of
Water & Natural Resources

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

April 3, 1987

1191-2
969-2

Stanley Neugebauer
Neugebauer Brothers
RR #1 Box 36
Hermosa, SD 57744

Dear Mr. Neugebauer:

This will acknowledge receipt of and thank you for the return of your 1986 Irrigation Questionnaires. A notice was sent to you March 23, 1987 regarding the Irrigation Questionnaire submittal violation of Water Permit Nos. 1191-2 and 969-2 and the date hearings were to be held before the Water Management Board to determine any action to be taken concerning the violation.

Please disregard the notice sent to you dated March 23, 1987. Your name has been deleted from the agenda pertaining to these hearings.

If you have any questions, please contact us.

Very truly yours,



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

**South Dakota Department of
Water & Natural Resources**
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3191

January 29, 1988

NEUGEBAUER BROTHERS -Stanley Neugebauer
RR 1 BOX 96
HERMOSA, SD 57744

NOTICE

Re: Violation of Requirement To Submit 1987 Irrigation
Questionnaire

Our records indicate that the 1987 Irrigation Questionnaire has not been submitted for Permit No(s). 969-2, 1191-2. The request for the Questionnaire was dated October 8, 1987. The Water Management Board has directed that owners of water permits who have not submitted 1987 Irrigation Questionnaires be given notice of hearing(s) to be held by the Board to determine if any action is to be taken concerning the violation.

The hearings will be held at 9:00 am, March 2, 1988 in Room 216, Joe Foss Building, 523 E Capitol, Pierre SD.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to procedures contained in SDCL 1-26. Following the hearing(s), the Water Management Board can:

1. Amend Permit No(s). 969-2, 1191-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
2. Postpone any action;
3. Take no action.

The hearing(s) 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.

John Hatch

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

NOTE: If the questionnaire(s) is received in this office before the March 2 hearing date, your name will be deleted from the agenda for the hearing.

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**South Dakota Department of
Water & Natural Resources**

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

February 12, 1988

969-2
1191-2

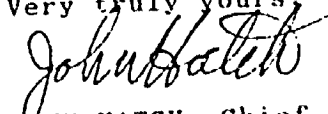
Neugebauer Dairy
Stan Neugebauer
RR 1, Box 96
Hermosa SD 57744

Dear Mr. Neugebauer:

I am writing to acknowledge receipt of your 1987 Irrigation Questionnaire(s). A notice was sent to you January 29, 1988 regarding the requirement to submit the Irrigation Questionnaire(s) for Water Permit No. 969-2 & 1191-2 and the hearing date before the Water Management Board.

Since your questionnaire was received prior to the March 2, 1988 Water Management Board Meeting, your name has been deleted from the Board Meeting agenda. If you have any questions, please contact us.

Very truly yours,



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

L

Water Rights Division - DWR
Conversation or File Documentation

969-
File No. 1191-2

NAME OF PERSON OR FILE: Neugebauer Dairy

ADDRESS: RR1 Box 96 Hermosa SD 57144 COUNTY Custer

DATE: August 6, 1990 TELEPHONE 255-4212

RE: Complaint on Pumping from Battle Creek

COMMENTS:

(255-4104)
Mrs. Carol Foss called today and wanted us to
stop Neugebauer's pumping. She said the lower
gage reading was 2.60 (1.64 cfs) and they needed
water for domestic use. After talking to her
for about an hour, she said Battle Creek was
running all the way to the Cheyenne River and
they did not have any cattle in their pasture.
She wanted more flow for when they do put
the cattle in the pasture. Tried to explain to
her that we were probably NOT going to shut
Neugebauer's off because they had water for
domestic use. Set up a meeting with Mrs
Foss for 10:00 on August 8, 1990 to discuss
this with her.

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

NAME: Tim Schaefer

969-2
1191-2

Conversation or File Documentation

NAME OF PERSON OR FILE: Nengebauer Dairy
ADDRESS: RR 1 Box 96 Hermosa SD 57744 COUNTY Custer
DATE: March 15, 1990 TELEPHONE 755-4212
RE: Complaint on Pumping from Battle Creek into dam
COMMENTS:

On March 14, 1990, Don Kaiser, Mrs. Clarence (Carol) Foss and Coene Baker called in to complain about Nengebauers pumping from Battle Creek into their dam when they did not have enough flow in the creek down at their place. It sounded like the creek was flowing at Baker's & Kaiser's but stopped flowing on Foss's property just downstream of the new gaging station. I talked to Merv Nengebauer and he said they had been pumping for a couple of days and would stop. They thought the people downstream probably had enough flow since the creek had been flowing at their place for some time. Merv said they should have called Kaiser or Foss and checked on the flow before they started to pump and will check with them before they start pumping again. I talked to Stan Nengebauer on March 15, 1990 and told him if we continue to get complaints we may have to bring this matter before the Water Management Board.

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

NAME: Therese Schrad

Water Rights Division - DWR
Conversation or File Documentation

File No. ¹⁰¹⁻⁴1191-7

NAME OF PERSON OR FILE: Clarence Foos
ADDRESS: Hermosa, SD COUNTY Custer
DATE: July 11, 1990 TELEPHONE 255-4104
RE: Battle Creek Floeds
COMMENTS:

Clarence Foos called to complain that Battle Creek was dry in their pasture. He called USGS and the flow at the gage was about 1 cfs. I called Stan Neugebauer and he stated that they were pumping. I asked him to turn off the pump, and he said he would do that.

I called Rita Foos and told her that Neugebauer was going to stop pumping. She stated that a 3cfs bypass at the gage was not enough. She thinks it should be changed to 9 cfs. With 9 cfs flow at the gage the water barely gets to the Cheyenne River.

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

NAME: Delvin W. Brown



Department of Water & Natural Resources

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

August 9, 1990

NOTICE

Stanley Neugebauer
Neugebauer Daily
RR 1, Box 96
Hermosa, SD 57744

Dear Mr. Neugebauer:

This letter is a follow up to the conversation you had on August 8, 1990 with Tim Schaal, concerning the complaints we received on your irrigation pumping. Mr. Schaal had also met with the downstream landowners along Battle Creek.

The qualifications on your permits (No. 969-2 & 1191-2) are as follows:

1. Diversions of flows from, Battle Creek for direct application to the land have a priority date of May 1, 1881. When such diversions are being made, low flow as needed for downstream domestic use shall be by-passed.
2. Diversions of flows from Battle Creek for storage into your 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.

Complaints occur when flows from Battle Creek are being diverted through your dam, which means diversions are being made into the dam and out of the dam at the same time. This situation is confusing and is not in compliance with the permit qualifications.

Your system must to be changed prior to the 1991 irrigation season to eliminate diversions through the dam. Either a pipe line or new ditches need to be installed to allow your fields to be irrigated, when water is available, directly from Battle Creek. Diversions into the dam may be stored for later irrigation.

Flow measurements were also taken on Battle Creek August 8, 1990. The flows were 2.93 cfs at the Hermosa gaging station, approximately 1 mile below your diversion point and 1.3 cfs at the lower Battle Creek gaging station, approximately 17 road miles

August 9, 1990
NOTICE
Page 2

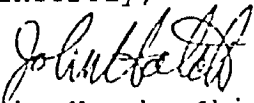
below Hermosa. The flow was also measured at 0.22 cfs or approximately 100 gpm at the lower end of Battle Creek just upstream of the confluence with the Cheyenne River (approximately 22 miles below Hermosa).

After discussing this with Mr. Schaal and because of the declining flow rates in Battle Creek, you agreed to stop diverting from Battle Creek Thursday morning, August 9, 1990. This was done to leave the remaining flows for downstream livestock watering (domestic use).

With the limited flows available in Battle Creek and distances involved, cooperation between all water users is essential. Before any of the permit holders begin pumping from Battle Creek for irrigation, water must be available for downstream domestic use. This will require communication with downstream domestic water users and cooperation by everyone to obtain the best use of Battle Creek flows.

If you have any questions, please let us know.

Sincerely,



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

cc: Clarence Foos
Herb Kaiser
Gene Baker
Ed Kanasky
Louis Freiberg

CERTIFICATION

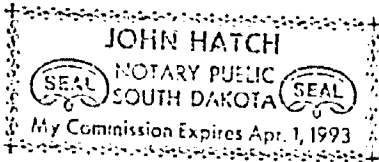
I hereby certify that on August 9, 1990 I have personally deposited with the U.S. Mail postage prepaid envelopes containing a Notice addressed as follows:

Stanley Neugebauer, Neugebauer Dairy, 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
Louis Friberg, Attorney, First Federal Plaza, 909 St. Joe St. #420, Rapid City SD 57701

Karen Schlaak
KAREN SCHLAACK
Senior Secretary

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

Sworn to, before me, this 10th day of August, 1990.



John Hatch
Notary Public

769-2

 **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



DEPARTMENT OF WATER & NATURAL RESOURCES

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

969-2

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.

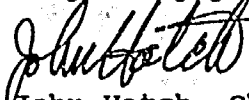
On April 18th, Battle Creek was flowing all the way to the Cheyenne River with an estimated flow into the Cheyenne River approximately the same as at the gaging station. It appears that on this day the 3.0 cfs standard was more than sufficient. Depending on the time of year and existing weather conditions,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

969-2



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

JUN 11 1993

Neugebauer Brothers
HCR 89, Box 209
Hermosa SD 57744

Dear Sirs:

The Water Management Board has validated the enclosed Vested Water Right No. 969-2. This validation gives legal status to the claim and is the final document for your vested right.

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

Very truly yours,

A handwritten signature in dark ink, appearing to read "John Hatch", is written over a faint, larger signature.

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

enclosure

969-2

SOUTH DAKOTA

VESTED WATER RIGHT NO. 969-2 FOR IRRIGATION

Date of Receipt of Claim June 11, 1968.

Date of Validation May 6, 1992.

The Water Management Board validated Vested Water Right Claim No. 969-2 for irrigation purposes for Neugebauer Brothers, HCR 89, Box 209, Hermosa SD 57744 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 969-2 appropriates 1.73 cubic feet of water per second from Battle Creek with the point of diversion located in the NW 1/4 SW 1/4 Section 31-T2S-R8E to irrigate 121.7 acres located in the N 1/2 SW 1/4, SW 1/4 SW 1/4, S 1/2 NW 1/4, NE 1/4 NW 1/4 Section 31-T2S-R8E.
2. The appropriation may not exceed the amount of water needed for beneficial use for irrigation. The appropriation may not exceed 3 acre feet per irrigated acre per year. Water is to be used during the following annual period: April 1 - November 30.
3. The priority date of the Vested Water Right is May 1, 1881.
4. The water use system has been constructed and water has been applied to beneficial use.
5. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATION

Diversions of flows from Battle Creek for direct application to the land bear a priority of May 1, 1881. When such diversions are being made, low flows as needed for downstream domestic use shall be by-passed.

WATER MANAGEMENT BOARD

By: [Signature]
Chief Engineer

JUN 11 1993

date

Division of Water Rights
Dept. of Environment and Natural Resources

NOTE: Vested Water Right No. 969-2 is also included as a part of Water License No. 969-2 for a total of 1.73 cfs to irrigate 121.7 acres.



February 16, 1994

NEUGEBAUER BROTHERS DAIRY
HCR 89 BOX 209
HERMOSA SD 57744

9692.

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

NOTICE

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

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

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

The hearing will be held at 8:45 am, April 6, 1994, at the Golden Hills Resort, 900 Miners Avenue, Lead, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to SDCL 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

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

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

If the questionnaires are received in this office on/or before April 1, 1994, you will no longer be in violation of your permit and your name will be deleted from the Board agenda.

Very truly yours,

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



February 16, 1994

NEUGEBAUER BROTHERS DAIRY
HCR 89 BOX 209
HERMOSA SD 57744

9692.
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE SOUTH DAKOTA 57501-3181

NOTICE

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

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

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

The hearing will be held at 8:45 am, April 6, 1994, at the Golden Hills Resort, 900 Miners Avenue, Lead, SD and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to SDCL 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

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

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

If the questionnaires are received in this office on/or before April 1, 1994, you will no longer be in violation of your permit and your name will be deleted from the Board agenda.

Very truly yours,

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

969-2



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

February 24, 1994

969-2
2153-2

Neugebauer Brothers
HCR 89 Box 209
Hermosa, SD 57744

Dear Sirs:

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

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

If you have any questions, please contact me.

Sincerely,

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3181

February 7, 1995

NEUGEBAUER BROTHERS
STANLEY NEUGEBAUER
HCR 89 BOX 209
HERMOSA SD 57744

NOTICE

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

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

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

The hearing will be held at 9:30 am, March 8, 1995 in the Crown Room, 3rd Floor, Kings Inn Best Western Convention Center, 200 S Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to SDCL 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

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

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

If the questionnaires are received in this office on or before March 3, 1995, you will no longer be in violation of your permit and your name will be deleted from the Board agenda.

Very truly yours,

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



969-2

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

March 1, 1995

969-2 ✓
2153-2

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

Dear Mr. Neugebauer:

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

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

If you have any questions, please contact me.

Sincerely,

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

969-2

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	<u>0.86</u>	9/11/1912
	Total	18.53	cfs

Conversation or File Documentation

NAME OF PERSON OR FILE: Carol FOOSADDRESS: Hermosa, SD COUNTY CusterDATE: Feb 1, 1991 TELEPHONE: _____RE: Flows in Battle Creek

COMMENTS:

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

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

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

Water Permit 2054-2 allows pumping during flood flows.

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

NAME: William H. Broy



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

John Hatch, Chief Engineer
Water Rights Division
523 East Capital
Pierre, S. D. 57501-3151

Dear Sirs:

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

In November Marvin Neugebauer called to see if they could pump into their dams. He called February 1, 1991 with the same request. I reminded him pumping into dams was far above stage. He became angry and stated that he wouldn't bother with us again. He said they would

put some cows over in the area by their dams, but they were quite low so cattle couldn't drink.

We called Mr. Broag and discussed this. He said that they could pump into their dams for domestic use. We reminded him that Battle Creek was running through their place. We asked how much water they could pump and he couldn't answer that. He said they could pump for domestic use even though we did not have any creek water for domestic use. He finally said that they couldn't pump.

On March Tim Lohal called to see if Neugebauer could pump. We knew that the water reading was 2 CFS. We reminded him that pumping into dams is when there is flood stages. He replied "we are working on that." We asked if they could pump 12 hours and shut off 12 hours. He said that wouldn't work.

Sunday April 14, we found Neugebauer pumping so Monday

A.M. we called and Mr. Broez stated that he gave them permission to pump on Friday 12, because of some rain and snow. He did not check with us to see what the situation was here. The rain came in a drizzle and the snow melted slowly so there was minimal run off in the hills or plains.

According to your letter of August 9, 1990, there was to be communication with downstream domestic water users. Your letter of August 15, 1990 instructed that the gauge reading be maintained at 3 C.F.S. Mr. Schaal and Mr. Broez were not following your orders.

We asked Mr. Broez why he authorized pumping last weekend and he said, "it was in anticipation of run-off water."

We have visited with Ron Emerson, Rick Cleland, Ed. Kamisky, and Kaiser and we all agree that we need domestic water and it must be maintained by your office enforcing the law which will ensure

What you have water. There are
the ranches affected by the dry
up last fall.

We should not have to continue
to fight for domestic water, but
those who have domestic water
don't realize our problem and some
don't care. It is not possible
to place irrigators and domestic
water users without wasted
water - water running into the
Cheyenne River.

Yesterday Mr. School & Mr. Brosz
met at our place with two other
ranchmen. We agreed we needed
to see the B.C.F.S. as a way
to secure domestic use. However,
that was already decided last
summer.

Sincerely,

Clarence & Carol Brosz

Water Rights Division - DVHR
Conversation or File Documentation

File No. 9:30 a.m.

NAME OF PERSON OR FILE: Mike Erk

ADDRESS: U.S. Forest Service - Buffalo Gap Nat Grant COUNTY Custer

DATE: 4-23-91 TELEPHONE 745-4107

RE: Grasslands lease with Mr & Mrs Clarence Foos on the lower

COMMENTS: end of Battle Creek. Section 30 & 21, T4S, R11E.

I called Mr. Erk about the lease on this property.
The lease states that Mr & Mrs Foos can have livestock
on this property from December 10th through May 15th.
Battle Creek is the only water source for this allotment. The
Cheyenne River is fenced because it adjoins the Pine
Ridge Indian Reservation.

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

NAME: Delvin D. Booz

Conversation or File Documentation

NAME OF PERSON OR FILE: DON NEGERAUERADDRESS: HEERMOSA COUNTY CUSTERDATE: 4/26/91 TELEPHONE 255-4462RE: REQUEST TO PUMP

COMMENTS:

MR NEGERAUER CALLED REQUESTED TO PUMP
600 gpm (1.33 cfs) THE GAGE IS READING
2.68 OF 3.7 cfs HE SAID WITH THE HEAVY
RAINS THAT THE CREEK IS COMING UP I TOLD
HIM TO GO AHEAD AND PUMP BUT HE WOULD
NEED TO WATCH THE GAGE IF IT GETS BELOW
2.64 HE WILL NEED TO CUT BACK ON SUMP OUT
HE SAID THAT HE WOULD CALL IN ON Monday

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

NAME: W. D. R. H.

Water Rights Division - DWMR
Conversation or File Documentation

File No. _____

NAME OF PERSON OR FILE: Mrs Foss

ADDRESS: Hermosa COUNTY Custer

DATE: 4/26/91 TELEPHONE 255-4104

RE: Informing on Manganese Pumping

COMMENTS:

I CALLED Mrs Foss AND TOLD HER THAT WE
WERE GOING TO ALLOW THE MANGANESE TO PUMP
BECAUSE THE FLOW IS CURRENTLY 3.7 cfs and
IT SHOULD BE COMING UP DUE TO THE RAINS. I TOLD
HER THAT IF THE GAGE DROPS BELOW 2.64 - THAT
THE MANGANESE WOULD HAVE TO SHUT OFF ON CUTOFF.
SHE AGREED.

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

NAME: J. L. Keith

Conversation or File Documentation

NAME OF PERSON OR FILE: Mrs Foos

ADDRESS: _____ COUNTY _____

DATE: 4/26/91 TELEPHONE _____RE: After 1st call on allowing Neugebauer's to pump.

COMMENTS:

Is upset w/ NEUGEBAUER PUMPING
I TOLD HER TO CALL NEUGEBAUER IF
GAGE IS BELOW 2.64 ~~THEY SHOULD~~
AND HAVE THEM SHUT OFF

I TOLD HER WE ARE LETTING THEM PUMP
BASED ON THE CREEK ENGINEERS RECOMMENDATION

I TRIED TO COUNSEL THE NEUGEBAUER'S TO TELL HER
THAT FOOS WOULD CALL IF FLOW GOT BELOW 2.64 ~~AND~~
DR. NEUGEBAUER AGREED THAT IF MRS FOOS CALL
AND SAID THAT THE FLOW WAS LESS THAN 2.64
HE WOULD GO TO THE GAGE AND MEET W/ MRS
NEUGEBAUER FOOS SO THEY BOTH COULD CHECK IT
IF FLOW WAS LESS HE SAID HE WOULD SHUT IT
AN CUT BACK. BUT IF FLOW DROPPED AND HE
SHUT OFF IF FLOW CAME UP HE WOULD SHUT
THE GAGE W/ MRS FOOS AND TURN IT BACK ON
HIS PUMP.

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

NAME: Mark R. [Signature]

Conversation or File Documentation

NAME OF PERSON OR FILE: MRS KAISELADDRESS: _____ COUNTY CUSTERDATE: 4/26/91 TELEPHONE _____RE: NEEDS MORE

COMMENTS:

IT IS NOTED THAT MRS KAISEL'S CHW
PUMP SHE SAID THEY SHOULD NOT BE
ALLOWED TO PUMP

I TOLD HER WE ARE LETTING THEM PUMP
BASED ON CHIEF ENGINEER'S RECOMMENDATION
OF 3 cfs at Below House 4950

SHE SAID THEY CAN ONLY PUMP WHEN FLOOD
FLAWS ARE OCCURRING. BASE ON THE INFORMATION
THAT JOHN HATCH GAVE ME, IT TOLD HER NEEDS MORE
CAN PUMP

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

NAME: W. B. P. H.

Water Rights Division - DWR
Conversation or File Documentation

File No. _____

NAME OF PERSON OR FILE: Don Neugebauer

ADDRESS: Herrmann, SD COUNTY _____

DATE: 4-29-91 TELEPHONE _____

RE: Pumping into dam from Battle Creek

COMMENTS:

Don Neugebauer called on 4-26-91 and requested that he be allowed to pump into their dam. Mark Rath took the call and with my OK (from home) Mark said he could.

Mr. Neugebauer called me at about 10:30 a.m. on 4-29-91. He stated that he had stopped pumping at about 5:30 a.m. today. He started pumping at approximately 8:00 p.m. MDT on Friday 4-26-91. On Saturday at about 12:30 p.m. the staff gage at the USGS gaging station read between 2.66 & 2.68. Sunday evening Clarence Foss called Stan Neugebauer and said that the staff gage was reading 2.44 and that they should stop pumping.

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

NAME: _____



May 2, 1991
Box 89 Box 315
Thamora, S.D.
57744

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

Dear Sir:

yesterday - I talked with Mr. Broez and he told me you were going to write in answer to my letter. He said that you would explain the Neugebauer water rights permits.

I believe we are all capable of understanding them as they are written. The problem we see is that they are not being enforced according to how they are written and not with interests of other users in mind.

When Mark Roth called last Friday to report that Neugebauer were pumping into dunes for storage, he stated that he wasn't familiar with Battle Creek, but was handling the matter in absence of Mr. Schaeck and Mr. Broez.

Rebecca Kaiser and I both

reminded him of Water Right 769-2. part 2 which says they are to bypass sufficient water to satisfy downstream domestic use and prior water rights. He would not listen, nor would he check their water right.

Neargetbauer had $2\frac{1}{4}$ " of rain Thurs. night and Friday morning. We had less than one inch. They said there was muddy water at their place, but we never had any muddy water down this way - certainly nothing resembling flooding.

What really seems strange to us is when your staff makes these judgments they are always in favor of the Neargetbauer. Domestic use and prior water rights aren't given due consideration. In August 1990 Mr. School was aware they were pumping illegally, but he let them pump many more hours. Mr. Broez two weeks ago let them pump in anticipation. Mr. Rath let them pump into dams for

storage ahead of others with prior irrigation water rights.

These are the matters we want addressed and we want to see these things corrected.

Thank you.

Sincerely,

Clarence & Carol Bos

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



January 16, 2002

NOTICE

969-2
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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

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

SUBJECT: Reporting Requirement for 2001 Irrigation Questionnaires

Our records indicate that the 2001 Irrigation Questionnaires have not been submitted for Permit Nos. 2054-2 & 2153-2, 969-2. The request for the Questionnaires was dated October 12, 2001. The Water Management Board has directed that owners of water permits who have not submitted the 2001 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 969-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2054-2 & 2153-2 qualification:

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

The hearing will be held at 10:00 am, March 13, 2002 in the Visitor Center (west side of Capitol Lake), 650 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

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

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

If the questionnaires are received in this office on/or before March 8, 2002, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. If you have questions or need assistance in completion of the irrigation questionnaire(s), please contact Genny McMath (605) 773-3352.

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

969-2

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

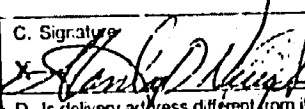
1. Article Addressed to:

NEUGEBAUER BROTHERS
 STANLEY NEUGEBAUER
 HCR 39 BOX 209
 HERMOSA SD 57744

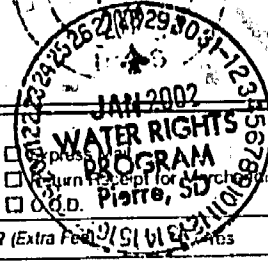
COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature


☐ Agent☐ AddresseeD. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below ☐ No

3. Service Type

☒ Certified Mail☐ Registered☐ Insured Mail☐ Express Mail☐ Return Receipt for Merchandise☐ O.D.D.4. Restricted Delivery? (Extra Fee) ☐ Yes ☒ No

2. A 7001 2510 0004 4797 5682

PS Form 3811, July 1999

Domestic Return Receipt

102595-99 M-1789



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 1, 2002

969-2
2054-2
2153-2

Stanley Neugebauer
Neugebauer Brothers
HCR 89 Box 209
Hermosa SD 57744

Dear Sir:

I am writing to acknowledge receipt of your 2001 irrigation questionnaires. You may disregard the January 16, 2002, "Notice" concerning reporting requirements for Water Right Nos. 969-2, 2054-2 and 2153-2.

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

If you have any questions, please contact me.

Sincerely,

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



January 14, 2004

969-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

NOTICE

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

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

SUBJECT: Reporting Requirement for 2003 Irrigation Questionnaires

Our records indicate that the 2003 Irrigation Questionnaires have not been submitted for Permit Nos. 2054-2 & 2153-2, 969-2. The request for the Questionnaires was dated October 17, 2003. The Water Management Board has directed that owners of water permits who have not submitted the 2003 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 969-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2054-2 & 2153-2 qualification:

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

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

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

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

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

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



969-2

Track & Confirm

Current Status

You entered 2301 3460 0000 8515 7940

Your item was delivered at 2:59 pm on January 16, 2004 in HERMOSA, SD 57744. The item was signed for by C NEUGEBAUER.

[Shipment Details >](#)

Notification Options

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Track & Confirm

Enter label number:

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SIGNATURE CONFIRMATION NUMBER:
2301 3460 0000 8515 7940

NEUGEBAUER BROTHERS
STANLEY NEUGEBAUER
HCR 89 BOX 209
HERMOSA SD 57744

Waiver of Signature ☐ YES ☐ NO

Postmark
Here

POSTAL CUSTOMER:

Keep this receipt. For inquiries:
Access internet web site at
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969-2

**DEPARTMENT of ENVIRONMENT
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PMB 2020
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PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

February 3, 2004

969-2
2054-2
2153-2

Stanley Neugebauer
Neugebauer Brothers
HCR 89 Box 209
Hermosa SD 57744

Dear Mr. Neugebauer:

I am writing to acknowledge receipt of your 2003 irrigation questionnaires. You may disregard the January 14, 2004, "Notice" concerning reporting requirements for Water Right Nos. 969-2, 2054-2 and 2153-2.

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

If you have any questions, please contact me.

Sincerely,

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 20, 2004

NOTICE OF SHUTOFF ORDER

TO: NEUGEBAUER BROTHERS
STANLEY NEUGEBAUER
HCR 89 BOX 209
HERMOSA SD 57744

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

SUBJECT: Shutoff Order for Battle Creek Water Rights

Shutoff Order for Water Right Nos. 969-2 2153-2 2054-2

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

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

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



969-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 20, 2005

NOTICE

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

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

SUBJECT: Reporting Requirement for 2004 Irrigation Questionnaires

Our records indicate that the 2004 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 22, 2004. The Water Management Board has directed that owners of water permits who have not submitted the 2004 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 969-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2054-2 & 2153-2 qualification:

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

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

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

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

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

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



969-2
**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 10, 2005

969-2
2054-2
2153-2

Stanley Neugebauer
Neugebauer Brothers
HCR 89 Box 209
Hermosa SD 57744

Dear Mr. Neugebauer:

I am writing to acknowledge receipt of your 2004 irrigation questionnaires. You may disregard the January 20, 2005, "Notice" concerning reporting requirements for Water Right Nos. 969-2, 2054-2 and 2153-2.

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

If you have any questions, please contact me.

Sincerely,

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 18, 2005

NOTICE OF MODIFICATION TO 1990 BATTLE CREEK ORDER

TO: Battle Creek Water Users

FROM: GARLAND ERBELE, Chief Engineer
Water Rights Program

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

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

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

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

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

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

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

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

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

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

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



969-2
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.



969-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

October 26, 2006

969-2
2054-2
2153-2

Stanley Neugebauer
Neugebauer Brothers
14197 SD Hwy 40
Hermosa SD 57744

Dear Mr. Neugebauer:

Enclosed is a "Notice" dated October 20, 2006 concerning the 2006 irrigation questionnaire. The notice was originally mailed to HCR 89 Box 209, Hermosa SD. The post office notified us that your address has changed and I will update our records accordingly.

If you have any questions, please contact me.

Sincerely,

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

enclosures

969-2



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:

969-2

PERMIT_NO	PTL_PRIOR1	PTL_PRIOR2	PRIORDATE	COUNTY	ST/USE	FIRST_NAME	LAST_NAME	ADDRESS2	CITY	STATE	ZIP	PLUS4
2153-2			05/01/1882	CU	LC IRR		NEUGEBAUER BROTHERS DAIRY	14197 SD HWY 40	HERMOSA	SD	57744	
969-2			05/01/1882	CU	LC IRR		NEUGEBAUER BROTHERS	14197 SD HWY 40	HERMOSA	SD	57744	
2368-2			10/14/1887	CU	LC IRR		CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
2368A-2			10/14/1887	CU	PE IRR		CUSTER RANCH LLC	15445 SD HWY 40	HERMOSA	SD	57744	
0421-2			10/27/1894	CU	PE IRR		JD RANCH REAL ESTATE LLC	HCR 88 BOX 298	HERMOSA	SD	57744	
0170-2			12/29/1895	CU	PE IRR	CLARENCE	FOOS	HCR 88 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		RITTBARGER 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	CLARENCE	FOOS	PO BOX 317	HERMOSA	SD	57744	0317
1275-2			01/01/1935	CU	LC IRR	DONALD	KAISER	15745 SD HWY 40	HERMOSA	SD	57744	
319-2			07/17/1948	CU	LC IRR		BATTLE CREEK VALLEY RANCH	15199 BAKER RD	HERMOSA	SD	57744	
1170-2			01/28/1974	CU	LC IRR	JOHN/DARLENE	STOVALL	14829 SD HWY 40	HERMOSA	SD	57744	
1283-2			08/01/1975	CU	PE COM	PE PETE	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	



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 22, 2010

NOTICE

TO: NEUGEBAUER BROTHERS, STANLEY NEUGEBAUER, 14197 SD HWY 40, HERMOSA, SD 57744

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

SUBJECT: Reporting Requirement for 2009 Irrigation Questionnaires

Our records indicate that the 2009 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 16, 2009. The Water Management Board has directed that owners of water permits who have not submitted the 2009 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 969-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2054-2 & 2153-2 qualification:

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

The hearing will be held at **10:00 am, March 10, 2010** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

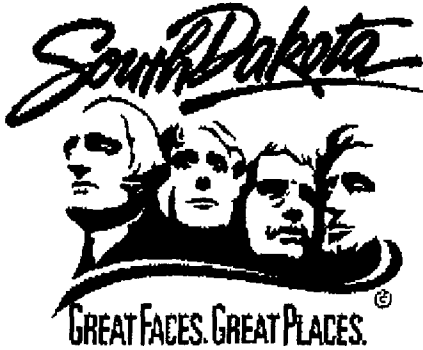
1. Suspend or cancel Permit No(s) 2054-2 & 2153-2 in accordance with applicable provisions of SDCL 46-1-12;
2. Amend Permit No(s) 969-2 to require the Irrigation Water Use Questionnaire to be submitted each year;
3. Postpone any action or take no action.

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

If the questionnaire(s) is (are) received in this office on/or before **March 5, 2010**, you will no longer be in violation of your permit and your name will be deleted from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link:
<https://denr.sd.gov/iq/asp>

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

969-2



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 2, 2010

969-2
2054-2
2153-2

Stanley Neugebauer
Neugebauer Brothers
14197 SD Hwy 49
Hermosa SD 57744

Dear Mr. Neugebauer:

I am writing to acknowledge receipt of your 2009 irrigation questionnaires. You may disregard the January 22, 2010, "Notice" concerning reporting requirements for Water Right Nos. 969-2, 2054-2 and 2153-2.

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

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Genny McMath".

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



969-2
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 21, 2011

NOTICE

TO: NEUGEBAUER BROTHERS, STANLEY NEUGEBAUER, 14197 SD HWY 40, HERMOSA, SD 57744

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

SUBJECT: Reporting Requirement for 2010 Irrigation Questionnaires

Our records indicate that the 2010 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 15, 2010. The Water Management Board has directed that owners of water permits who have not submitted the 2010 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 969-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2054-2 & 2153-2 qualification:

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

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

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

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

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

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 1, 2011

969-2
2054-2
2153-2

Stanley Neugebauer
Neugebauer Brothers
14197 SD Hwy 40
Hermosa SD 57744

Dear Sir:

I am writing to acknowledge receipt of your 2010 irrigation questionnaires.

You may disregard the January 21, 2011, "Notice" concerning reporting requirements for Water Right Nos. 969-2, 2054-2 and 2153-2. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

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



969-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

June 20, 2012

STANLEY NEUGEBAUER
NEUGEBAUER BROTHERS DAIRY
14197 SD HWY 40
HERMOSA, SD 57744

Dear Water Right Holder;

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

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

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

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

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

Sincerely,

Garland Erbele, Chief Engineer
DENR, Water Rights Program

attachment

06/20/2012

Battle Creek Water Rights

PERMIT_NO	STATUS	LIC_CFS	P-Order	PRIORDATE	LAST_NAME
2153-2	LC	0.33	1	05/01/1881	NEUGEBAUER BROTHERS DAIRY
969-2	LC	1.73	1	05/01/1881	NEUGEBAUER BROTHERS
2368-2	LC	1.85	2	10/14/1886	WYOMING DAKOTA RAILROAD PROPERTIES INC
2368A-2	PE	0.00	2	10/14/1886	WYOMING DAKOTA RAILROAD PROPERTIES INC
0421-2	PE	0.00	3	10/27/1893	JD RANCH REAL ESTATE LLC
2373-2	LC	1.66	4	03/02/1895	RODALES RANCHES INC
1209-2	LC	1.07	5	09/29/1900	KANESKY
1221-2	LC	1.14	5	09/29/1900	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: STANLEY NEUGEBAUER
NEUGEBAUER BROTHERS DAIRY
14197 SD HWY 40
HERMOSA SD 57744

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

SUBJECT: Battle Creek Water Rights Shutoff Order

Shutoff Order for Water Right Nos. 2153-2(969-2)2054-2

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

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

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

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

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

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

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



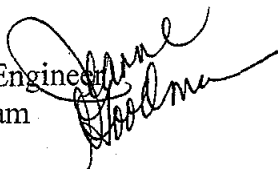
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

NOTICE OF SHUTOFF ORDER
JUNE 26, 2013

TO: NEUGEBAUER BROTHERS DAIRY
STANLEY NEUGEBAUER
14197 SD HWY 40
HERMOSA SD 57744

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

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

Shutoff Order for Water Right Nos. 2153-1 969-2 2054-2

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

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

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

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

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

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

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

CERTIFICATION

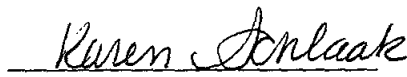
I hereby certify that on June 26, 2013 postage, prepaid envelope(s) containing a Notice dated June 26, 2013 regarding Battle Creek Shut-off Notices addressed as stated below:

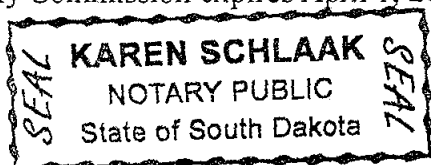
NEUGEBAUER BROTHERS DAIRY	STANLEY NEUGEBAUER	14197 SD HWY 40	HERMOSA	SD	57744
WYOMING DAKOTA RAILROAD PROPERTIES INC	DAVID S DRACH	120 S 6TH ST - 9TH FLOOR	MINNEAPOLIS	MN	55402
TRAVIS BIES		25813 SOUTH FOR ROAD	FAIRBURN	SD	57738
JD RANCH REAL ESTATE LLC		HCR 89 BOX 298	HERMOSA	SD	57744
RUSHMORE VIEW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


Gail Jacobson
Secretary/Water Rights

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





969-2
DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

January 16, 2015

NOTICE

TO: NEUGEBAUER BROTHERS, STANLEY NEUGEBAUER, 14197 SD HWY 40, HERMOSA, SD 57744

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

SUBJECT: Reporting Requirement for 2014 Irrigation Questionnaires

Our records indicate your 2014 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 17, 2014. The Water Management Board has directed that owners of water permits who have not submitted the 2014 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 969-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2054-2 & 2153-2 qualification:

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

The hearing will be held at **10:00 am, March 4, 2015** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation, or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

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

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

If the questionnaire(s) is (are) received in this office before the **March 4, 2015** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaire(s) for your use. If you have questions or need assistance, please contact Genny McMath at (605) 773-3352 or email at genny.mcmath@state.sd.us. If you prefer, you can complete the questionnaire online at the following link: <http://denr.sd.gov/iq.aspx>

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

969-2



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

January 26, 2015

969-2
2054-2
2153-2

Stanley Neugebauer
Neugebauer Brothers
14197 SD Hwy 140
Hermosa SD 57744

Dear Mr. Neugebauer:

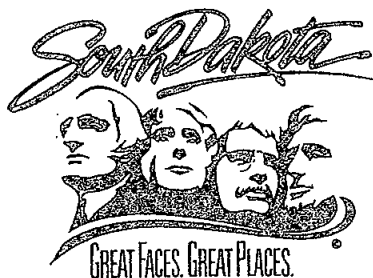
I am writing to acknowledge receipt of your 2014 irrigation questionnaires.

You may disregard the January 16, 2015, "Notice" concerning reporting requirements for Water Right Nos. 969-2, 2054-2 and 2153-2. The information was received in our office prior to the Water Management Board meeting and your name has been deleted from the agenda.

If you have any questions, please contact me.

Sincerely,

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

July 12, 2016

denr.sd.gov

Dear Water Right Holder;

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

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

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

PERMIT_NO	Priority	STATUS	USE	LAST_NAME
2153-2	May 1, 1881	LC	IRR	NEUGEBAUER BROTHERS DAIRY
969-2	May 1, 1881	LC	IRR	NEUGEBAUER BROTHERS
2368-2	October 14, 1886	LC	IRR	WYOMING DAKOTA RAILROAD PROPERTIES INC
2368A-2	October 14, 1886	PE	IRR	WYOMING DAKOTA RAILROAD PROPERTIES INC
2373-2	March 2, 1895	LC	IRR	RUSHMORE VIEW RANCH
1209-2	September 29, 1900	LC	IRR	KANESKY
1221-2	September 29, 1900	LC	IRR	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, appearing to read "Jeanne Goodman", followed by a horizontal line.

Jeanne Goodman, Chief Engineer
DENR, Water Rights Program



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

denr.sd.gov

July 11, 2017

Dear Water Right Holder;

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

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

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

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

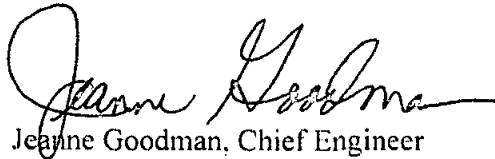
South Dakota water law gives the highest priority to domestic use, which includes livestock watering. There is generally adequate water available to meet both domestic use and other needs. However, once water availability reaches critical low levels, other uses, including irrigation, will

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

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

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

Sincerely,

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

Jeanne Goodman, Chief Engineer
DENR, Water Rights Program

969-2, 2054-2,
2153-2



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

August 16, 2022

NEUGEBAUER BROTHERS
14197 SD HWY 40
HERMOSA, SD 57744

Dear Battle Creek Water Right Holder:

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

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

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

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

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

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

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

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program



2054-2
2153-2
969-2

**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

January 20, 2026

NOTICE

TO: NEUGEBAUER BROTHERS, STANLEY NEUGEBAUER, 14197 SD HWY 40, HERMOSA, SD 57744

FROM: Ron Duvall, Engineer III
for Adam Mathiowetz, PE, Acting Chief Engineer
Water Rights Program

SUBJECT: Reporting Requirement for 2025 Irrigation Questionnaires

Our records indicate your 2025 Irrigation Questionnaires have not been submitted. The request for the Questionnaires was dated October 8, 2025. The Water Management Board has directed owners of water permits who have not submitted the 2025 Irrigation Questionnaires be given notice of permit violation and a hearing to be held by the Board. The hearing is to determine if Permit No(s) 969-2 should be amended to require the Questionnaire to be submitted each year and to determine action to be taken for violation of Water Permit No(s) 2054-2 & 2153-2 qualification:

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

The hearing will be held on **Wednesday, March 4, 2026 at 9:30 am (Central Time)** in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre, SD, and will be conducted pursuant to SDCL 46-1-12, 46-1-14, 46-2-9, 46-2-11 and 46-2-17. These are contested case hearings pursuant to Chapter 1-26. According to SDCL 46-1-12, the Board may suspend a permit for a period of up to one year for the first violation of a permit qualification or up to three years for a second violation or cancel a permit for a third violation. Following the hearing, the Water Management Board can:

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

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

If the questionnaires are received in this office before the **March 4, 2026** hearing you will no longer be in violation of your permit and your name will be removed from the Board agenda. Enclosed are additional questionnaires for your use. If you have questions or need assistance, please contact Shannon Konst at (605) 773-3352 or email at shannon.konst@state.sd.us. **If you prefer, you can complete the questionnaire online at the following link: <https://danr.sd.gov/iq> using this password: DTSPTJ**

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



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

STANLEY NEUGEBAUER	969-2
14197 SD HWY 40	2054-2
HERMOSA, SD 57744	2153-2

April 15, 2026

Dear Battle Creek Water Right/Permit Holder:

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

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

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

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

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

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

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

Sincerely,

Adam Mathiowetz, PE
Acting Chief Engineer
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

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

**Notice of Shutoff Order
June 18, 2026**

To: STANLEY NEUGEBAUER
14197 SD HWY 40
HERMOSA, SD 57744

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

Subject: Shutoff Order for Water Right No. 969-2, 2054-2, & 2153-2

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

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

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

The USGS maintains a website where you can view real-time stream flow measurements at several sites along the creek, the web address is:
<https://waterdata.usgs.gov/state/south-dakota/>

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

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

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