

WATER PERMIT NO. 1949-1

Name of Applicant: **Frawley Ranches Inc.**

Address: **12600 W Colfax Ave, Suite B-130, Lakewood CO 80215**

Phone: **303 223-4000**

Amount of Water Claimed: **0.11 cfs**

Total Acres: **NA**

Source of Water Supply: **springs**

Water to be used for: **commercial use**

County: **Lawrence**

Type of Waste Disposal System:

Location: **7 miles east of Spearfish**

PRIORITY Date Received: **2-6-15**

Application/License Fee: **\$ 700**

Corrected Application Received: **2-6-15**

Period of Annual Use: **Jan 1 – Dec 31**

Remarks: **Spring water bottling operation**

Diversion Point: **NW 1/4 SW 1/4 Sec 18-T6N-R4E**

Land to be Irrigated: **NA**

Depth of Well: **NA**

Well Driller:

Remarks:

Type of Map: **topo**

Prepared by:

			18		
	⊗				

Reviewed and the Number Assigned on: **2-6-15**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____

SD EForm - 1585LD V4

FORM 2: Application for uses other than irrigation
(type or print)Mail to:
PMB 2020
DENR - Water Rights
523 E Capitol Ave
Pierre, SD 57501-3182
ph. (605) 773-3352(office use only)
No. 1949-1 Hydrologic Unit 10120203
Basin Belle Fourche River
Newspaper Black Hills Pioneer
P.O. Box 7, Spearfish 57783-625-642-2761RECEIVED
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Application For Permit To Appropriate Water Within The State Of South Dakota

Check use(s) of water:

☐ Municipal	☐ Suburban Housing	☐ Recreational	☐ Institutional
☐ Rural Water System	☒ Commercial	☐ Fish & Wildlife	☐ Geothermal Heat
☐ Domestic (over 18 gpm)	☐ Industrial	☐ Other	

Type of Application:
(check one)
☒ New ☐ Vested Right (Use predates Mar 2, 1955) ☐ Future Use Reservation
☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____
☐ Amendment/Correction to Permit No. _____

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

1. Name to Appear on Water Permit Frawley Ranches, Inc.(check one) ☒ Owner ☐ Tenant/lessee ☐ Owner's Legal Agent

(name and complete address if different than above name)

Mailing Address 12600 W. Colfax Ave. Suite B-130 Lakewood CO 80215
(Address) (City) (State) (Zip Code)Home Phone 303-233-4000 Cell _____ Email dpropp@propprealty.com2. Amount of water claimed 0.11 *CFS or 50 **GPM 8.25 AF/YR ***AF
(*Cubic Feet per Second) (**Gallons per Minute) (***Acre Feet - storage capacity of dam/dugout or annual use if applicable)3. Source of water supply Natural Springs CNW 1/4 SW 1/44. Location of point of diversion Existing springs in SW1/4 Section 18 R4ET6N-NW1/4, S1/4 County Lawrence

(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)

If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☐ Yes ☐ No

If "Yes," where will water be used? _____

(example - NW1/4 section 12-T104N-R53W)

5. County or counties where water will be used Spring Water Bottling, Interstate6. Annual period during which water is to be used 12 months per year (Jan. 1 - Dec. 31)

7. Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

See Attachment

I, Daryll Propp, the applicant, certify that I have read this application, have examined the attached map, and that the matters stated are true.

2012-09

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

**SOUTH DAKOTA
WATER PERMIT NO. 1949-1**

Date of first receipt of application February 6, 2015.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 1949-1 to Frawley Ranches, Inc., 12600 W Colfax Ave, Suite B-130, Lakewood CO 80215 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 1949-1 appropriates 0.11 cubic feet of water per second (8.25 acre-feet annually) from springs located in the NW 1/4 SW 1/4 Section 18-T6N-R4E.
2. The water appropriated shall be used for the purpose of commercial use in a water bottling operation and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date of approval of Permit No. 1949-1 is April 30, 2015.
5. The date from which applicant may claim right is February 6, 2015.
6. One-fifth of the construction is to be completed on or before October 30, 2017.
7. All construction is to be completed on or before April 30, 2020.
8. Water is to be put to beneficial use on or before April 30, 2024.
9. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. Water Permit No. 1949-1 is subject to compliance with Administrative Rules of South Dakota Chapter 20:01:11, Bottled Water Quality.
2. Permit No. 1949-1 authorizes diversion of only natural spring discharge. The Permit prohibits artificial excavation in the vicinity of the spring to enhance the discharge of this spring.
3. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the spring.

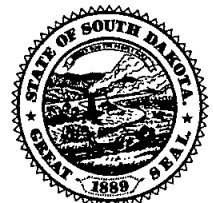
-----**WATER MANAGEMENT BOARD**-----

By: *Jeanne Goodman*

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

MAY 27 2015

date



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Attachment

7. The Anderson Ranch Springhouse located on the current Frawley Ranch was constructed in 1888. Prior to the Andersons, the spring location in Centennial Valley was a favorite gathering place by the Native Americans, who enjoyed the bountiful natural spring water. The Andersons located their dairy at the spring because of the refrigeration effects of the cool natural spring water for their dairy products. The Frawley Ranch has historically used this spring water for livestock watering.

A new era is drawing for the Frawley Ranch and the historic Anderson Dairy spring water and springhouse. Testing has indicated that the natural spring water collected at the springhouse is suitable for drinking water. The intent is to distribute the natural spring water on a wholesale basis, emphasizing the long duration and historic nature of the spring water.

Water Testing Report from:

Midcontinent Testing Laboratories

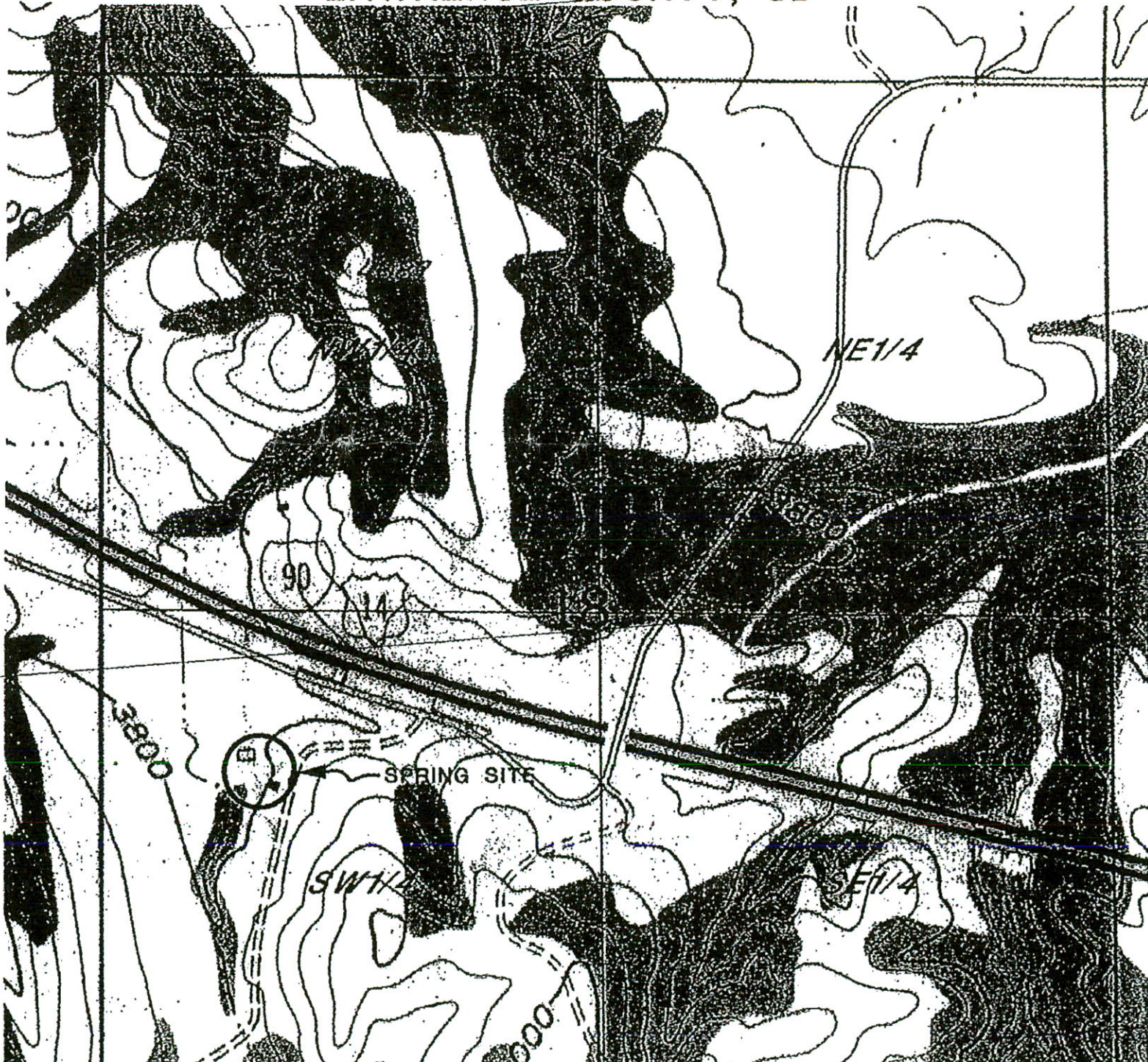
2831 South Plaza Drive

Rapid City, SD 57701

Dated 1/22/2015

Lab#: 20150122812

FRAWLEY RANCHES, INC.
SPRING, AND SPRING HOUSE LOCATION
SW1/4 SECTION 18, T6N, R4E, BHM
LAWRENCE COUNTY, SD



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RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date 2/6, 20 15

RECEIVED OF Wyss Associates (Frawley Ranches) 728 6th St Rapid City SD 57701

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

Fee for Application for Permit No. <u>1949-1</u> to Appropriate Water, to construct and to put water to beneficial use	500	00
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>1949-1</u>	200	00
Fee for Filing Transfer Form _____		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
(Any Other Work Provided by Law) TOTAL	700	00

No. 07251

By James Goodman Jr
Chief Engineer



**Wyss
Associates, Inc.**

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**WATER RIGHTS
PROGRAM**

**Letter of
Transmittal**

728 Sixth St. ▪ Rapid City, SD 57701 ▪ Ph: 605.348.2268 ▪ Fx: 605.348.6506 ▪ Email: info@wyssassociates.com ▪ web: www.wyssassociates.com

To: Eric Gronlund Date: February 3, 2015
Firm: Water Rights Program From: Wyss Associates, Inc.
Address: 523 East Capital Avenue Project: Frawley Ranches, Inc.
Pierre, SD 57501 Proj. No: _____

X Mail _____ Deliver _____ Pick up _____ Fed Ex _____

<u>Copies</u>	<u>Date</u>	<u>Submittal</u>	<u>Description</u>
<u>1</u>	<u>02/03/15</u>	_____	<u>Water Rights Fee (\$700)</u>
<u>1</u>	<u>02/03/15</u>	_____	<u>Water Right Application with attachment and map</u>
<u>1</u>	<u>02/03/15</u>	_____	<u>Midcontinent Testing Lab Report</u>
_____	_____	_____	_____

These are transmitted as checked below:

<u>X</u> For approval	_____ Reviewed
<u>X</u> For your use	_____ Furnish as corrected
_____ As requested	_____ Revise and Resubmit
_____ For review & comment	_____ Rejected
_____ For Bids Due: _____	_____

Comments: _____

cc: _____

Gronlund, Eric

From: Wyss, Patrick <patw@wyssassociates.com>
Sent: Tuesday, January 20, 2015 10:07 AM
To: Gronlund, Eric
Subject: Re: water permitting

Yes. We plan to reapply in February. His staff is currently taking new water samples.

Thanks
Pat

Patrick Wyss
Fellow, American Society of Landscape Architect
605 348-2268
www.wyssassociates.com

On Jan 20, 2015, at 9:48 AM, Gronlund, Eric <Eric.Gronlund@state.sd.us> wrote:

Mr. Wyss:

Did you brief Mr. Propp about Water Permit Nos. 1733-1 and 1756-1 for the bottled water operation being subject to cancellation for non-construction?

Eric Gronlund
Water Rights Program, DENR
605 773-3352
Eric.gronlund@state.sd.us

From: Gronlund, Eric
Sent: Tuesday, December 23, 2014 11:38 AM
To: patw@wyssassociates.com
Subject: water permitting

Pat

Attached is the application Frawley Ranches filed to appropriate water from the spring for bottled water. Also attached is the application/instruction form.

Once you brief Mr. Propp regarding the two existing permits being subject to cancellation, please let me know and DENR will proceed with the cancellation of the permits. I do not want the notice of cancellation being sent to Mr. Propp to come as a surprise.

Thanks

Eric Gronlund
Water Rights Program, DENR
605 773-3352
eric.gronlund@state.sd.us
<E1585LDV4-NONIRRIG.pdf>

Permit Nos. 1733-1 and 1756-1

Water Rights Program - DENR
Conversation File Documentation

NAME OF PERSON OR FILE: Water Permit Nos. 1733-1 & 1756-1, Frawley Ranches

ADDRESS: COUNTY: Lawrence County

DATE: February 5, 2015 TELEPHONE:

RE: cancellation of Water Permit Nos. 1733-1 & 1756-1, Frawley Ranches

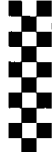
In December 2014, Pat Wyss contacted me regarding the Anderson Ranch spring in Lawrence County. Frawley holds Water Permit Nos. 1733-1 & 1756-1 appropriating a total of 50 gpm for commercial use for a bottled water operation. The project had not been developed within either the construction time or time to place water to beneficial use. I indicated at that time the permits were likely subject to cancellation. I told Mr. Wyss that we'd give him time to consult with the owner Mr. Propp regarding DENR proceeding with cancellation.

In email correspondence on January 20, 2015, Mr. Wyss indicated he did brief Mr. Propp and that it was Frawley Ranches' intention to proceed with reapplying for a permit to use the spring water for commercial use.

On February 5, 2015, DENR received an application to appropriate water from the Anderson Ranch spring for a bottled water operation.

I recommend that DENR proceed with notice of cancellation of Water Permit Nos. 1733-1 & 1756-1, Frawley Ranches. Notice should be provided to Mr. Propp and Mr. Wyss.

NAME: Eric Hendrix

**MIDCONTINENT**

TESTING LABORATORIES, INC.

2381 South Plaza Drive P.O. Box 3388 Rapid City, SD 57709
(605) 348-0111 – www.thechemistrylab.comReceived: 01/22/15 at 08:30 AM
by Kate ShrevesAccount: 9123
Elkhorn Ridge RV ParkDON HANSEN
ELKHORN RIDGE RV PARK
20189 HWY 85
SPEARFISH, SD 57783**RECEIVED****FEB 06 2015****WATER RIGHTS
PROGRAM****DRINKING WATER REPORT**

EPA #	SAMPLE SITE	SAMPLE POINT	SAMPLE DATE & TIME	TOTAL COLIFORM SM 8223 P/A	FECAL COLIFORM SM 8223 P/A	NITRATE	ANALYST	LAB NUMBER
	Spring ₁		01/21/15 02:30 PM	Absent	Absent		KLS 01/22/15	20150122012

Key to Notes:

- 1. Bacteriologically safe for drinking or washing uncooked foods at the time of sampling.

APPROVED BY:

Steve Distau

APPROVED DATE:

1/23/2015 2:27:06 PM

DATE PRINTED:

01/23/2015 02:36 PM

*Pat Wyss**mel.559*

**MIDCONTINENT**
TESTING LABORATORIES, INC.

Page 1 of 1

2381 South Plaza Drive P.O. Box 3388 Rapid City, SD 57709
(605) 348-0111 -- www.thechemistrylab.comSample Site: Spring
Sampled: 01/21/15 at 02:35 PM
by Don Hansen
Sample Matrix: WaterLab ID#: 20150122818
Received: 01/22/15 at 08:30 AM
by Kate Shreves
Account: 9123 - Elkhorn Ridge RV ParkDON HANSEN
ELKHORN RIDGE RV PARK
20189 HWY 85
SPEARFISH, SD 57783

Parameter	Result	Units	DF	MDL	PQL	Method	Analyst/Date
<u>Non-Metallics</u>							
Nitrogen, Nitrate (NO3)	0.091	mg/L	1	0.014	0.050	SM 4500-NO3 F	BLL 01/26/15

Approved By: _____

Steve Pistau

Approved On: 1/27/2015 8:01:11 AM


MIDCONTINENT
 TESTING LABORATORIES, INC.

 2381 South Plaza Drive P.O. Box 3388 Rapid City, SD 57709
 (605) 348-0111 www.TheChemistryLab.com
Account # 9123

Lab #

0122812Account Name Elkhorn Ridge RV Park

Attention to

Melvin BreikreutzDON HANSEN
641 5552

Mailing Address

20189 Hwy 85

City

Spearfish

State

SD

Zip Code

57783

Phone

605-722-1800

EPA ID #

Please collect sample following instructions on back of form. Also, complete the following:

☐ **Water Supply**SPRING FAWLEY BANNALAWRENCE COUNTY

Sample Location or Site#

SW 1/4 SEC 18 T6N, R4E, B1M 5A

Sample Purpose

☒ Routine for Monthly CompliancePRIVATE SPRING☐ TCR Repeat, indicate☐ Original Unsafe☐ UpstreamHOUSE ☐ Downstream☐ GWR Triggered☐ GWR Repeat

Other, describe

☐ **Pool, Spa or Beach**

Sample Name

Point of Collection

☐ **Bottled Water**

Lot Number or Date Code

☐ **Private Well**

Well Location

Sampled by:

DON HANSEN

Sample Date

1-21-15

Sample Time

2:30 PM

Field Notes

pH

Residual Cl/Br

Remarks

BACTERIA

Signature

Company

Date

Time

Relinquished by

Received by

Office Use Only

☐ Ppd Mailer☐ Pick-up☐ Bill☐ Paid



2381 South Plaza Drive P.O. Box 3388 Rapid City, SD 57709
(605) 348-0111 www.TheChemistryLab.com

Account # 9123

Lab # 0122818

Account Name Elkhorn Ridge RV Park
Attention to ~~Melvin Breitkreutz~~ DON HANSEN
Mailing Address 20189 Hwy 85 641-5552
City Spearfish State SD Zip Code 57783
Phone 605-722-1800 EPA ID # _____

Please collect sample following instructions on back of form. Also, complete the following:

- ☐ **Water Supply** SPRING FRAWLEY RANCH LAWRENCE COUNTY
Sample Location or Site# PRIVATE SW 1/4 SEC 18 T6N R6E BHM
Sample Purpose ☒ Routine for Monthly Compliance SPRING HOUSE
____ TCR Repeat, indicate: ____ Original Unsafe ____ Upstream ____ Downstream
____ GWR Triggered ____ GWR Repeat Other, describe _____

☐ **Pool, Spa or Beach**

Sample Name _____ Point of Collection _____

☐ **Bottled Water**

Lot Number or Date Code _____

☐ **Private Well**

Well Location _____

Sampled by:

DON HANSEN

Sample
Date

1-21-15

Sample
Time

2:35 PM

Field Notes

pH _____

Residual Cl/Br _____

Remarks NOT A PTE

Signature	Company	Date	Time
Reinquished by <u>Don Hansen</u>			
Received by <u>KSUREWS</u>	<u>WMT</u>	<u>1/22/15</u>	<u>0830</u>
Office Use Only	☐ Ppd Mailer	☐ Pick-up	☐ Bill ☐ Paid



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 1949-1, Frawley Ranches, Inc.**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 1949-1, Frawley Ranches, Inc., c/o Daryll Propp, 12600 W Colfax Avenue, Suite B-130, Lakewood CO 80215.

The Chief Engineer is recommending APPROVAL of Application No. 1949-1 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing rights, 3) the proposed use is a beneficial use and 4) it is in the public interest with the following qualifications:

1. Water Permit No. 1949-1 is subject to compliance with Administrative Rules of South Dakota Chapter 20:01:11, Bottled Water Quality.
2. Permit No. 1949-1 authorizes diversion of only natural spring discharge. The Permit prohibits artificial excavation in the vicinity of the spring to enhance the discharge of this spring.
3. The Water Permit Holder shall report to the Chief Engineer annually the amount of water withdrawn from the spring.

See report on application for additional information.

Jeanne Goodman, Chief Engineer
April 10, 2015

NOTE: The water is to be obtained from a source that will need to be approved by the Department of Environment and Natural Resources and shall be located, protected, and operated to minimize the possibility of contamination. The approval of the water right permit does not constitute department approval under the bottled water quality rules. I encourage you to contact the Drinking Water Program at 605 773-3754 to discuss the administrative rules for a bottled water operation including approval of the source.

WATER PERMIT APPLICATION NO. 1949-1
FRAWLEY RANCHES, INC
MARCH 25, 2015

Water Permit Application No. 1949-1 proposes to appropriate up to 8.25 acre-feet annually at a maximum diversion rate of 0.11 cubic feet of water per second (cfs) from a spring located in the NW¼ SW¼ Sec.18, T6N-R4E in Lawrence County. The water is for commercial use in a bottled water operation.

HISTORY:

Frawley Ranches, Inc. currently holds Water Permit Nos. 1733-1 and 1756-1, appropriating a total of 0.11 cfs from the spring this application is proposing as a source, for a bottled water operation.

Water Permit Application No. 1733-1 was submitted on July 21, 2000, proposing to appropriate 0.056 cfs (25 gpm) from this spring. A total of 28 petitions were received opposing issuance of the permit, and there were 12 parties to the Water Management Board hearing in opposition to the application. The Board considered the application on September 28, 2000, adopted findings of facts, and conclusions of law on December 6, 2000, and a final decision approving the permit was signed on December 14, 2000.

Water Permit Application No. 1756-1 was submitted on October 2, 2001, proposing to appropriate an additional 0.056 cfs from the spring. In addition to the public notice, the parties of record for the hearing on Water Permit Application No. 1733-1 were personally notified. There were no petitions received in opposition to the application, and the Board approved the permit on December 5, 2001.

On November 1, 2007, the Chief Engineer issued a Notice of Cancellation, recommending cancellation of Water Permit Nos. 1733-1 and 1756-1, due to non-construction. The cancellation was contested by Frawley Ranches, Inc. Based on information provided subsequent to the notice of hearing for cancellation, it was concluded that development of the spring to the extent it was capable of producing water, constituted completion of construction of the source, and a hearing to consider cancellation of the permits was not held. In accordance with the permits, water was to be placed to beneficial use for commercial bottled water use in the amount of 25 gallons per minute (gpm) by December 6, 2009, as set forth on Permit No. 1733-1, and an additional 25 gpm appropriated by Permit No. 1756-1 by December 5, 2010. To date, water from the spring has not been placed to beneficial use for a bottled water operation; therefore the permits are subject to cancellation. The Water Permit Application No. 1949-1 proposes to appropriate water for the same bottled water operation put forward by Water Permit Nos. 1733-1 and 1756-1.

WATER SOURCE:

The source of water for this proposed project is a "spring" along an unnamed ephemeral tributary to Polo Creek. The source of water to this "spring" is not clear. Geologically, the springhouse is located near the contact between the Spearfish Formation and the overlying Sundance Formation (Darton, 1925). The sandstone members of the Sundance and Spearfish Formations may locally be aquifers. However, because of the orientation of the beds (dipping to the northeast), (Redden and others, In Prep), the Sundance is an improbable source of springs in this area. The Spearfish Formation's limited recharge area and the relatively low capacity to transmit water due to high shale content also make the formation an unlikely spring source.

The top of the Minnekahta Limestone is approximately 150 feet below grade in the vicinity of this spring (Carter and Redden, 1999). A potentiometric surface map suggests the Minnekahta is saturated with a potentiometric surface estimated to be 100 feet below grade near the spring (Strobel and others, 2000a). However, the regional scale of this map (i.e. 1:100,000) does not provide the precision to conclude or refute the aquifer as the source of the spring. The Minnekahta Limestone outcrops approximately 1,000 feet to the west and approximately 40 feet higher than this spring (Redden and others, in prep.). Considering the proximity of the outcrop, small contributing recharge area, and minimal head potential, the Minnekahta aquifer is not likely the source of this spring.

The potentiometric surfaces of the Minnelusa aquifer and the Madison aquifer are estimated to be 300 and 350 feet below grade, respectively, at the spring site (McKaskey, 2013). The DENR-Water Rights Program maintains observation wells in both aquifers within approximately two miles of this spring site that support McKaskey's potentiometric surface (Water Rights, 2015a). Therefore, it can be concluded that neither the Minnelusa nor the Madison aquifers are likely to discharge at this location.

The most likely source of water for this "spring" is the Quaternary aged alluvium (Qal) and/or Quaternary aged Terrace deposits (Qt) that are present. It is probable that a spring at this site could be considered a "depression spring" (Fetter, 1980), which is simply a topographic low spot where the land surface incises the water table. Rahn and Gries (1973) identifies this type of spring as a Type 6 spring and indicates that springs such as this "are more properly called seeps".

The areal extent of the alluvium/terrace deposits has been delineated in this area (see Figure 1., (Redden and others, in prep.). However, the aquifer characteristics, including the amount of water is storage have not been quantified. Recharge to the alluvium occurs through precipitation falling directly on the alluvium, runoff from adjacent areas and streamflow losses from the ephemeral tributary. The aquifer is under unconfined conditions.

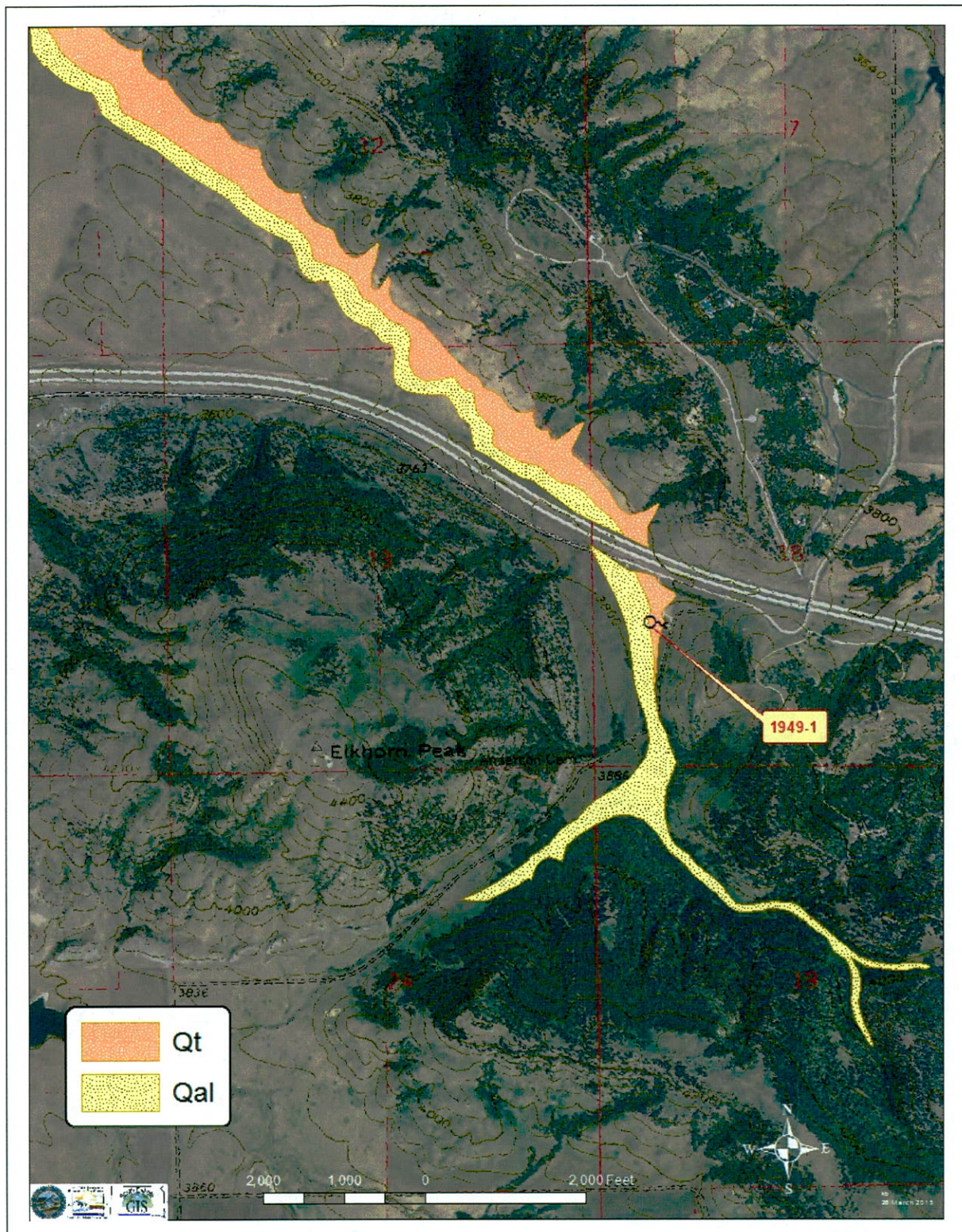


Figure 1. Location of the spring proposed as a water supply by Water Permit Application No. 1949-1 and the areal extent of the Quaternary Alluvium (Qal) and Quaternary Terrace Deposits (Qt) (Modified from Redden and others, in prep).

SOUTH DAKOTA CODIFIED LAW (SDCL) 46-2A-9

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public interest.

SDCL 46-6-3.1

SDCL 46-6-3.1 requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source." Since SDCL 46-1-6(12) defines groundwater as "water under the surface...", provided the water surfaces before it is diverted, SDCL 46-6-3.1 does not apply to appropriations from springs.

SDCL 46-5-3

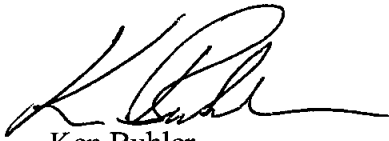
Pursuant to SDCL 46-5-3, the owner of land on which a natural spring arises and which constitutes the source or part of the water supply of a definite stream may acquire a right to appropriate the flow from the spring as provided by law for appropriation of waters.

WATER AVAILABILITY AND EXISTING WATER RIGHTS

Any discharge from this spring is apparently lost to the alluvium along the unnamed tributary to Polo Creek. Polo Creek is a tributary to Falsebottom Creek, which is a tributary to the Redwater River. At times, flows in Redwater River are insufficient to satisfy all of the water rights issued from it (Water Rights, 2015_b). The withdrawals proposed by this application are relatively small and are minor when compared to evapotranspiration losses from this aquifer. Therefore, this appropriation will not affect the availability of water in the Redwater River for downstream water rights. The aquifer contained in the alluvium along this unnamed tributary is localized and the DENR-Water Rights Program has no record of other wells supplied from it (Water Rights, 2015_a). As long as no artificial excavations are made to enhance the discharge of this spring, and provided water from the spring discharges to the atmosphere (surfaces) prior to it being diverted, this proposed appropriation will not lead to additional withdrawals beyond natural discharge. Therefore, unappropriated water is available for this appropriation and existing rights will not be impaired if the permit is approved.

CONCLUSIONS:

1. This application proposes to appropriate up to 8.25 acre-feet of water annually at a maximum diversion rate of 0.11 cfs water from a spring discharging from a localized Quaternary Alluvium aquifer.
2. There is a reasonable probability that unappropriated water is available from this aquifer.
3. This appropriation can be made without adverse impact to other water rights.
4. As long as no artificial excavations are made to enhance the discharge of this spring, and provided water from the spring discharges to the atmosphere (surfaces) prior to it being diverted, this proposed appropriation will not lead to additional withdrawals beyond natural discharge.



Ken Buhler
SD DENR-Water Rights Program

REFERENCES:

- Carter, J.M., Redden, J.A., 1999a, Altitude of the Top of the Minnekahta Limestone in the Black Hills Area, South Dakota: U.S. Geological Survey Hydrologic Investigations Atlas HA-744-B, 2 sheets, scale 1:100,000
- Darton, N.H., Paige, S., 1925, Geologic Atlas of the United States, Central Black Hills Folio, South Dakota, Folio No. 219, US Geological Survey, Washington, DC
- Fetter, C.W., 1980, Applied Hydrogeology, Charles E. Merrill Publishing Company, Columbus, Ohio
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- Water Rights. 2015b. Water Right/Permit Files. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2015c. Well Completion Reports. SD DENR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.

RECEIVED

APR 24 2015

WATER RIGHTS
PROGRAM

Affidavit of Publication

STATE OF SOUTH DAKOTA:

COUNTY OF LAWRENCE:

Letitia Lister of said County and State being first duly sworn, on her oath says: That the BLACK HILLS PIONEER is a legal daily newspaper of general circulation, printed and published in the City of Spearfish, in said County and State by Letitia Lister, and has been such a newspaper during the times hereinafter mentioned; and that said newspaper has a bonafide circulation of at least 200 copies weekly, and has been published within said County in the English language for at least one year prior to the first publication of the notice herein mentioned, and is printed in whole or in part in an office maintained at the place of publication; and that I, Letitia Lister, the undersigned, am the Publisher of said newspaper and have personal knowledge of all the facts stated in this affidavit; and that the advertisement headed:

Notice OF Application
No. 1949-1

a printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive and consecutive weeks, the first publication being made on the 20th day of April, 2015, and the last publication on the day of , that the full amount of fees charged for publishing same, to-wit: The sum of \$ 22.61, insures solely to the benefit of the publisher of the BLACK HILLS PIONEER, that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

[Signature]
Subscribed and sworn to before me this 21st day of April, 2015

[Signature]
Notary Public, Lawrence County, South Dakota
My commission expires: 10-24-2016

NOTICE OF APPLICATION NO. 1949-1 to Appropriate Water

Notice is given that Frawley Ranches, Inc, c/o Daryll Propp, 12600 W Colfax Ave, Suite B-130, Lakewood CO 80215 has filed an application for a water permit to appropriate 0.11 cubic feet of water per second (8.25 acre-feet annually) from springs located in the NW 1/4 SW 1/4 Section 18-T6N-R4E for commercial use in a water bottling operation.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 1949-1 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 30, 2015.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Information concerning this application is available at <http://denr.sd.gov/public>. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application.

Steven M. Pimer,
Secretary,
Department of
Environment and Natural
Resources
Published once at the
total approximate cost of
\$22.61.

#383
April 20



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

April 13, 2015

Black Hills Pioneer
PO Box 7
Spearfish SD 57783

ATTENTION: Legal Public Notice

Enclosed is a Notice on Application No. 1949-1 to Appropriate Water. Please publish the notice once on April 20, 2015. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352.

The applicant must verify to you that the notice is to be published and arrange for payment. **Please BILL the APPLICANT for the cost of publication.** The APPLICANT is Frawley Ranches, Inc, c/o Daryll Propp, 12600 W Colfax Ave, Suite B-130, Lakewood CO 80215 (Ph # 303-233-4000).

Please send the Water Rights Program an affidavit or the enclosed Proof of Publication form immediately.

The applicant pays the cost of publication, but the Water Rights Program records require an affidavit or Proof of Publication. Delays in receiving the affidavit can be costly to the applicant.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

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

April 13, 2015

Frawley Ranches Inc
Daryll Propp
12600 W Colfax Ave Suite B-130
Lakewood CO 80215

Dear Mr. Propp:

Water Permit Application No. 1949-1 for commercial use has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Black Hills Pioneer printed at Spearfish SD (Ph # 605-642-2761). You will need to contact the newspaper(s) and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper(s) to authorize publication of your Notice and to arrange for payment. Early contact with the paper(s) can eliminate delays. Upon receiving authorization from you, the publisher has been instructed to publish your notice. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Eric Gronlund
Natural Resources Engineer
(605) 773-3352

enclosures

cc: Pat Wyss, Wyss Associates, 728 6th St, Rapid City SD 57701

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

Instruction to Newspaper - Publish the Notice on April 20, 2015. The applicant is responsible for payment. The text of the notice can be e-mailed to your paper by contacting Karen Schlaak at (605) 773-3352 or email: Karen.schlaak@state.sd.us.

NOTICE OF APPLICATION NO. 1949-1 to Appropriate Water

Notice is given that Frawley Ranches, Inc, c/o Daryll Propp, 12600 W Colfax Ave, Suite B-130, Lakewood CO 80215 has filed an application for a water permit to appropriate 0.11 cubic feet of water per second (8.25 acre-feet annually) from springs located in the NW 1/4 SW 1/4 Section 18-T6N-R4E for commercial use in a water bottling operation.

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Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 30, 2015.

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

Published once at the total approximate cost of_____.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

MAY 27 2015

Frawley Ranches Inc
Darryl Propp
12600 W Colfax Ave Ste B-130
Lakewood CO 80215

Dear Mr. Propp:

Enclosed is Water Permit No. 1949-1 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

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

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

Sincerely,

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

cc: Pat Wyss, Wyss Associates, 728 6th St, Rapid City SD 57701

enclosures