

WATER PERMIT NO. VR 2267-2

Phone: 605-574-2591

Name of Applicant: Kim and Marcia Benning - Spring Creek Inn

Post Office Address: HCR 87, Box 55, Hill City SD 57745

Amount of Water Claimed: 45 gpm 0.1 cfs Total Acres: NA

Source of Water Supply: groundwater

Water to be used for: commercial County: Pennington

About 1 miles east of Hill City

PRIORITY Date Received: 11-25-92 Fee: \$15 Remarks: Priority date
of January 1, 1953

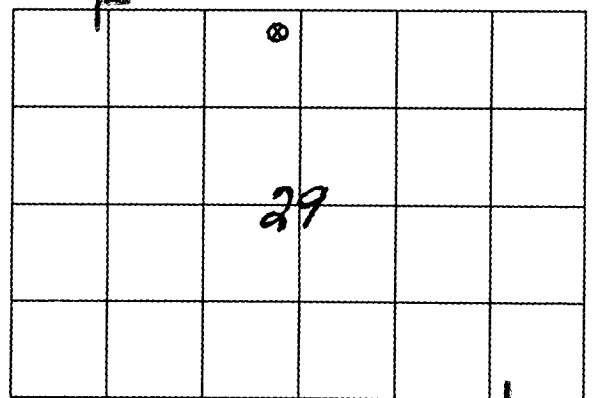
Corrected Application Received: 3-1-93 Period of Annual Use: Jan 1 - Dec 31

WATER QUALITY APPROVAL RECEIVED: NA APPROVED/CONDITIONAL (Circle one)

WI-1 Description same as Application YES ☐ NO ☐ REMARKS: _____

Diversion Point: NE 1/4 NW 1/4 Sec 29-T1S-R5E

Land to be Irrigated: _____



Well Log: Driller: _____ Licensed YES ☐ NO ☐

Depth of Well: 15' REMARKS: no log available

Type of Map: plat PREPARED BY: Douglas Sperlich Reviewed and the Number

No. 2367-2 Hydrologic Unit 10120109
 Map No. _____ Basin Upper Cheyenne
 Newspaper Pennington Co. Prevalier News, Box 266

Hill City

Application For Permit To Appropriate Water Within The State Of South Dakota

Check use of water: Industrial ☒ Commercial ☒ Municipal ☐ Other Common Distribution System ☐
 Rural Water System ☐ Suburban Housing ☐ Geothermal Heat ☐ Institutional ☐ Recreational ☐
 Domestic ☐ (above 18gpm) Other ☐

Type of Application: Check one or more of the following

New ☐ Vested Right ☒ Future Use ☐ Change Use ☐
☐ Amend Permit No. _____ with old priority date retained
 Change diversion point(s) ☐ Add diversion point(s) ☐ Other ☐ _____
☐ Application to: Change diversion point(s) ☐ Add diversion point(s) ☐ on Permit No. _____
☐ Construction to use water reserved by Future Use Permit No. _____



- Name of Applicant Kim and Marcia Benning Phone No. 605-574-2591
57745
 Post Office Address HCR 87 Box 55 Hill City, State SD
(Street, RR or Box) (City) (Zip Code)
(011cfs)
 - Amount of water claimed (c.f.s.) MAX CONSUMPTION: 45 ~~150~~ gallon per minute per Joe Allender
 - Source of water supply Underground spring
 - Location of point of diversion Please refer to enclosed map. NE 1/4 NW 1/4 Sec 29-T1S-R5E
- _____ County Pennington
- Counties where water will be used PENNINGTON
 - Annual period during which water is to be used January 1st to December 31st.
 - Give a brief description of proposed 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)

Water rights use to serve the Inn.

Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach map (see instruction)

STATE OF SOUTH DAKOTA)
 County of Pennington)^{ss}

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

Signed

Marcia BenningSubscribed and sworn to before me this 20th day of Nov. 1992Diana Rome

Notary Public

SOUTH DAKOTA

VESTED WATER RIGHT NO. 2267-2

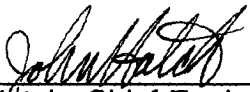
Date of Receipt of Claim November 25, 1992.

Date of Validation June 1, 1993.

The Chief Engineer, on behalf of the Water Management Board validated Vested Water Right Claim No. 2267-2 for Kim and Marcia Benning, HCR 87, Box 55, Hill City SD 57745 with the following limitations, conditions and qualifications:

1. Vested Water Right No. 2267-2 appropriates 45 gallons per minute (0.1 cubic feet of water per second) from one well (Precambrian Crystalline Rock) 15 feet deep located in the NE 1/4 NW 1/4 Section 29-T1S-R5E.
2. The appropriated water is used for supplying water to the Spring Creek Inn and may not exceed the amount of water needed for beneficial use for commercial purposes.
3. The water is to be used during the following annual period: January 1 - December 31.
4. The priority date of the Vested Water Right is January 1, 1953.
5. The water use system has been constructed and water has been applied to beneficial use.
6. Water Rights obtained in compliance with the laws of the State of South Dakota must not be unlawfully impaired by this appropriation.

WATER MANAGEMENT BOARD

By: 
John Hatch, Chief Engineer
Water Rights Division
Department of Environment and
Natural Resources

AUG 10 1993
date

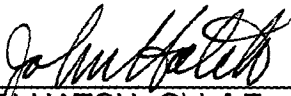
STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 2267-2

(1) Kim and Marcia Benning of HCR 87 Box 55, Hill City, SD 57745, made Application No. 2267-2, November 25, 1992 for validation of a vested right claim to appropriate 0.10 cubic feet of water per second from groundwater (one well), Pennington, County, South Dakota, for commercial purposes. Vested Water Right No. 2267-2 was validated June 1, 1993 with a priority date of January 1, 1953. Construction of the described water supply system and application of water to beneficial use has been completed and complies with applicable provisions of South Dakota State Law.

(2) The vested right owner is entitled to divert 0.10 cubic feet of water per second for beneficial use. The location of the diversion point is in the NE 1/4 NW 1/4 Section 29, T1S, R5E.

(3) Pursuant to Section 46-5-30.1 Kim and Marcia Benning of HCR 87 Box 55, Hill City, SD 57745 the holders and/or owners of Vested Water Right No. 2267-2 is issued a license to appropriate 0.10 cubic feet of water per second from groundwater (one well) with a priority date of January 1, 1953 from the location specified in (2) of this license. The water is to be used for the purpose of commercial use. This license is subject to any limitations, conditions or qualifications listed in Vested Water Right No. 2267-2 and subject to South Dakota State Law.



AUG 10 1993

JOHN HATCH, Chief Engineer
Water Rights Division
Department of Environment and Natural Resources

Supplemental Information

(type or print in ink)

1. Well Information - Proposed construction

- a) Drill Hole Diameter 30" Depth 15'
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack Thickness _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth of Water (ground surface to water level) 12 ft Dored well
- g) Distance to nearest existing domestic well:
- On applicants property ✓ On property owned by others _____

2. Dugout Information Estimates

- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

3. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below. The locations of each dam should be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam please give their name and address

b) Freeboard _____

c) Crest Width _____

Crest Length _____

d) Height _____

e) Outlet Dimensions:
Pipe diameter _____

Spillway width _____

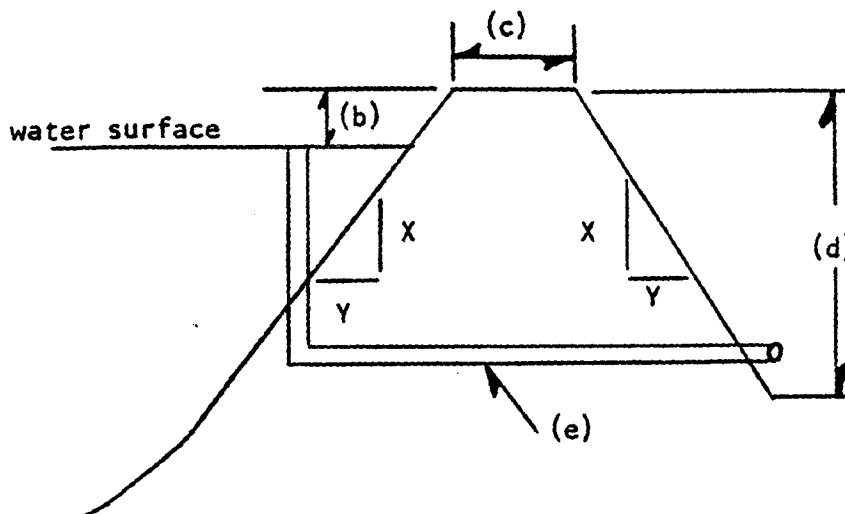
f) X & Y Slope
Upstream _____

Downstream _____

Surface Area of Impoundment _____

Storage _____ acre feet

Drainage area above dam _____



X Walter S. Day
Signature of Applicant

Affidavit of Water Use

No. _____

(Type or Print in Ink)



Note: This Form is supplemental to Form 2 and is to be used when an affidavit pertaining to construction of water already constructed is needed, primarily with vested right claims.

**Affidavit Of Construction Of Water Use System
And Application Of Water To Beneficial Use**

Name of Applicant (Same as Form 2) Kim and Marcia Benning

Post Office Address HCR 87 Box 55 Hill City, SD 57745
(Street, RR or Box) (State) (Zip Code)

A. Notice of Appropriation _____ Date of Posting _____

Date of recording _____ Recording date _____
Where Book Page

B. Date of start of construction of water supply system 1950C. Date that water was first applied to beneficial use 1950D. Name of owner of original water supply system Joe BoganE. Amount of water originally applied to beneficial use supply adequate for one household

F. Present Use of Water - Amount of water now being used To adequately operate a 17 unit
motel & cabins + one household

Date that this water was first used motel constructed 1953 (50 gal. per min)
45

G. Chronological History of Water Use

1950: House built and occupied, water used for personal use.

1953: Motel built, use of commercial water begun

1992: Additional cabins addition begun as approved by Pennington County building permit.

Attach to this Form 2B any copies of notices, postings, filings, publications, affidavits, or other records that apply. You may also attach any written statement by you, or by others, that you deem pertinent.

State of South Dakota)

County of Pennington) ^{ss}

I, MARCIA BENNING the applicant, certify that I have read the foregoing
(print or type)
 and that the matters therein stated are true.

Signed

Marcia BenningSubscribed and sworn to before me Nov. 20th 1992

Diana Rome
 Notary Public or other qualified officer

I, the undersigned do hereby certify that I know about the water use system described above, that I have read the foregoing, and that the matters therein stated are true.

Marcia Benning
 (Print name)

11-20 1992

(Print name) _____ 19____

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

Pierre, March 31, 1900

RECEIVED OF Circle S. Hotel, SR, Box 55, Hill City, SD 57745

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

Fee for Application for Permit No. <u>2267-2</u> to Appropriate Water, to construct works and to put water to beneficial use _____	5 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. _____	2 00
Fee for Filing Transfer Form _____	
Fee for Filing Extension Request _____	
Fee for Certified Copy of _____	
Fee for Print Copy of Map _____	
Fee for Certifying _____	
Fee for _____	
(Any Other Work Provided by Law)	
Total	7 00

By

John H. [Signature]
Chief Engineer

CONFIDENTIAL

RECEIPT

413520

Division of Water Rights

South Dakota Department of Environment and Natural Resources

Pierre, _____ November 30, 19 92

RECEIVED OF Marcia Benning, Spring Creek Inn, HC S7 Box 55, Hill City, SD 57745

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

Fee for Application for Permit No. <u>2267-2</u> to Appropriate Water, to construct and to put water to beneficial use _____	4	50
Fee for Application for Permit No. _____ to Appropriate Water, for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
Fee for Filing Extension Request _____		
Fee for _____		

(Any Other Work Provided by Law)	Total	4 50

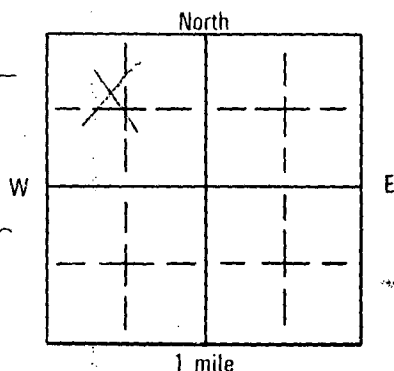
By

Chief Engineer

[Signature]

SOUTH DAKOTA WATER WELL COMPLETION REPORT

10-85

Location N 1/4 Sec 29 Twp 1 S Rg 5 ECounty
PenningtonPlease mark well
location with
an "X"1 mile East of
HILL CITYWell Completion Date 8-2-89

PROPOSED USE:

☒ Domestic ☐ Municipal ☐ Test Holes
☐ Irrigation ☐ Industrial ☐ Stock

Method of Drilling:

Downhole Hammer

CASING DATA:

☐ Steel ☒ Plastic ☐ OtherIf other describe 40'-160 PVC

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
LB/FT <u>8</u>	IN <u>8</u>	FT <u>0</u>	FT <u>38</u>	IN <u>8</u>
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN
LB/FT	IN	FT	FT	IN

GROUT:

Was the well grouted? ☒ YES ☐ NOTo what depth? 10' - 30' FEETWhat is grouting material? type IIIIf cement, number of sacks? 2Describe grouting procedure tapcrete pipeWhat was grout weight? 14 LB/GALSCREEN: ☐ Perforated pipe ☐ Manufactured None

Diameter _____ IN Length _____ FEET

Material _____

Slot Size _____ Set From _____ Feet To _____ Feet

Slot Size _____ Set From _____ Feet To _____ Feet

Slot Size _____ Set From _____ Feet To _____ Feet

Other information _____

Was a packer or seal used? ☐ YES ☒ NOIf so, what material? Casings Set Hill Rock

Describe packer(s) and location? _____

Was well disinfected upon completion? ☒ YES ☐ NOExplain Chlorine SolutionBacteriological analysis ☒ YES ☐ NOLaboratory sent to TRAVIS LabWell Owner: Spring Creek FarmName Circle S. MotelAddress HILL CITY, S.D. 57745

Well Log:

Depth

Formation	From	To
Drift	0	32
Schist Hd. grey	32	60
Schist Fract. H ₂ O-3gpm	60	61
Schist to gtz. hd.	61	120
Schist Hd. grey	120	170
Quartz Fract. H ₂ O-8gpm	170	171
Schist Hd. grey	171	180
Quartz Fract. H ₂ O-4gpm	180	182
Schist Hd. grey	182	205

STATIC WATER LEVEL 20' Feet

If flowing: closed in pressure _____ PSI

GPM flow _____ through _____ inch pipe

Controlled by ☐ Valve ☐ Reducers ☐ Other

If other; specify _____

Can well be completely shut in? _____

WELL TEST DATA:

☒ Pumped w/AIR 40 gpm☐ Bailed Describe: _____☐ Other _____

Pumping Level Below Land Surface

_____ ft. After _____ Hrs. pumped _____ GPM

_____ ft. After _____ Hrs. pumped _____ GPM

_____ ft. After _____ Hrs. pumped _____ GPM

REMARKS:

This well was drilled under license # 324

And this report is true and accurate.

Drilling firm Alexander Drilling Co.

Signature of License Representative:

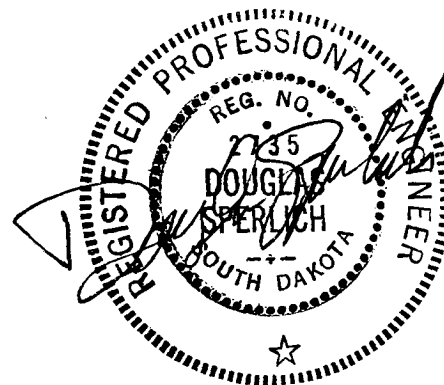
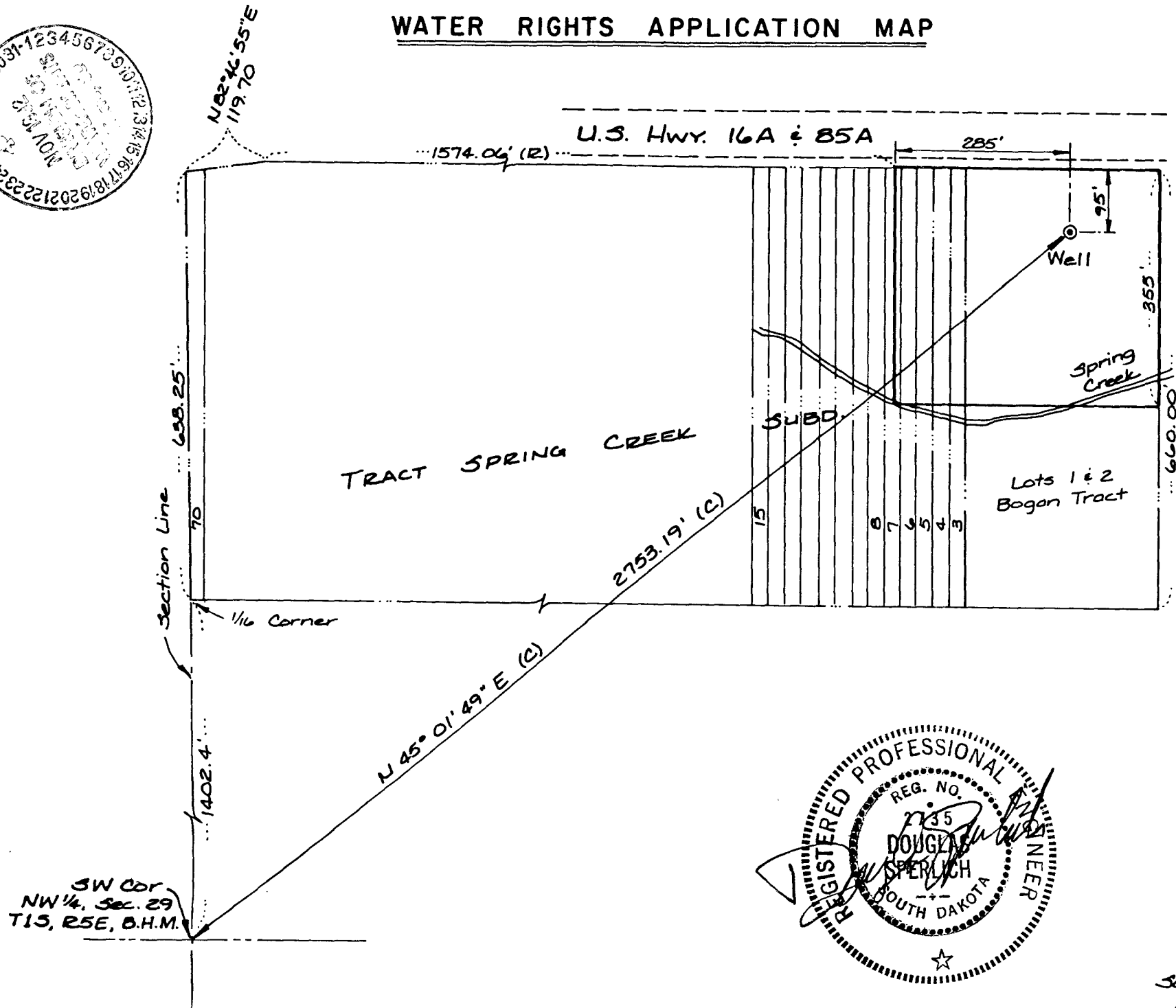
By Alexander Co.

Signature of Well Owner:

Date _____



WATER RIGHTS APPLICATION MAP



Scale: 1" = 200'
Aug. 1992

Appl No. 2267-2



Department of Water & Natural Resources

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

June 21, 1984

Circle S. Motel
St. Rt., Box 55
Hill City, South Dakota 57745

Dear Mr. & Mrs. Shaw:

The Division of Environmental Quality of this Department is conducting a survey of non-community public water supply systems. As a part of the survey, we have reviewed our records and we can not find any water rights on file for Circle S. Motel.

A water permit is required pursuant to SDCL 46-1-15 to use water from a private source for commercial use. Any use of water, except for private domestic use, requires a water permit. Examples of commercial use are: truckstops, motels, restaurants, tourist attractions, commercial campgrounds and any other business operation. Examples of non-commercial use that require permits for private supplies are: churches, hospitals and nursing homes (any amount of water) and schools that pump more than 18 gallons per minute.

If you have a water permit that has been issued under another name or if you believe a permit has been issued under another name, please contact us. We are enclosing the necessary permit application forms and instructions, if you need a permit. Please complete and submit with a (see instructions) filing fee.

An existing business without a water right has no right to the use of water. Except for private domestic use, any water user without a water right is not entitled to receive protection in the event of well interference by a new or future user who has a water right. The new user with a water right will have the senior priority over an existing user without a water right. In South Dakota, the first in time (senior priority) is the first in right, except for individual domestic use. Individual household, farm or ranch use does not require a permit and has preference over all other users of water.

If you have any questions or need assistance with completion of the forms, please feel free to contact us.

Sincerely,

Kevin C. Larson
Water Resources Engineer
Office of Water Rights
Phone: (605) 773-3352

Enclosures

Equal Opportunity Employer

SOUTH Dakota Department of
Water & Natural Resources

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

April 25, 1985

NOTICE

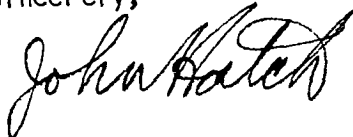
Circle S. Motel
St. Rt. Box 55
Hill City, South Dakota 57745

Dear Mr. and Mrs. Shaw:

June 21, 1984 we notified you that State Law requires that a water permit be obtained for any use of water from a private source for use in a motel. We have not heard from you on this. Failure to comply with State Laws--SDCL 46-1-6(6), 46-1-15, 46-5-8.2, 46-5-9, and 46-5-10 and Water Management Board Rule ARSD 74:02:01:03--can result in an order to stop water use until an application for a water permit has been submitted and approved.

If you have questions or need another set of permit applications forms or if you believe you already have the required water permit or need assistance in completing the forms, feel free to contact us. Please submit the completed application forms prior to June 25, 1985.

Sincerely,



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

S519.WR



Department of Water & Natural Resources

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

NOTICE

January 30, 1986

Warren Shaw Y
Circle S. Motel
St. Rt. Box 55
Hill City, SD 57745

Dear Mr. & Mrs. Shaw:

June 21, 1984 and April 25, 1985 we notified you that state law requires a water permit for water use by your business. We have not received an application from you for the required water permit. Pursuant to South Dakota Codified Laws 46-1-15, 46-5-9, 46-5-10 and 46-2-18, if you wish to continue to use water during 1986, you will need to have an application on file prior to April 1, 1986.

The filling fee for use of 45 gallons per minute or less is \$50.00. The applicant must pay the cost of advertising. If your water system has been in continuous use since prior to 1955, it may qualify for a vested right. The filling fee for a vested right is \$10.50.

If you need any help in preparing the application, map or additional forms, please contact us.

Very truly yours,

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

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

S522.wr

PS Form 3811, Dec. 1960

● **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space
on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).

- ☒ Show to whom and date delivered —¢
☐ Show to whom, date, and address of delivery.. —¢

2. ☐ **RESTRICTED DELIVERY**

(The restricted delivery fee is charged in addition to
the return receipt fee.)

TOTAL \$

3. **ARTICLE ADDRESSED TO:** Warren Sharkey
Circle S. Motel
SR Box 55
Hill City, SD 57745

4. **TYPE OF SERVICE:**

- ☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

P614819579

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

5. *Warren Sharkey*
DATE OF DELIVERY

POSTMARK

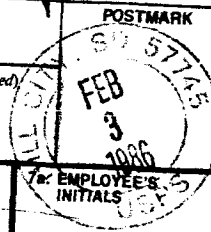
6. **ADDRESSEE'S ADDRESS** (Only if requested)

7. **UNABLE TO DELIVER BECAUSE:**

BJ

**EMPLOYEE'S
INITIALS**

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL



WATER RIGHTS DIVISION

March 26, 1986

Warren Shay
Circle S. Motel
Star Route, Box 55
Hill City, South Dakota 57745

Dear Mr. Shay:

This letter is in response to your telephone call requesting the necessary forms to apply for a vested right.

Enclosed are the following forms:

1. Two copies of Form 2 (Application for Permit)
2. Two copies of Form 2A (Well information)
3. One copy of Form 2B (Affidavit of Water Use)

Please complete the enclosed forms and return with the \$10.50 vested right filing fee. Contact us if you have any questions.

Sincerely,

Ron Duvall
Natural Resources Engineer

RD:ms
Enc.

Circle S Motel

WATER RIGHTS DIVISION
(605) 773-3352

May 23, 1986

Warren Shay
Circle S Motel
SR, Box 55
Hill City, South Dakota 57745

Dear Mr. Shay:

This letter is in response to the permit application and fee received from you on March 31, 1986. The following information is needed before processing can begin on your Vested Right Application.

1. Enclosed are two copies of Form 2 which have been typed from the originals received from you. Both copies need to be signed and notarized.
2. Item No. 2 on the Form 2 applications needs to be completed. The number of gallons per minute of water the well produces is the information needed.
3. The enclosed Affidavit of Water Use must also be signed and notarized. Any information in answer to Item G (Chronological History) would also be appreciated.
4. Mark on the enclosed map the location of the well and also sign the map. I can complete the legal description for the well location on Item No. 4 if the well is located on the enclosed map.
5. If a well log is not available, please indicate so when the above information is completed and returned.

Please contact us if you have any questions.

Sincerely,

Ron Duvall
Natural Resources Engineer

RD:ms
Enc.

SOUTH DAKOTA
Department of
Water & Natural Resources

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

August 3, 1987

NOTICE

TO: Warren Shay, Circle S Motel, St Rt Box 55, Hill City,
SD 57745

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



SUBJECT: Notice of Requirement to File Vested Water Right Claim

This Notice is in regard to your vested water right application received in our office March 31, 1986. May 23, 1986, you were notified that additional information would be needed before your application could be processed. To date, we have not received the information from you.

The following information is needed before processing can begin on your application:

1. Both copies of the typed application forms (sent to you May 23, 1986) need to be signed and notarized.
2. Item No. 2 on the first page of the application needs to be completed with the amount of water claimed (in gallons per minute or cubic feet per second).
3. The affidavit of Water Use must also be signed and notarized. Please fill in Item G (Chronological History) if possible.
4. A signed map showing the location of the diversion point.
5. A well log if possible. If a well log can not be found, please indicate this when returning the other information.

South Dakota Water Law SDCL 46-5-49 states that if the Chief Engineer is aware of a water use system for which the owner claims vested right status, the owner may be required to file the vested right claim within 90 days. Any claim filed after the 90 days will be considered a new application and receive a new priority date, which would be the date the application is received in this office. You have 90 days from the date of this notice to submit the above information pertaining to your vested water right application.

The \$10.50 fee you submitted will cover the vested right application, however, if your application were new, the filing fee would be \$50.00 or more (depending on the amount of water claimed). We will be glad to answer any questions you may have.

CERTIFICATION

I hereby certify that on August 3, 1987 I have personally deposited with the U.S. Mail, a postage prepaid envelope containing Notice of Requirement to File a Vested Water Right Claim to Warren Shay, Circle S Motel, St Rt Box 55, Hill City SD 57745.

Karen Schlaak
KAREN SCHLAACK
Senior Secretary

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 3rd day of August, 1987.



John Hatch
Notary Public

No. _____	Hydrologic Unit _____
Map No. _____	Basin _____
Newspaper _____	

Application For Permit To Appropriate Water Within The State Of South Dakota

Check use of water: Industrial ☐ Commercial ☒ Municipal ☐ Other Common Distribution System ☐
 Rural Water System ☐ Suburban Housing ☐ Geothermal Heat ☐ Institutional ☐ Recreational ☐
 Domestic ☐ (above 18gpm) Other ☐

Type of Application: Check one or more of the following

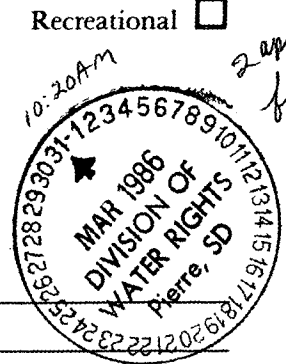
New ☐ Vested Right ☒ Future Use ☐ Change Use ☐☐ Amend Permit No. _____ with old priority date retainedChange diversion point(s) ☐ Add diversion point(s) ☐ Other ☐☐ Application to: Change diversion point(s) ☐ Add diversion point(s) ☐ on Permit No. _____☐ Construction to use water reserved by Future Use Permit No. _____1. Name of Applicant Circle S Motel Phone No. 574-2591Post Office Address Str. Rt. Box 55 State S. Dak. 57745
(Street, RR or Box) Zip Code

2. Amount of water claimed (c.f.s) _____

3. Source of water supply Well4. Location of point of diversion Spring Creek Sub D4130' of N355' of Lot 1, N355' of Lot 2N355' of Lot 3, 4, 5, 6, N355' of E11' of Lot 7 County Pennington5. Counties where water will be used Pennington6. Annual period during which water is to be used year around

7. Give a brief description of proposed 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)

Attachments: Attach Form 2A if diversion from a well or dugout, or if storage of water, is proposed. Attach map (see instruction)

STATE OF SOUTH DAKOTA)
County of Pennington)^{ss}I, Warren Shay the applicant, certify that I have read the foregoing application, have examined the attached map and that the matters therein stated are true and that I intend, and am able to complete the necessary construction.X Signed Warren ShaySubscribed and sworn to before me this 28 day of March 19 86_____
Notary Public (or other qualified officer)

WATER PERMIT

The Water Management Board hereby approves Water Permit Application No. _____

(Applicant)

(Post Office Address)

(State)

(Zip Code)

With the following qualifications.

Date of first receipt of application _____, 19____.

Date of return to applicant for correction, amendments or changes required _____, 19____.

Date of receipt of corrected application _____, 19____. Approved _____, 19____.

The Water Management Board hereby approves this Water Permit No. _____ authorizing the construction of the water use system and the placing of water to beneficial use as stated in the Application and as qualified in the Water Permit approval, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is _____, 19____.
2. The equivalent of at least one-fifth of the specified work is to be completed on or before _____, 19____.
3. The whole of said work is to be completed on or before _____, 19____.
4. The limit of time from proof of beneficial use of water appropriated in accordance herewith is _____, 19____.
5. The water appropriated shall be used for the purpose of _____

6. 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 unlawfully impaired by this appropriation.
7. The amount of the appropriation herein granted shall not exceed _____ cubic feet per second; neither shall it exceed the capacity of the above described water supply system nor shall it exceed the amount of water needed for beneficial uses served and to which water is actually and beneficially applied for _____ on or before _____, 19____; said water to be used during the following described annual period: _____

WATER MANAGEMENT BOARD

By: _____
Chief Engineer

Division of Water Rights
Dept. of Water and Natural Resources

_____, 19____

Supplemental Information

(type or print in ink)

1. Well Information - Proposed construction

- a) Drill Hole Diameter 30" Depth 15'
- b) Casing Type _____ Diameter _____ Thickness _____
- c) Screen Type _____ Diameter _____ Thickness _____
- d) Gravel Pack Thickness _____ Length of Gravel Pack _____
- e) Depth to Top of Water Bearing Material _____
- f) Depth of Water (ground surface to water level) 12 ft bored well
- g) Distance to nearest existing domestic well:
On applicants property L On property owned by others _____

2. Dugout Information Estimates

- a) Surface Dimensions _____ Depth _____
- b) Depth to water (ground surface to water level) _____

3. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below. The locations of each dam should be shown on the map submitted with the application.

- a) If a private engineering firm or government agency was involved in the design of this dam please give their name and address

b) Freeboard _____

c) Crest Width _____

Crest Length _____

d) Height _____

e) Outlet Dimensions:
Pipe diameter _____

Spillway width _____

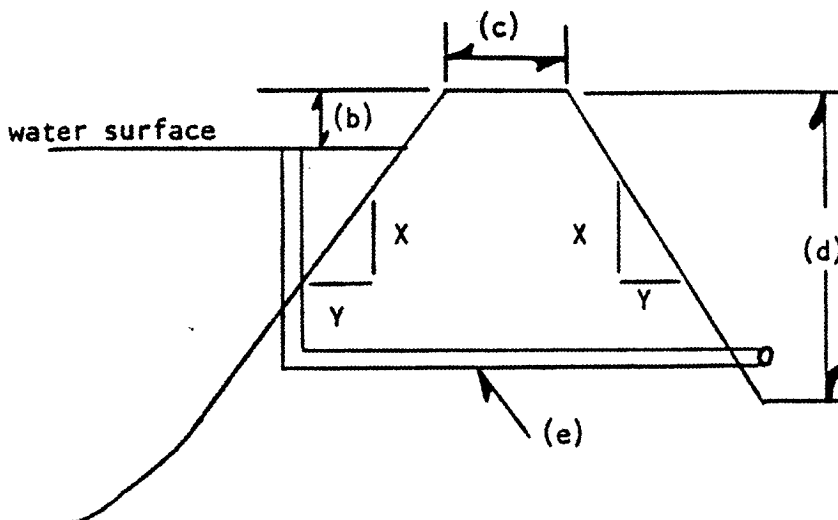
f) X & Y Slope
Upstream _____

Downstream _____

Surface Area of Impoundment _____

Storage _____ acre feet

Drainage area above dam _____



X Walter J. [Signature]
Signature of Applicant

Affidavit of Water Use

No. _____

(Type or Print in Ink)

Note: This Form is supplemental to Form 2 and is to be used when an affidavit pertaining to construction and water use already constructed is needed, primarily with vested right claims.

**Affidavit Of Construction Of Water Use System
And Application Of Water To Beneficial Use**

Name of Applicant (Same as Form 2) Circle S Motel
 Post Office Address Str Rt. Box 55, Hill City, South Dak 57745
(Street, RR or Box) (State) (Zip Code)

A. Notice of Appropriation _____ Date of Posting _____

 Date of recording _____ Recording date _____
Where Book Page

B. Date of start of construction of water supply system _____

C. Date that water was first applied to beneficial use 1951D. Name of owner of original water supply system Virgil Schoenhard

E. Amount of water originally applied to beneficial use _____

F. Present Use of Water - Amount of water now being used _____

Date that this water was first used 1951

G. Chronological History of Water Use

Attach to this Form 2B any copies of notices, postings, filings, publications, affidavits, or other records that apply. You may also attach any written statement by you, or by others, that you deem pertinent.

State of South Dakota)

County of Pennington) ^{ss}
 I, Warren Shay the applicant, certify that I have read the foregoing
(print or type)
 and that the matters therein stated are true.

 X Signed Warren Shay
Subscribed and sworn to before me March 28, 19 86_____
Notary Public or other qualified officer

I, the undersigned do hereby certify that I know about the water use system described above, that I have read the foregoing, and that the matters therein stated are true.

(Print name) 19_________
(Print name) 19____

NAME: Spring Creek Inn

PHONE LOG: 23 Oct, 90--Lady from Spring Creek Inn (formerly Circle S Motel) said she bought it from old owner and that he should have to take care of permitting process, but the well under question is capped and is not used. However, they had a new well drilled and are using that in their commercial business. Am sending her more applications to fill out.

Oct 24, 90--Marcia Bennings (574-2591) called and said she was in receipt of my letter. Said it was incorrect- the new well dug in 1989 had been capped and that was the one she was not using. The well they are currently using for their motel has been dug 40 yrs ago- we checked our records and couldn't find any permit for that well--was so advised by Eric G.

June 24, 1991- Contacted Ms Bennings and she stated she was suing the former owners (Warren and Jean Shay) for a variety of reasons, one of which is the fact that they didn't have permits for anything. She didn't want to talk about the requirement for a permit, and referred me to her attorney. Talked to Ms Portia Brown, Ms Bennings' attorney and explained the situation, she requested the forms be sent to her--will send today with cover letter. DF



Department of Water & Natural Resources

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

October 18, 1990

~~CIRCLE S MOTEL~~ SPRING CREEK INN
HILL CITY SD 57745

Dear SIR :

A well drillers report filed with this office by ALEXANDER DRILLING CO indicates you have completed a new well. The well driller is required by South Dakota Codified Laws (SDCL 46-6-11) to file a well construction report.

The purpose of the enclosed "Summary of South Dakota Water Law and Water Right Information" is to provide general information and to inform you of the responsibilities you have incurred. Specifically:

1. According to South Dakota Water Rights Law (SDCL 46-1-15, 46-5-9, 46-5-10), it is necessary to obtain a water permit to appropriate waters of this state. An exception to this requirement is for water used for domestic purposes. Domestic water uses that do not require a permit are listed under item 5 on the enclosed summary. Those activities that require permits are listed under item 7.
2. If your new well was drilled as a replacement well and if you do not plan to use the old well, the old well is considered abandoned and must be plugged pursuant to SDCL 46-6-27. Other abandoned wells must also be plugged.
3. If the old well is not to be abandoned, or will be used, the well must be sealed or capped at the surface pursuant to SDCL 46-6-27.

Based upon the information we have, you may need a water permit. Since we have no record of a water permit for this well, I am enclosing application forms and an instruction sheet for preparing a water permit application.

Please complete the application and submit it with the required fee to the "Water Rights Division, Joe Foss Building, 523 E. Capitol, Pierre, SD 57501" by 11/19/90.

The Centennial Environmental Protection Act (House Bill 1291) as passed by the 1989 Legislature included Section 46 (SDCL 34A-3A-18) which states:

"Following completion of any new well for domestic use, a water quality sample shall be collected and submitted to the department of health laboratory or another laboratory approved by the department. If the well flows or if the well driller installs the pump, the well driller shall collect and submit the water quality sample. If the pump is not installed by the well driller, the owner shall collect and submit the water sample. The completed analysis shall be submitted to the department by the well driller or owner within thirty days after the submittal of well completion report which is filed with the department pursuant to 46-6-11. At a minimum, the water sample shall be analyzed for nitrate, coliform bacteria, sodium, conductivity and sulfate. Other contaminants may be analyzed for at the option of the well owner or driller. The owner or well driller shall pay for the cost of all analyses."

If you have questions or need assistance contact Regan Fanning, Natural Resources Analyst (605-773-3352).

Very truly yours,

Ron Duvall
Natural Resources Engineer
for JOHN HATCH, Chief Engineer
Water Rights Division

cc: well driller

enclosure

Conversation or File Documentation

NAME OF PERSON OR FILE: Spring Creek InnADDRESS: Hill City SD 57445 COUNTY PEDATE: 10/23/95 TELEPHONE _____RE: permit needed

COMMENTS:

Current owner of motel said they capped old well + are not using it. Said we should talk to owner before her to get the permit from him. (Warren Shry RR#1, Custer SD)

She also indicated they have a new well nearby and are sending water samples in. As near as I can tell they don't have a permit for that well and didn't ask if they had one either.

Will send a follow-up letter to the new owner and state they would still need a permit under state statute and will send more application forms.

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.

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

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

October 23, 1990

Spring Creek Inn
Hill City SD 57745

Dear Ma'am:

In our recent telephone conversation on Oct. 23, 1990, you indicated there had been a transfer of ownership and name change of the motel you currently manage. You stated that the old well had been capped and was not being used. In addition, a new well was drilled in which you are currently sending water samples to the state.

We are unable to find in our records a permit for the new well you are currently using. By South Dakota Codified Law, Chapter 46-1, you are required to have a permit since the water is used for commercial purposes.

Enclosed are water permit applications which you will need to fill out and return in order to be in compliance with State Statutes.

Please contact Regan Fanning, Natural Resource Analyst, if you have any further questions or need help filling out the forms. The address is: Water Rights Division, Joe Foss Building, 523 E. Capitol, Pierre SD 57501 (605-773-3352).

Sincerely,

Regan Fanning

Regan Fanning,
Natural Resource Analyst

enclosures



Department of Water & Natural Resources

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

October 26, 1990

Marsha Bennings
Spring Creek Inn
Hill City, SD 57745

Dear Ms. Bennings:

This letter is in reference to our telephone conversation on October 24, 1990 regarding whether the well utilized by Spring Creek Inn has a permit. From my investigation I believe the well is located in Section 29 T1S-R5E. Our files indicate that no water permit has been issued in the name of Spring Creek Inn or the Circle S Motel under that legal description.

However, after our discussion on the phone, I did find past correspondence with Mr. Warren Shay (previous owner of the Circle S Motel) on an incomplete application that was filed in the mid 1980's. Enclosed are copies of this past correspondence. Mr. Shay had filed an incomplete application for a vested right and failed to provide this Division with the necessary additional information to complete the application.

If water has been put to beneficial use continuously for its current use by the motel since July 1, 1955, you may then apply for a vested water right claim. The enclosed application forms will need to be completed including the Affidavit of Water Use in order to proceed with processing a vested right claim. The application filing fee for a vested right claim is \$15.00 and in 1986 Mr. Shay submitted \$10.50 which will still apply to your vested right claim. This leaves a shortfall of \$4.50. I should also remind you that you will be responsible for the cost of the public notice for two consecutive weeks once a complete application is received and processed.

If water has not been put to beneficial use continuously by the motel since July 1, 1955, a water permit will need to be obtained. In this case, the application forms will need to be filled out with the exception of the Affidavit of Water Use. The application fee for a new water permit is \$50. Once again, the \$10.50 previously submitted would still apply, leaving a \$39.50 shortfall that will need to be submitted. You will also be responsible for the cost of publication of the public notice under this scenario.

Finally, an existing business without a water right has no right to the use of water. Pursuant to South Dakota Codified Laws 46-1-15, 46-5-9, 46-5-10 and 46-2-18, if you wish to continue to use water you will need to obtain a permit. Except for private domestic use, any water user without a water right is not entitled to receive protection in the event of well interference by a new or future user who has

Page 2

a water right. The new user with a water right will have the senior priority over an existing user without a water right. In South Dakota, the first in time (senior priority) is the first in right, except for individual domestic use. Individual household, farm or ranch use does not require a permit and has preference over all other users of water. Obtaining a water right ultimately benefits you by protecting your right to use water.

Please follow the instruction sheet carefully when filling out the application. If at any time you have any questions or need help filling out the forms, do not hesitate to give me a call.

Sincerely,

Eric Gronlund
Natural Resource Engineer
605 773-3352

enclosure



DEPARTMENT OF WATER & NATURAL RESOURCES

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

February 22, 1991

MARSHA BENNING
SPRING CREEK INN
HILL CITY SD 57745

Dear MS. BENNING:

I am writing to follow-up on my October 23, 1990 letter concerning the requirement to apply for a water permit.

Information we have indicates you may need a water permit to use water from your new well(s). A water permit must be obtained for any use of water other than domestic uses, such as individual farm or ranch use, not exceeding 18 gallons per minute during average daily use.

No response to the October 23, 1990 has been received. If you need assistance with completion of the application forms or if you do not believe you need a water permit, please contact Regan Fanning by March 29, 1991 at: Joe Foss Building, 523 E. Capitol, Pierre SD 57501-3181, (605) 773-3352.

Thank you for your attention to this matter.

Sincerely,

Ron Duvall
Natural Resources Engineer

South Dakota

GREAT FACES. GREAT PLACES.

June 25, 1991

Portia Brown
P.O. Box 8018
Rapid City, SD 57709

Dear Ms. Brown:

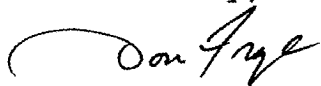
This letter is in reference to our phone conversation on June 24, 1991 regarding water rights for Spring Creek Inn. Originally, our office contacted the Spring Creek Inn as a result of a well driller's report stating that a well had been drilled on 8-2-89 for the Circle S. Motel (now known as the Spring Creek Inn). Any use of water for commercial purposes requires a water permit, and no permit had been issued for that well or any other well on that property.

Subsequent investigation and correspondence with Ms Bennings revealed that the well identified in the well driller's report had been capped and was not being used. Since the new well was not being used, no permit for that well is required. Ms Bennings stated that the well they were using for the business was a well that had been drilled over 40 years ago. She was also advised that there is no record of a permit for that well, and either a permit is needed, or a vested right can be claimed if water use began before or on February 28, 1955.

Mr. Shay, the former owner, did submit an incomplete application for a vested right back in 1986, and despite several letters requesting the correct and complete information, he never supplied us with a correct/complete vested right application. I am enclosing copies of Mr. Shay's application and a copy of a letter sent by this office to Ms Bennings explaining the application process. The fee for the vested right has already been paid by Mr. Shay, and no further fee will be required to process a vested right claim. I am forwarding an application package for a vested right claim, and I am also enclosing forms and instructions for a new water permit application should you be unable to substantiate a vested right.

Please submit the completed forms to the "Water Rights Division, 523 E. Capitol, Pierre, SD 57501". If you have any questions, or need help completing the forms, please contact me at (605) 773-3352.

Sincerely,



DON FRYE, Natural Resources Analyst
Water Rights Division
enclosure
CC: MARSHA BENNINGS

DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

Conversation or File Documentation

NAME OF PERSON OR FILE: PORTIA BROWN-LAWYER FOR MARSHA BENNINGESADDRESS: P.O. Box 8018 Rapid City SD 57709 COUNTY PEDATE: 11/04/91 TELEPHONE 348-7516RE: application for Spring Creek Inn.

COMMENTS:

I talked to Ms Brown and asked about the status of the water rights application for the Spring Creek Inn. She said Ms Benninges is suing the previous owners and will not be making an application until the litigation is complete.

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.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

June 24, 1992

574.55

Kim and Marcia Benning
Spring Creek Inn
HC 87 Box 55
Hill City SD 57745

Dear Mr & Mrs Benning:

I am writing regarding the legal requirement that you obtain a permit to appropriate water for use in your facility. We understand that the litigation between you and the previous owners is complete, and you are going to maintain ownership of Spring Creek Inn, therefore, you must have a water permit to continue using the water from your well. **A business without a water permit has no legal right to the use of water and the Chief Engineer can issue a shut off order if the illegal use of water continues.**

Enclosed are water permit application forms and an instruction sheet. Please complete and return the application with the required fee to the "Water Rights Division, 523 E. Capitol, Pierre, SD 57501" by July 24, 1992. If you have questions or need assistance contact Don Frye, Natural Resources Analyst (605-773-3352).

Very truly yours,

RON DUVALL, Natural Resources Engineer
Water Rights Division
enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

December 1, 1992

Kim & Marcia Benning
HCR 87, Box 55
Hill City SD 57445

Dear Ms. Benning:

We received your vested right application on November 25, 1992. Please complete as much information as possible regarding the Well Information (Item No. 1) on the enclosed Form 2A, Supplemental Information sheet.

Item No. 2 of the application states the amount of water claimed is 150 gallons per minute. The amount of water claimed should be based on your pump rate. This amount would appear to be excessive for commercial use at a motel and cabins.

Upon receipt of the Form 2A, further processing of your application will continue. If you have any questions, please contact this office.

Sincerely,

Karen Schlaak

Karen Schlaak
Natural Resources Analyst
605 773-3352

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

February 11, 1993

Kim & Marcia Benning
HCR 87, Box 55
Hill City SD 57445

Dear Mr. Benning:

On November 25, 1992, you submitted an application (copy enclosed) for a permit to appropriate water for commercial use at the Spring Creek Inn. You were notified on December 1, 1992 (copy enclosed) that the application was incomplete. To date, we have not received a response from you.

As stated in the letter dated December 1, 1992, the 150 gallons per minute claimed on the application appears to be excessive for commercial use at a motel and cabins. Applications for commercial use similar to yours usually are for amounts between 10 to 25 gallons per minute. Please provide a diversion rate that accurately reflects the pump rate for the well. Since you do not know the amount of water originally applied to beneficial use, we would presume that the amount to be claimed on the application would be approximately the same as that used back in 1950. Please let us know if you agree.

While reviewing the information submitted by Warren Shay (previous owner) we found a Supplemental Information sheet-Form 2A which he had submitted (copy enclosed). If the information is correct and the well being used is 15 feet deep, it will not be necessary to submit another Form 2A.

If you have any questions, please contact this office.

Sincerely,

Karen Schlaak

Karen Schlaak
Natural Resources Analyst
(605) 773-3352

enclosure

SPRING CREEK INN
HC 87 BOX 55
HILL CITY, SD 57745
1 MILE EAST ON 16 & 385
"IN THE HEART OF THE HILLS"



Karen Schlaak, Natural Resources Analyst
Department of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, South Dakota 57501-3181

Dear Karen,

In response to your letter of February 11, 1993:

Mr. Robert Olson from RJ Olson Construction has looked in to the questions regarding gallons per minute on our well pump. He said the pump is larger than what is usually required for a business of our size, but because of our plans to enlarge and build, a larger pump was installed. He did confirm, however, that the current pump capacity is more likely 45 gallons per minute realistically.

Regarding the information supplied by Warren Shay, previous owner of the motel: Since the well was dug many years ago, probably in 1950 according to local authorities, the information supplied by Mr. Shay is as close to accurate as one could hope for. The depth of the well varies with annual precipitation but usually is at 15 foot depth. Hopefully, this statement will negate the need for further completion of form 2A, as most of the questions are in reference to a new well being planned or dug and almost impossible to complete for a well that has been in place for years with no written substantiation from the well digger available.

Do let me know if any further information is required.

Thank you.

Sincerely,

Marcia Benning

Marcia Benning
SPRING CREEK INN

VESTED WATER RIGHT APPLICATION NO. 2267-2
KIM AND MARCIA BENNING
APRIL 14, 1993

Vested Water Right Application No. 2267-2 proposes validation of a vested water right claim for 45 gallons per minute (0.1 cubic feet of water per second) from one well, 15 feet deep, located in the NE 1/4 NW 1/4 Sec.29, T1S-R5E. The water use has a claimed priority date of January 1, 1953 and is used as a commercial water supply at the Spring Creek Inn.

WATER SOURCE: Precambrian Aged Crystalline Rock

A well log is not available for this well and there is some confusion on the total depth of the well, (see Marcia Benning letter received March 1, 1993, included with application). A Well Completion Report for a nearby well suggests that this well is supplied by Precambrian aged Crystalline Rock that is mantled with alluvium, colluvium, or weathered schist. (Dewitt, 1989)

This is a Transient Non-community Public Water System as defined by ARSD 74:04:05. The system routinely submits samples for the bacteriological safety and the nitrate concentration of the water. Barbara Larsen, DENR, Office of Drinking Water, has advised that one sample analysis, submitted for the July through September 1990 quarter, was bacteriologically unsafe at the time of testing. All of the other samples for this system have been safe.

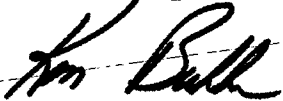
Gary Stephenson, DENR, Regional Office, Rapid City, has advised that he has no information on the wastewater disposal system. He has received no complaints on the system.

The affidavit provided with this application indicates a well at this site has provided water for this purpose since 1953. There has been not controversy reported regarding this water use.

CONCLUSIONS:

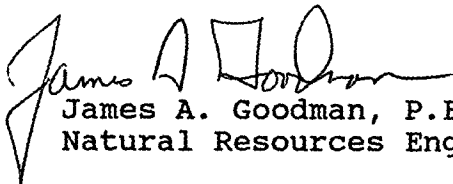
1. Vested Water Right Application No. 2267-2 proposes validation of a vested water right claim to 0.1 cubic feet of water per second from one well, with a claimed priority date of January 1, 1953

2. The affidavit provided with this application indicates the water has been put to beneficial use prior to 1953 as required by SDCL 46-6-1.



Ken Buhler
Natural Resources Engineer

Approved by



James A. Goodman, P.E.
Natural Resources Engineer

REFERENCES:

Dewitt, D., J.Redden, D.Buscher, A.Wilson, 1989, Geologic Map of the Black Hills Area, South Dakota and Wyoming, Map I-1910, United States Geological Survey, Washington, D.C. 20242

RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER
RIGHT APPLICATION NO. 2267-2, Spring Creek Inn

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Environment and Natural Resources concerning Validation of Vested Water Right Application No. 2267-2, Spring Creek Inn, c/o Kim and Marcia Benning, HCR 87 Box 55, Hill City, SD 57745.

The Chief Engineer is recommending VALIDATION of Application No. 2267-2 for 0.1 cfs (45 gpm) because 1) water has been appropriated as described for commercial use with a priority date of January 1, 1953, 2) the use has been developed without unlawful impairment of existing rights, 3) the use is a beneficial use and 4) it is in the public interest.

See report on application for additional information.

for Eric Gronlund
JOHN HATCH, Chief Engineer
April 16, 1993



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

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

April 28, 1993

Kim and Marcia Benning
HCR 87 Box 55
Hill City, SD 57745

Dear Mr. & Mrs. Benning:

Your Application No. 2267-2 for a vested water right claim has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice of your claim has been sent to the Publisher of the Pennington Co. Prevalier News printed at Hill City, SD (Ph # 574-2538). For your information, a copy of the notice, the recommendation of the Chief Engineer and a report on the application are enclosed. Please review the notice and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your notice of hearing to validate a vested right and to arrange for payment. Early contact with the paper can eliminate delays. The publisher has been instructed to publish your notice once each week for two consecutive weeks with the last publication to occur twenty days before the board meeting. We must receive Proof of Publication before the application can be considered.

Sincerely,

Eric Gronlund
Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

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



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

April 28, 1993

Pennington Co. Prevailer News
Box 266
Hill City, SD 57745

ATTN: Legal Publications:

Enclosed is a Notice of Hearing to Validate Vested Right Application No. 2267-2 to be published twice. Please publish the notice on May 5, 1993, with the second publication 7 days later.

The APPLICANT MUST VERIFY TO YOU THAT THE NOTICE IS TO BE PUBLISHED, before you make the first publication. Please BILL the APPLICANT for the cost of publication. The APPLICANT is Kim and Marcia Benning, HCR 87 Box 55, Hill City, SD 57745 (Ph # 574-2591).

A copy of BOTH publications must be SENT to the WATER RIGHTS DIVISION. IMMEDIATELY return the FIRST publication with the FIRST Transmittal form on the bottom of this page. The first copy is needed to check the publication for errors so any corrections can be made in the second publication. Publication errors can invalidate the public notice and cause the applicant costly delays.

Please be sure the SECOND publication is returned IMMEDIATELY with the enclosed Proof of Publication form. DO NOT WAIT until the end of the month or the billing cycle. The permit application cannot be considered until proof of publication has been received.

Sincerely,

Eric Gronlund
Natural Resources Engineer
605 773-3352

enclosures

-----CUT HERE-----
FIRST TRANSMITTAL NOTICE
TO: Eric Gronlund
Water Rights Division
523 E Capitol
Pierre SD 57501-3181

Date _____
We are in receipt of your letter of _____ enclosing Notice of Hearing to Validate
A Vested Right Application which was first published in our issue
of _____. ENCLOSED IS A COPY OF THIS FIRST PUBLICATION.

Name

Newspaper

Instruction to Newspaper - Publish first Notice on May 5, 1993, with the second publication 7 days later. The applicant is responsible for payment.

NOTICE OF HEARING To Validate
Vested Water Right Application No. 2267-2 to Appropriate Water

Notice is given that Kim and Marcia Benning, HCR 87 Box 55, Hill City, SD 57745 has filed an application to validate a vested water right claim to appropriate 45 gallons per minute (0.1 cubic feet of water per second) from one well (Precambrian Crystalline Rock) 15 feet deep located in the NE 1/4 NW 1/4 Section 29-T1S-R5E. The water use has a claimed priority date of January 1, 1953, and is used as a commercial water supply at the Spring Creek Inn.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2267-2 because 1) water has been appropriated as described for commercial use with a claimed priority date of January 1, 1953, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, and 4) it is in the public interest. Unless a petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation, the Water Management Board will NOT CONDUCT a HEARING to consider this application and the chief engineer will issue the vested water right application as recommended. Petitions filed in support of the application will NOT require the Board to hear the application.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Division, 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 May 24, 1993. 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.

For purposes of publishing 1) the notice of hearing on Application No. 2267-2 and 2) the chief engineer's recommendation, a meeting at the Division of Water Rights office to hear this application is scheduled for June 1, 1993, at 9:00 am in Room 413, Joe Foss Building, 523 E Capitol, Pierre SD. If this application is opposed or the recommendation is contested, the June 1, 1993, hearing date will be rescheduled for a regularly scheduled Board meeting. Notice of the time and place of the rescheduled hearing before the Board will be given by First Class Mail to the applicant and persons filing petitions. Anyone not filing a petition, but interested in attending the hearing, may contact the Division of Water Rights to confirm a hearing date and location. The June 1, 1993, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by May 24, 1993.

If a hearing is held, the Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve the validation, 2) approve the validation with qualifications, 3) defer, or 4) deny validation of the application based on the facts presented at the public hearing. Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by May 24, 1993, at the above Water Rights Division address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

This application is made pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-18, 46-2A-22; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-49; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:15; 74:02:01:19 thru 74:02:01:22. Robert E. Roberts, Secretary, Department of Environment and Natural Resources.

PROOF OF PUBLICATION

STATE OF SOUTH DAKOTA)
County of Pennington) ss

I, PAT LEMBKE

certify that the attached printed Notice was
taken from the Hill City
Prevalence News

printed and published in Hill City (Custer)

County of Pennington and State of

South Dakota. The notice was published in
the newspaper on the following two dates:

May 5, 1993
May 12, 1993

Cost of Printing: 78.28

Pate Lembke
(Signature)

Ass Editor
(Title)

May 12 1993
(Date Signed)



NOTICE OF HEARING To Validate Vested Water Right Application No. 2267-2 To Appropriate Water

NOTICE IS GIVEN that Kim and Marcia Benning, HCR 87, Box 55, Hill City, SD 57745 has filed an application to validate a vested water right claim to appropriate 45 gallons per minute (0.1 cubic feet of water per second) from one well (Precambrian Crystalline Rock) 15 feet deep located in the NE 1/4 NW 1/4 Section 29-T1S-R5E. The water use has a claimed priority date of January 1, 1953, and is used as a commercial water supply at the Spring Creek Inn.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends VALIDATION of Vested Water Right Application No. 2267-2 because 1) water has been appropriated as described for commercial use with a claimed priority date of January 1, 1953, 2) the use has been developed without unlawful impairment of existing rights, 3) it is a beneficial use of water, and 4) it is the public interest. Unless a petition is filed opposing the application or the applicant files a petition contesting the chief engineer's recommendation, the Water Management Board will NOT CONDUCT a HEARING to consider this application and the chief engineer will issue the vested water right application as recommended. Petitions filed in support of the application will NOT require the Board to hear the application.

Any person interested in opposing or supporting this application must file a written petition with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Division, 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 May 24, 1993. The petition may be informal, but must include a statement describing

the petitioner's interest in the application, the petitioner's reason for opposing or supporting the application, and the signature and mailing address petitions. Anyone not filing a petition, but interested in attending the hearing, may contact the Division of Water Rights to confirm a hearing date and location. The June 1, 1993, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any interested person opposing the application. The request for an automatic delay must be filed by May 24, 1993.

If a hearing is held, the Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve the validation, 2) approve the validation with qualifications, 3) defer, or 4) deny validation of the application based on the facts presented at the public hearing. Any hearing will be an adversary proceeding. Any person filing a petition and/or the applicant have the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by May 24, 1993, at the above Water Rights Division address to request copies of information pertaining to this application, to assure access to the hearing by the handicapped or to obtain an interpreter for the hearing impaired.

This application is made of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

For purposes of publishing 1) the notice of hearing on Application No. 2267-2 and 2) the chief engineer's recommendation, a meeting at the Division of Water Rights office to hear this application is scheduled for June 1, 1993, at 9:00 am in Room 413, Joe Foss Building, 523 E. Capitol, Pierre SD. If this application is opposed or the recommendation is contested, the June 1, 1993, hearing date will be rescheduled for a regularly scheduled Board meeting. Notice of the time and place of the rescheduled hearing before the Board will be given by First Class Mail to the applicant and persons filing pursuant to SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-13, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-18, 46-2A-22; 46-5-1 thru 46-5-11, 46-5-13 thru 46-5-15, 46-5-24, 46-5-25, 46-5-30.2, 46-5-30.4, 46-5-31, 46-5-49; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-26; and Board Rules ARDS 74:02:01:01 thru 74:02:01:15, 74:02:01:19 thru 74:02:01:22. Robert E. Roberts, Secretary, Department of Environment and Natural Resources.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

AUG 10 1993

2267-2

Kim and Marcia Benning
HCR 87, Box 55
Hill City, SD 57745

Dear Mr. and Mrs. Benning:

Enclosed are your Validated Vested Water Right and Water License No. 2267-2. As long as you use the water beneficially, as stated in the Water License, the State Water Laws provide that you have a continuing right to use the water.

Very truly yours,

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

enclosures

January 17, 2001

2000 South Dakota Water Use Questionnaire

To:

KIM AND MARCIA BENNING
HCR 87 BOX 55
HILL CITY SD 57745

Address correction requested:

Kim + Marcia Benning
PO Box 901
Hill City SD 57745

One questionnaire is being provided for each permitted water source. The following information is based on Water Permit/Right No. 2267-2. If you have other permits/rights in the same water source, also include water use under those permits/rights on this questionnaire.

Water Source: GROUNDWATER

County: PENNINGTON

Aquifer: PRECAMBRIAN ROCK

Pumping Pt. Legal: SEC 29-T001S-R05E

Management Unit: NOT APPLICABLE

Type of Water Use: COMMERCIAL

- 1) Please estimate your year 2000 water use from the above water source: NA gallons
2) If no water use in 2000, please list the reason(s) why in the comments section.

Comments:

We sold this property to Larry + Karen
Moore (23900 Hwy 385) 574-2591
5 years ago.

Contact Person:

Marcia Benning

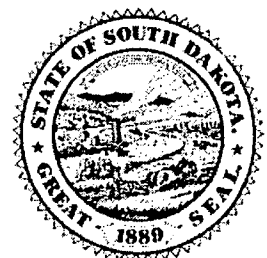
Telephone No:

574-2250

Questions? Please call Mark Rath or Ron Duvall at 605 773-3352 for assistance.

Thank you for completing the 2000 water use questionnaire.

Water Rights on the Web: www.state.sd.us/denr/wr





DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

February 1, 2001

Larry & Karen Moore
23900 Hwy 385
Hill City SD 57745

Dear Mr. & Mrs. Moore:

Recent correspondence with Marcia Benning indicates you are the current owners of the property where the Spring Creek Inn is located. Water Right No. 2267-2 authorizes 0.10 cubic feet of water per second (45 gallons per minute) from one well for commercial use. For your information, I have enclosed a copy of the Water Right No. 2267-2, well log and map.

Also, enclosed is a partially completed "Notice of Transfer" form for use in filing an ownership change on Water Right No. 2267-2. The transfer form should be checked over for accuracy and signed by the new owner in the presence of a notary public. Upon completion, return the form to our office with a required filing fee of \$2.50.

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

If you have any questions, please contact me.

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
605 773-3352

enclosures



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

April 26, 2001

2267-2

Larry & Karen Moore
23900 Hwy 385
Hill City, SD 57745

Dear Mr. & Mrs. Moore:

On February 1, 2001, we contacted you regarding ownership of Vested Water Right No. 2267-2, currently listed in the names of Kim and Marcia Benning. The vested water right authorizes diversion of ground water for commercial purposes. Our February letter included a "Notice of Transfer of Ownership" form for use in filing the ownership change. To date, we have not heard from you concerning the ownership change.

In the event you no longer have the original transfer of ownership form, I am including an additional one. Please review the form for accuracy and complete as needed. Upon completion, please sign the form in the presence of a notary and return it to our office with a required filing fee of \$2.50. The check or money order for the fee can be made payable to the Water Rights Program.

It is very important that ownership records be kept current. South Dakota Water Law 46-5-30.3 requires that any sale, grant, lease, conveyance or other transfer of a Water Permit or Right to appropriate water be filed with our program within ninety days. If you are not the owners of the property described in the vested water right, please let us know.

Thank you in advance for your help.

Sincerely,

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

enclosure



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 24, 2001

2267-2

Larry & Karen Moore
23900 Hwy 385
Hill City, SD 57745

Dear Mr. & Mrs. Moore:

On February 1, 2001 and April 26, 2001 we contacted you regarding ownership of Vested Water Right No. 2267-2, currently listed in the names of Kim and Marcia Benning. The vested water right authorizes diversion of ground water for commercial purposes (Spring Creek Inn). To date, we have not heard from you concerning the ownership change.

In the event you no longer have the original transfer of ownership form, I am including an additional one. Please review the form for accuracy and complete as needed. Upon completion, please sign the form in the presence of a notary and return it to our office with a required filing fee of \$2.50. The check or money order for the fee can be made payable to the Water Rights Program.

It is very important that ownership records be kept current. South Dakota Water Law 46-5-30.3 requires that any sale, grant, lease, conveyance or other transfer of a Water Permit or Right to appropriate water be filed with our program within ninety days. If you are not the owners of the property described in the vested water right, please let us know.

Thank you in advance for your help.

Sincerely,

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

enclosure



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

July 31, 2001

2267-2

Larry & Karen Moore
23900 Hwy 385
Hill City, SD 57745

Dear Mr. & Mrs. Moore:

Thank you for sending in the transfer of ownership form for Water Right No. 2267-2.

Prior to filing the transfer, we are required to charge a \$2.50 filing fee. My first letter may not have been clear with respect to payment of a fee. The check or money order for the fee can be made payable to the Water Rights Program.

As soon as we receive the fee from you, the water right will be transferred to your names. Thank you in advance for your help.

Sincerely,

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

RECEIPT

Water Rights Program

South Dakota Department of Environment and Natural Resources

416888

Pierre, August 16, 2001

RECEIVED OF Larry & Karen Moore, 23900 Hwy 385, Hill City, SD 57745
the following amount in fees for services rendered as provided for by law:

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

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

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

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

Fee for Filing Transfer Form _____ Water Right No. 2267-2

Fee for Filing Extension Request _____

Fee for _____

(Any Other Work Provided by Law)

Total

2 50

2 50

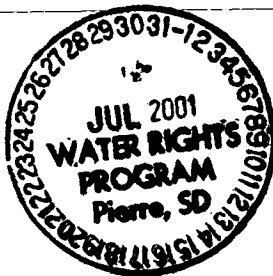
By

Garland Erbele
Garland Erbele

Chief Engineer

Dr

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



7-26-01

Date:

be transferred to: (name & address) LARRY & KAREN MOORE

23900 Hwy 385 Hill City SD 57745 Telephone No. 605-574-2591

on e well located in the NE ¼ NW ¼ Section 29-T1S-R5E

County of Pennington)

I/We LARRY + KAREN MORE being first duly sworn on my oath depose and say that my relation to the above described undertaking is that of Owner, that I have read the above foregoing statement, and that I know of my own personal knowledge that the information herein stated is true.

Karen Moore
(Signed)

Subscribed and sworn to before me this 26th day of July, 2001



Neil W. Hyman
(Notary Public)

My Commission Expires
December 1, 2002

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

August 21, 2001

2267-2

Larry & Karen Moore
23900 Hwy 385
Hill City, SD 57745

Dear Mr. & Mrs. Moore:

Thank you following up on the transfer of ownership for Water Right No. 2267-2. The water right formerly listed in the names of Kim & Marcia Benning is now listed in your names.

Enclosed is your Receipt No. 416888 in the amount of \$2.50, which you paid for filing the ownership change.

If you have any questions concerning the water right, please get in touch with me.

Sincerely,

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

enclosure