

Considered: _____

Vested Right
WATER PERMIT NO. 5112-3

MAP No. same

Name of Applicant Erma Smith dba Smitty Lunch

Post Office Address P.O. Box 48, Houghton SD 57449

Amount of Water Claimed .0066 Total Acres NA

Source of Water Supply groundwater

Water to be used for commercial use County Brown

About _____ miles _____ of _____ in Houghton

PROOF OF PUBLICATION: Received ☒ Not Received _____

APPLICATION: Approved 3/4/87 Subject to _____

F.F. & C.L. Adopted _____ Not Approved _____ Deferred _____

PRIORITY _____ Date Received July 23, 1986 Fee \$15.00 Remarks _____

8/1/47

Corrected Application Received Oct. 31, 1986 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 well: SE 1/4 SE 1/4 section 31 -

T127N-R61W

Land to be Irrigated NA

				31	

Well Log: Driller not available (Lakman) Licensed YES _____ NO _____

Depth of Well 40 ft REMARKS _____

Type of Map Topo PREPARED BY Ron Duwall Reviewed and the Number

assigned on 12/8/86 By Ron Duwall

No. 5112-3 Hydrologic Unit 10160003
 Map No. same Basin James River
 Newspaper Aberdeen American News, P.O. Box 4430
(daily)

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 ☐ 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. _____

1. Name of Applicant ERMA SMITH - SMITTY LUNCH Phone No. 605-885-6386

Post Office Address P.O. Box 48, HOUGHTON, S.D. State S.D. 57449
(Street, RR or Box) Zip Code

2. Amount of water claimed (c.f.s.) 3 gallons per minute .0066

3. Source of water supply Well

4. Location of point of diversion 40 Rods west of South east Corner of Section 31
Township 127, Range 61 Lot 11 Block 2
Houghton S. Dak. County Brown

5. Counties where water will be used Brown

6. Annual period during which water is to be used 12 months January 1 - December 31

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)

This water system has been in continuous use since 1947. Drilled by Rahman well drilling co, now out of business. Mr Rahman is deceased and there are no records available. I am sending what I have as to well. My home is also on this water system.

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

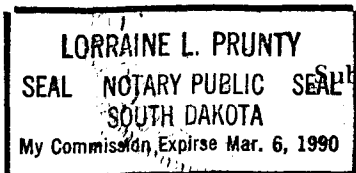
STATE OF SOUTH DAKOTA
 County of _____) ss

I, Erma Smith 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.

Signed Erma Smith

Subscribed and sworn to before me this 9th day of July 1986

Lorraine L. Prunty
 Notary Public (or other qualified officer)



WATER PERMIT

The Water Management Board hereby approves Water Permit Application No. 5112-3

Erma Smitty - dba Smitty Lunch

(Applicant)

PO Box 48

Houghton

(Post Office Address)

South Dakota

(State)

57449

(Zip Code)

With the following qualifications.

see VR-2

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 3 inch Depth 40 Ft
- b) Casing Type Steel Diameter Unknown Thickness Unknown
- c) Screen Type Don't Know Diameter Don't Know Thickness Don't Know
- d) Gravel Pack Thickness Don't Know Length of Gravel Pack Don't Know
- e) Depth to Top of Water Bearing Material Don't Know
- f) Depth of Water (ground surface to water level) 40 Ft
- g) Distance to nearest existing domestic well:
On applicants property Same well On property owned by others 1 Block
Not in use

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 _____

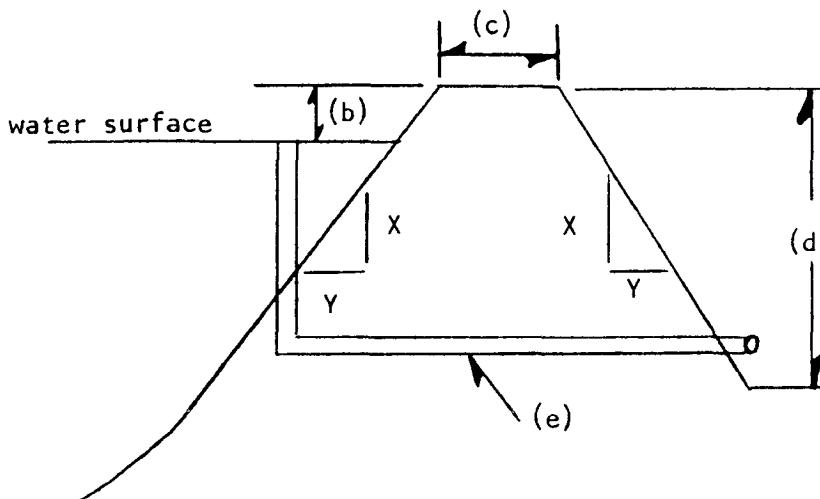
f) X & Y Slope
Upstream _____

Downstream _____

Surface Area of Impoundment _____

Storage _____ acre feet

Drainage area above dam _____



Erma Smith

Signature of Applicant

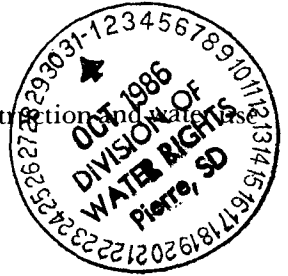
Affidavit of Water Use

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) ERMA A SMITH
 Post Office Address P.O. Box 48 Hwy 140 S.D. 57401
 (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 Feb 1917D. Name of owner of original water supply system Lyle Nelson, Min. DacotaE. Amount of water originally applied to beneficial use 2000 gals a dayF. Present Use of Water - Amount of water now being used 3000 gal a dayDate that this water was first used Aug 1, 1917G. Chronological History of Water Use used in irrigation since

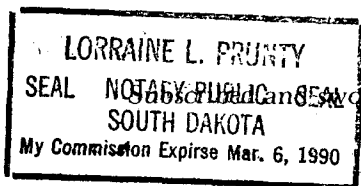
Attach to this Form 2B any copies of notices, postings, filings, publications, affidavits, or other records that apply. You may also attach any written statement by you, or by others, that you deem pertinent.

State of South Dakota)

SS

County of _____)

X I, Erma a Smith the applicant, certify that I have read the foregoing
 (print or type)
 and that the matters therein stated are true.



Signed

Erma a Smith
Lorraine L. Prunty October 29, 1986
 Notary

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)

(Print name)

Ilse Schroeder Oct 29 1986
Deb Roessler Oct. 29 1986

VESTED WATER RIGHT

The Water Management Board hereby validates Vested Water Right Claim No. 5112-3.

Erma Smith - Smitty Lunch
(applicant)

P.O. Box 48, Houghton
(post office address)

South Dakota 57449
(state) (zip code)

Date of receipt of Application July 22, 1986.

Validated March 4, 1987.

The Water Management Board hereby validates 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 Vested Water Right, subject, however, to the following limitations and conditions:

1. The date from which applicant may claim right is August 1, 1947.
2. The whole of said work has been completed and water has been applied to beneficial use as described on Form 2B of this application.
3. The water appropriated is used for the purpose of commercial use.
4. The prior rights 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.
5. The amount of appropriation hereby validated shall not exceed 0.0066 cubic feet per second of time; 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 has been actually and beneficially applied for commercial use. The water to be used during the following described period January 1 - December 31.

WATER MANAGEMENT BOARD

By: John Hatch
(Chief Engineer) JOHN HATCH

Division of Water Rights
Dept. of Water and Natural Resources

APR 30 1987, 1987

STATE OF SOUTH DAKOTA

VESTED RIGHT WATER LICENSE NO. 5112-3

(1) Erma Smith dba Smitty Lunch
of P.O. Box 48, Houghton, South Dakota 57449
made Application No. 5112-3, July 22, 1986
for validation of a vested right claim to appropriate 0.0066
cubic feet per second of water from groundwater (one well),
Brown County, South Dakota for commercial and domestic
purposes. Vested Water Right No. 5112-3, with a priority
date of August 1, 1947 was validated March 4, 1987 and
issued to applicant for diversion of water with construction of
the described water supply system completed and the application
to beneficial use of said water completed.

and

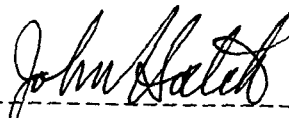
(2) It is certified that the application has complied with the
provisions of South Dakota State Law relating to completion of
the construction of the water supply system and is entitled to
divert 0.0066 cubic feet per second of water for
beneficial use. The location of the diversion point(s) is
Lot 11, Block 2 of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 31, T127N-R61W

and

(3) The applicant has complied with the provisions of South Dakota State Law relating to the application of water to beneficial use to the following extent,

water is diverted from the well through the distribution system for a
commercial water supply for Smitty Lunch and also for domestic purposes.

(4) Pursuant to Section 46-5-30.1 Erma Smith - Smitty Lunch
of P.O. Box 48, Houghton, South Dakota 57449
the holder(s) and/or owners(s) of Vested Water Right No. 5112-3
is issued a license to appropriate water, the right to use
0.0066 cubic feet per second of water from groundwater (one well)
with a priority date of August 1, 1947
from the location specified in (2) of this license. The water to
be conducted to and upon lands specified in (3) of this license
for the purpose of commercial and domestic use. This license
is subject to any limitations or qualifications listed in Vested
Water Right No. 5112-3 and subject to South Dakota State Law.



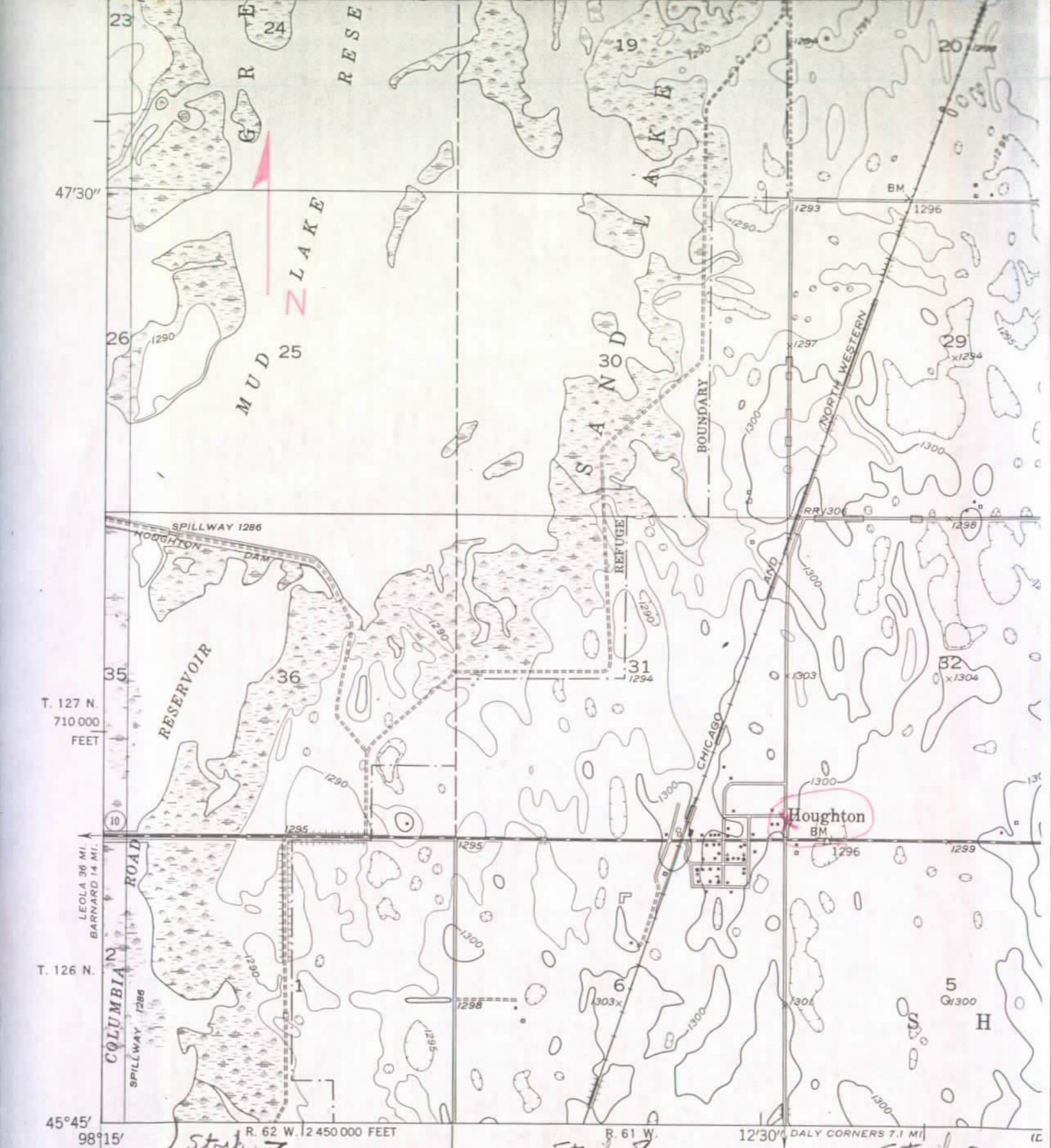
JOHN HATCH, Chief Engineer

Water Rights Division

Department of Water and Natural

Resources

APR 30 1987



T. 127 N.
710 000
FEET

LEOLA 36 MI.
BARNARD 14 MI.
T. 126 N.

45°45'
98°15'

Mapped, edited, and published by the Geological Survey
as part of the Department of the Interior program

Signature:
Orma Smith

10,000-foot grid based on South Dakota coordinate system,
north zone

Strip 8

TRUE NORTH
MAGNETIC NORTH

Ron Durall
Natural Resources Eng.
12/8/86

V/R Appl No. 5112-3

Strip 9

CONTOL
DATUM

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

410499

Pierre, July 23, 1986

RECEIVED OF Erma Smith - Smitty Lunch, PO Box 48, Houghton, SD 57449

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct works and to put water to beneficial use <u>(VESTED)</u>	15	00
Fee for Application for Permit No. _____ to Appropriate Water for Future Use _____		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form _____		
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	15 00

By

Chief Engineer

John Hatch

JOHN HATCH/mjs

WATER RIGHTS DIVISION
(605) 773-3352

August 14, 1986

Erma Smith
P.O. Box 48
Houghton, South Dakota 57449

Dear Ms. Smith:

This letter is in response to your water permit application received on July 23, 1986. The following information is needed before the permit application can be processed:

1. An Affidavit of Water Use Form needs to be submitted with each Vested Right Application. Enclosed is an Affidavit which needs to be completed and returned.
2. A map also needs to be submitted with the application. Mark the location of the well on the map with an "X" and sign the map.

Please complete and return the enclosed form and map to complete your permit application. Contact us if you have any questions. Thank you for your time and consideration.

Sincerely,

Ron Duvall
Natural Resources Engineer

RD:ms
Enc.

REPORT ON VESTED RIGHT APPLICATION NO. 5112-3
ERMA SMITH dba SMITTY LUNCH
December 9, 1986

Vested Water Right Application No. 5112-3 proposes to validate a vested right claim for the appropriation of 0.0066 cubic feet of water per second from one well, 40 feet deep located in Lot 11, Block 2 of the SE 1/4 SE 1/4 Section 31, T127N, R61W. A priority date of August 1, 1947 has been claimed for th water use. Water is used for Smitty Lunch and for domestic purposes.

Conclusions:

1. According to the affidavit of water use, the works were constructed during 1947 and water has been put to beneficial use.
2. A priority date of August 1, 1947 should be assigned according to the Affidavit of Water Use.
3. The amount of water appropriated seems reasonable for the claimed use.
4. It is recommended that the vested right claim be validated.



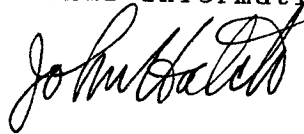
Ron Duvall
Natural Resources Engineer

RECOMMENDATION OF CHIEF ENGINEER FOR VALIDATION OF VESTED WATER
RIGHT APPLICATION NO. 5112-3

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Division, Department of Water and Natural Resources concerning Validation of Vested Water Right Application No. 5112-3, Erma Smith dba Smitty Lunch, PO Box 48, Houghton SD 57449.

The Chief Engineer is recommending VALIDATION of Application No. 5112-3 because 1) water has been appropriated as described for commercial use with a priority date of August 1, 1947, 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 the attached report for additional information.

A handwritten signature in cursive script, appearing to read "John Hatch", is written in dark ink.

JOHN HATCH, Chief Engineer
December 9, 1986

SOUTH Dakota Department of
Water & Natural Resources

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

December 16, 1986

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

Erma Smith
Smitty Lunch
PO Box 48
Houghton SD 57449

Dear Ms Smith:

Your Application No. 5112-3 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 ABERDEEN AMERICAN NEWS printed at Aberdeen SD. 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 by the Water Management Board.

Sincerely,



Ron Duvall
Natural Resources Engineer
605. 773-3352

enclosures

Instruction to Newspaper - Publish first publication of the following Notice on or before December 31, 1986 with 2nd publication 1 week later. The applicant is responsible for payment.

NOTICE OF HEARING To Validate
Vested Right Application No. 5112-3 to Appropriate Water

Notice is hereby given that Erma Smith dba Smitty Lunch whose mailing address is PO Box 48, Houghton, South Dakota has filed an application to validate a vested right claim to appropriate 0.0066 cubic feet of water per second from one well 40 feet deep located in Lot 11, Block 2 of the SE 1/4 SE 1/4 Section 31, T127N, R61W. The water use has a claimed priority date of August 1, 1947 and is used as a commercial water supply for Smitty Lunch and for domestic purposes.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right Application No. 5112-3 because 1) water has been appropriated as described for commercial and domestic use with a claimed priority date of August 1, 1947, 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.

Validation of this application will be considered by the Water Management Board in Room 216, Joe Foss Bldg, Pierre SD, March 4, 1986 at 10:00 am.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) approve validation, 2) approve the validation with qualifications, 3) defer, or 4) deny validation of the application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and the Chief Engineer by February 20, 1987. The petition may be informal, but it must include a statement describing the petitioner's interest in the application, the reasons for the petitioner's opposition to or support of the application, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The applicant need not file a petition.

This application is made pursuant to the provisions of SDCL 46-1-1 thru 46-1-9, 46-1-12 thru 46-1-15; 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; 46-5-1 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; ~~(ground)~~ 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14 and Board Rules ARSD 74:02:01:01 thru 74:02:01:15 and 74:02:01:19 thru 74:02:01:22.

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

Any person wishing a copy of the Chief Engineer's recommendation, further information on this application or to assure access to the hearing by the handicapped can contact the Water Rights Division, Joe Foss Bldg, Pierre SD (605 773-3352) for assistance prior to the hearing date. The time of the hearing will be automatically extended for at least twenty days upon written request of the applicant or person who has filed a petition to oppose or support the application. The request for extension must be filed with the Chief Engineer by February 20, 1987.

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA

COUNTY OF BROWN

ss.

Lori Noltner

BEING DULY SWORN, ON HIS OATH SAYS:

That the ABERDEEN AMERICAN NEWS is a DAILY newspaper of general circulation, printed and published in Aberdeen, Brown County, South Dakota, by the Aberdeen News Company, a corporation, and has been such a newspaper during the times hereinafter mentioned, that affiant is an employee and principal clerk of said publisher and has personal knowledge of all the facts stated in this affidavit; that the advertisement headed Notice of hearing Erma Smith

a printed copy of which is hereunto attached, was printed and published in the regular and entire issue of said newspaper, and not in a supplement thereof, once each week for 2 successive weeks.
The first publication being made on the 22nd day of Dec 1986
The second publication being made on the 29th day of Dec 1986
The third publication being made on the day of
The fourth publication being made on the day of
The fifth publication being made on the day of
The sixth publication being made on the day of
The seventh publication being made on the day of
The eighth publication being made on the day of
The ninth publication being made on the day of

That said newspaper is a legal newspaper, being published five days or more each week, having a bona fide circulation of more than two hundred copies daily, having been published in the English language within the said County of Brown for more than one year next prior to the first publication of said notice, and is printed in whole in an office maintained at the place of publication of said newspaper. That the whole amount of the fee paid for the publication of the annexed notice is \$ 51.60, which inures solely to the benefit of said publisher; that no agreement or understanding for a division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever.

Lori Noltner

Subscribed and sworn to before me this 29th day of

Dec 19 86

Ellen Jaaski

Notary Public, Brown County, S. D.

My commission expires 7-13-87

daily circulation 19930



(No. 515 - Dec. 22, 29 - 2T)
NOTICE OF HEARING
To Validate Vested Right
Application No. 5112-3 to
Appropriate Water

Notice is hereby given that Erma Smith dba Smitty Lunch whose mailing address is PO Box 48, Houghton, South Dakota has filed an application to validate a vested right claim to appropriate 0.0066 cubic feet of water per second from one well 40 feet deep located in Lot 11, Block 2 of the SE 1/4 SE 1/4 Section 31, T127N, R61W. The water use has a claimed priority date of August 1, 1947 and is used as a commercial water supply for Smitty Lunch and for domestic purposes.

Pursuant to SDCL 46-2A-2 the Chief Engineer of the Water Rights Division recommends VALIDATION of Vested Water Right Application No. 5112-3 because 1) water has been appropriated as described for commercial and domestic use with a claimed priority date of August 1, 1947, 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.

Validation of this application will be considered by the Water Management Board in Room 216, Joe Foss Bldg. Pierre SD, March 4, 1986 at 10:00 am.

The recommendation of the Chief Engineer is not final or binding upon the Board and the Board is authorized to 1) approve validation, 2) approve the validation with qualifications, 3) defer, or 4) deny validation of the application after it reaches a conclusion based upon facts presented at the public hearing. Any interested person who may be affected by a Board decision and who intends to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with BOTH the applicant and the Chief Engineer by February 20, 1987. The petition may be informal, but it must include a statement describing the petitioner's interest in the application, the reasons for the petitioner's opposition to or support of the application, and the signature and mailing address of the petitioner or his legal counsel if legal counsel is obtained. The applicant need not file a petition.



Department of Water & Natural Resources

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

WATER RIGHTS DIVISION
(605) 773-3352

APR 30 1987

Erma Smith
PO Box 48
Houghton, South Dakota 57449

Dear Mrs. Smith:

Enclosed are your Validated Vested Water Right and Water License No. 5112-3.
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

JH:MS

enclosures

Equal Opportunity Employer



DEPARTMENT OF WATER & NATURAL RESOURCES

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

December 6, 1990

Bud & Elaine Frohling
B & E Cafe
Houghton, SD 57449

Dear Mr. & Mrs. Frohling:

In response to a request from Senator Herseth, I reviewed our files pertaining to a permit on file for B & E Cafe. March 4, 1987, the Water Management Board validated Vested Right Claim No. 5112-3 for Erma Smith dba Smitty Lunch. Vested Right No. 5112-3 is for use of 0.0066 cubic feet of water per second (3 gallons per minute) by the cafe and adjoining residence.

It is our understanding that you now own the cafe. Enclosed is a partially completed "Notice of Transfer" for filing and ownership change on Vested Right No. 5112-3. The transfer form should be checked over for accuracy and signed by the new owner(s) in the presence of a notary public. Upon completion, return the form to our office with a required filing fee of \$2.50.

I have included a copy of Vested Right No. 5112-3 which you may keep for your records. If you have any questions, please contact me.

Sincerely,

Genny McMath
Natural Resources Analyst
(605) 773-3352

enclosures

NOTICE OF TRANSFER OF OWNERSHIP

No. 5112-3

TO: Chief Engineer
Water Rights Division, DWR
523 East Capitol
Pierre, SD 57501-3181

Date: Dec. 14, 1990I/We request that Vested Water Right Claim No. 5112-3formerly owned by: Erma Smith dba Smitty Lunch, Houghton, SD 57449be transferred to: (name & address) Ernest & Elaine Frohling dba B & E CafeP.O. Box 62 Houghton, SD 57449 (telephone No.) 885-6380

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

(diversion point location of well) SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 31, T127N, R61W

I/We understand that the validity of Vested Water Right Claim No. 5112-3 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

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

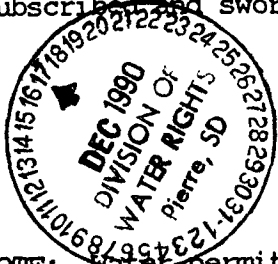
A fee of Two Dollars and Fifty Cents (\$2.50) is attached to cover the filing fees as required under SDCL 46-2-13.

STATE OF SOUTH DAKOTA)
)
County of BROWN)

I/We Elaine Frohling 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.

Elaine Frohling
(Signed)

Subscribed and sworn to before me this 14th day of December, 1990.



Gayle Lloyd
(Notary Public)

GAYLE LLOYD, Notary Public
My Commission Expires August 24, 1995

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

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



DEPARTMENT OF WATER & NATURAL RESOURCES

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

January 8, 1991

No. 5112-3

Ernest & Elaine Frohling
dba B & E Cafe
PO Box 62
Houghton SD 57449

Dear Mr. & Mrs. Frohling:

Enclosed is a receipt in the amount of \$2.50 which you paid for the transfer of Vested Water Right No. 5112-3.

Our records now show you as the owner of this Vester Water Right No. 5112-3.

Sincerely,

JACI KONOP
Senior Secretary
Water Rights Division
605 773-3352

enclosure

RECEIPT

Division of Water Rights

South Dakota Department of Water and Natural Resources

412450

Pierre, December 17, 1990

RECEIVED OF Ernest & Elaine Frohling dba B & E Cafe, PO Box 62, Houghton SD 57449

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct works 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 <u>Vested Water Right No. 5112-3</u>	2	50
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	2 50

By John Hatch/gmh
Chief Engineer

February 2, 2006

2005 South Dakota Water Use Questionnaire 5112-3

To:

B & E CAFE
ERNEST FROHLING, PO BOX 62
HOUGHTON SD 57449

Address correction requested:

The Connection
212 Main St.
Houghton, SD 57449

One questionnaire is being provided for each permitted water source. The following information is based on Water Permit/Right No. 5112-3. 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
Aquifer: NOT APPLICABLE
Management Unit: NOT APPLICABLE

County: BROWN
Pumping Pt. Legal: SEC 31-T127N-R61W
Type of Water Use: COMMERCIAL

- 1) Please estimate your year 2005 water use from the above water source: _____ gallons
2) If no water use in 2005, please list the reason(s) why in the comments section.

Comments:

I use BDM Water out of
Buckhorn, SD

Contact Person:

Marge Frohling

Telephone No:

605-885-6380

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



Thank you for completing the 2005 water use questionnaire.

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

RECEIVED

FEB 10 2006

WATER RIGHTS
PROGRAM

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME & ADDRESS: Marge Frohling, 212 Main St, Houghton SD 57449

DATE: May 25, 2006

TELEPHONE: 605 885-6380

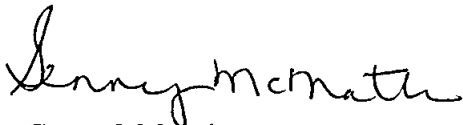
RE: Water Right No. 5112-3

COMMENTS:

The 2005 SD Water Use Questionnaire submitted for Water Right No. 5112-3 was returned by Marge Frohling dba "The Connection". She indicated they use water from BDM RWS system.

I called her to find out if the well described in the water right was used as a backup supply. She said they haven't used it as such but then they haven't needed too. She bought the place 11 years ago from her in-laws and has never used the well. I told her that they could retain the water right but in order to call the well a "back-up" water supply, they need to make sure its in working order and ready for use on demand.

Since the water right is in the former owner's name, send Ms. Frohling a transfer of ownership form.



Genny McMath
Environmental Scientist



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

May 26, 2006

5112-3

Marge Frohling
The Connection
212 Main St
Houghton SD 57449

Dear Ms. Frohling:

Thank you for taking the time to visit with me regarding the use of water as described under Vested Water Right No. 5112-3. Enclosed is a copy of the vested right which you may keep for your records.

It is my understanding that you are hooked to the BDM Rural Water System and would like to maintain the current water right and have the opportunity to use the well on the property as a backup water supply.

In order to update the vested water right, it should be transferred to your name. Enclosed is a partially completed Notice of Transfer of Ownership form for filing an ownership change. Please review the form and make any necessary corrections. Upon completion, please sign the form 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.

If you have any questions concerning the vested water right or completion of the ownership form, please contact me.

Sincerely,

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

enclosures



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

July 12, 2006

5112-3

Marge Frohling
The Connection
212 Main St
Houghton SD 57449

Dear Ms. Frohling:

In May 2006, I spoke with you about a water right listed in the name of B & E Café. At that time, you indicated that although you were hooked to BDM Rural Water System, you wished to keep the vested water right and be able to use the well described in it for a back-up water supply.

Today, I am writing as a reminder that we have not yet received the "Notice of Transfer of Ownership" from you. In the event you do not have the original form I sent to you, I am including an additional one for your use.

In order to update the vested water right, it needs to be transferred to your name. Please complete the form, sign 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.

If you have any questions concerning the vested water right or completion of the ownership form, please contact me.

Sincerely,

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

enclosure

NOTICE OF TRANSFER OF OWNERSHIP

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

RECEIVED

No.

5112-3

AUG 11 2006

WATER RIGHTS
PROGRAM

Date:

8-10-06

I/We request that Vested Water Right No. 5112-3

formerly owned by: Ernest & Elaine Frohling, dba B & E Cafe, PO Box 62, Houghton SD 57449

be transferred to: (name & address)

Marge Lohberg dba: The Connection
212 Main St
Houghton SD 57449 Telephone No. 605 885 6380

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

(Location of well: SE 1/4 SE 1/4 Section 31, T127N, R61W)

I/We understand that the validity of Vested Water Right No. 5112-3 has not been determined by this transfer action. If I/We have any questions on validity, I/We understand that only the Water Management Board has the authority to determine if a water permit/right is valid (see note).

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

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

I/We Marge Lohberg the new owner, certify that the above information is true and correct.

Marge Lohberg
(Signed by new owner)

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

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

RECEIPT

WATER RIGHTS PROGRAM

South Dakota Department of Environment and Natural Resources

Date August 11, 20 06

RECEIVED OF Marge Frohling, 212 Main St., Houghton SD 57449

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

Fee for Application for Permit No. _____ to Appropriate Water, to construct and to put water to beneficial use	2	50
Fee for Application for Permit No. _____ to Appropriate Water for Future use		
Fee to retain Future Use Permit No. _____ after period of seven years.		
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. _____		
Fee for Filing Transfer Form <u>52</u> <u>5112-3</u>		
Fee for _____		
Fee for Issuing New Well Driller's License No. _____ for C.Y. _____		
Fee for Renewal of Well Driller's License No. _____ for C.Y. _____		
Fee for Issuing Well Pump Installer's License No. _____ for C.Y. _____		
Fee for Renewal of Well Pump Installer's License No. _____ for C.Y. _____		
..		
(Any Other Work Provided by Law)	TOTAL	2.50

No.

02545

By

Darlan D. White
Chief Engineer
gm



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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

August 11, 2006

5112-3

Marge Frohling
The Connection
212 Main St
Houghton SD 57449

Dear Ms. Frohling:

I am writing to acknowledge receipt of the ownership change and filing fee you submitted for transferring Vested Water Right No. 5112-3.

The transfer has been completed. The vested right, formerly held by Ernest & Elaine Frohling, dba B & E Café is now listed as "Marge Frohling, dba The Connection".

Enclosed is your Receipt No. 02545 in the amount of \$2.50 which you paid for the filing fee. You may keep this for your records.

Sincerely,

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

enclosure