

Notice of Hearing on Future Use Application No. 4456A-3 and Review Future Use Permit No. 4456-3

Notice is given that Aurora-Brule Rural Water System, Inc., c/o Wade Blasius, Manager, PO Box 140, Kimball SD 57355 has filed an application to amend Future Use Permit No. 4456-3 by changing the future use area. Future Use Permit No. 4456-3 reserves 621 acre feet of water from the Missouri River with the diversion point within the SW 1/4 SE 1/4 Section 20-T104N-R71W. The application seeks to change the future use area to the NW 1/4 SW 1/4 Section 21-T104N-R71W which is where the system's current Missouri River intake is located.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Future Use Application No. 4456A-3 because 1) existing rights will not be unlawfully impaired, 2) it is a beneficial use of water, and 3) it is in the public interest.

Notice is also given that the Water Management Board will review Future Use Permit No. 4456-3 for progress made in the development of the water reserved by the Permit and future plans for development of the water reserved by the Permit. The permit was approved in 1979 and currently reserves 621 acre feet from the Missouri River at the location described above for rural water system use. The rural water system serves users in Aurora, Buffalo, Brule, Davison, Douglas and Jerauld Counties.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends that Permit No. 4456-3 REMAIN in EFFECT for 621 acre-feet annually because 1) the reserved water may be developed, 2) there is need for the reserved water, 3) the proposed use will be a beneficial use and 4) it is in the public interest.

The Water Management Board will consider Application No. 4456A-3 and future use review of No. 4456-3 at 10:00 a.m. on July 8, 2015 in the Matthew Training Center, Joe Foss Bldg, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendations are not final or binding upon the Board. Regarding Application No. 4456A-3, the Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application and based on the facts presented at the public hearing. Regarding Future Use Review of the permit, the Board is authorized to 1) allow the permit to remain in effect, 2) amend the permit by adding qualifications, 3) cancel the permit for no development or no planned future development, or 4) take no action after it reaches a conclusion based upon facts presented at the public hearing.

Any interested person who intends to participate in the hearing shall file a petition to oppose or support the application or review and the petition shall be filed with BOTH the applicant and Chief Engineer. The applicant must also file a petition if opposed to the Chief Engineer's recommendations. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by June 29, 2015. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application or review, the petitioner's reasons for opposing or supporting the application or review, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The hearing is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing and decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

The July 8, 2015 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition to oppose or support the application or review. The request for an automatic delay must be filed by June 29, 2015. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to all petitioners regarding the time, date and location.

Information concerning the application or review is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by June 29, 2015 at the above Chief Engineer's address to request copies of the staff report, recommendations, application or other information. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by publication, and the applicable date to give notice to the Chief Engineer is May 18, 2015. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application and review: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-5, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31, 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; and Board Rules ARSD 74:02:01:01 thru 74:02:01:25.03.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources.