

## NOTICE OF HEARING on Application No. 7239-3 to Appropriate Water

Notice is given that Hanson County Dairy, c/o Michael Crinion, 126 Pine Ridge Road, Brookings SD 57006 has filed an application for a water permit to appropriate 1.11 cubic feet of water per second from three wells to be completed into the Floyd:East James Aquifer (approximately 120 feet deep) located in SW 1/4 Section 34-T104N-R58W for commercial use in a dairy operation to be constructed in the SE1/4 of Section 4-T103N- R58W in Hanson County.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 7239-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation and no hearing may be held before the board, unless the Chief Engineer makes a finding that an application, even if uncontested, presents important issues of public policy or public interest that should be heard by the board." This matter involves a rehearing of an application previously heard by the Water Management Board and all parties have agreed to a two day hearing. As such, the Chief Engineer finds that this application presents important issues of public interest that should be heard by the Water Management Board.

The Water Management Board will consider this application at 8:30 AM on August 27, 2012 in the Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave. Pierre SD. The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny this application based on the 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 and the petition shall be filed with BOTH the applicant and Chief Engineer. Concerned Citizens of Hanson County is already a party in opposition to this application. The applicant must also file a petition if opposed to the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605 773-3352)" and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by August 17, 2012. The petition may be informal, but shall be in writing and shall 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. 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 August 27, 2012 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. The request for an automatic delay must be filed by August 17, 2012. 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.

Contact Eric Gronlund at the above Chief Engineer's address to request copies of the staff report, recommendation, 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 August 13, 2012. However, since this particular matter is a rehearing of 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.

The legal authority and jurisdiction under which the hearing is to be held are the following as applicable: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-14 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-10, 46-2A-14, 46-2A-15; 46-5-6.11, 46-5-10 thru 46-5-13, 46-5-30 thru 46-5-30.3, 46-5-32; 46-6-3, 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-26; and Board rules ARSD 74:02:01:01 thru 74:02:01:15.

The particular section of statutes and rules pertaining to this permit application are, in addition to the above, the following: SDCL 46-2A-9, 46-6-3.1, 46-2A-15, 46-5-10 thru 46-5-13, 46-6-10, 46-6-26; the above listed administrative rules and the following rules pertaining to qualifications recommended by the Chief Engineer: ARSD Chapter 74:02:04, 74:54:01, 74:54:02, 74:51:01, 74:51:02, 74:51:03 and 74:52:01 through 74:52:11

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