

NOTICE OF HEARING on Application Nos. 7295-3, 7316-3 and 7348-3 to Appropriate Water

Notice is given of three water permit applications to appropriate water from the Tulare:East James Aquifer in Spink County. The following applications were previously public noticed for deferral. Upon reevaluation of the current availability of water in the aquifer in light of historic record, recent irrigation reports and past and recent USGS reports, the Chief Engineer has revised his recommendation. Therefore it is necessary to public notice the applications and the Chief Engineer's revised recommendations.

Application No. 7295-3 filed by William F St. Clair, 37644 184th St, Tulare SD 57476 proposes to appropriate 1.78 cubic feet of water per second from one well to be completed into the Tulare:East James Aquifer (90 feet deep) located in the center of the NW 1/4 Section 30 for irrigation of 120 acres located in the NW 1/4 Section 30; all in T117N-R61W.

Application No. 7316-3 filed by Van Buskirk Farms LLP, c/o Matt Van Buskirk, Box 73, Hitchcock SD 57348 proposes appropriate 4.5 cubic feet of water per second from two wells to be completed into the Tulare:East James Aquifer (80 feet deep) located in the approximate centers of the NW 1/4 and the SW 1/4 Section 12 for irrigation of 272 acres located in the W 1/2 Section 12; all in T114N-R62W.

Application No. 7348-3 filed by Michael Sentell, 18690 398th Ave, Hitchcock SD 57348 proposes to appropriate 5.33 cubic feet of water per second from a gravel pit completed into the Tulare:East James Aquifer and located in the NE 1/4 SW 1/4 Section 14 for irrigation of 440 acres located in the NW 1/4 Section 13, NW 1/4, W 1/2 SE 1/4, SE 1/4 SW 1/4 Section 14; all in T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 7295-3, 7316-3 and 7348-3 because 1) the Water Rights Program reevaluated the current availability of water in the aquifer and determined that unappropriated water is available from the aquifer, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest to put water resources of the state to the fullest extent of which they are capable.

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." In this case, the Chief Engineer finds that these applications present important issues of public interest that should be heard by the Water Management Board.

The Water Management Board will consider these applications at 10:30 AM on October 3, 2012 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. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny any of these applications 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 any of the applications and the petition shall be filed with BOTH the applicant and Chief

Engineer. 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 addresses are given above. A petition filed by an interested person must be filed by September 24, 2012. The petition may be informal, but must include a statement describing the petitioner's interest in any of the applications, the petitioner's reasons for opposing or supporting any of the applications, 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 October 3, 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 any of the applications. The request for an automatic delay must be filed by September 24, 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 by September 24, 2012, at the above Chief Engineer's address to request copies of the staff report, recommendations, applications 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 September 24, 2012. However, since this particular matter are water permit applications 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, 26-2A-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 these permit applications 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 rule pertaining to qualifications recommended by the Chief Engineer: ARSD Chapter 74:02:01:14.02. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.