

NOTICE OF HEARING ON APPLICATIONS TO APPROPRIATE WATER FROM MANAGEMENT UNITS OF THE UPPER VERMILLION MISSOURI AQUIFER

Twenty one applications proposing to appropriate water for irrigation from the Upper Vermillion Missouri (UVM) aquifer were filed in 2012 and 2013. The Chief Engineer recommended deferral because at the time it was not possible to conclude that unappropriated water was available from the aquifer. Nineteen of the applications were formally deferred by the Water Management Board pending study of the UVM aquifer. Two other applications (Nos. 7690-3 and 7919-3) are currently public noticed for a March 6, 2014, hearing with a recommendation of deferral.

The South Dakota Geologic Survey (SDGS) conducted work in 2013 - 2014 which established new boundaries for the main body of the aquifer. This work done by the SDGS has been analyzed by the Water Rights Program and provides identifiable geologic and hydrologic data documenting two boundaries establishing three management units within the UVM aquifer. The Water Rights Program is proposing designating North, South and West management units of the UVM aquifer. Observation well data and a flow net analysis has been conducted on each management unit to determine whether unappropriated water is available.

All UVM applications are now scheduled before the Water Management Board for consideration. The Chief Engineer has revised the recommendation to approval for those applications within the boundary of the South Management Unit and the West Management Unit. The Chief Engineer recommends that applications within the North Management Unit remain deferred. The report to the Chief Engineer and the recommendations are available at <http://denr.sd.gov/des/wr/pubnotice.aspx> or by contacting the Water Rights Program at (605) 773-3352.

This notice schedules a hearing before the Water Management Board beginning at 10:30 AM, on Thursday, March 6, 2014, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. Listed below is a description of each application, the Chief Engineer's recommendation, and the procedure to file a petition to intervene in the hearing process.

South Management Unit of the Upper Vermillion Missouri Aquifer (Approval Recommendation)

Application No. 7441-3 filed by Gary E or Julie A Peterson, 45913 299th St, Centerville SD 57014 proposes to appropriate 1.78 cubic feet of water per second (cfs) from one well to be approximately 175 feet deep located in the center of the SE 1/4 Section 8 for irrigation of 140 acres located in the SE 1/4 Section 8; all in T95N-R52W.

Application No. 7442-3 filed by Gary E or Julie A Peterson, 45913 299th St, Centerville SD 57014 proposes to irrigate 40 additional acres. Water Right No. 5982-3 authorizes 1.64 cubic feet of water per second (cfs) from one well that is 165 feet deep located in the SE 1/4 NW 1/4 Section 17 to irrigate 115 acres located in the NW 1/4 Section 17; all in T95N-R52W. The application is proposing to irrigate an additional 40 acres located in the W 1/2 NE 1/4 Section 17-T95N-R52W from the existing well. This application, if approved does not authorize any increase in the developed diversion rate. The Water Management Board did authorize a change in the location of acres without an increase in the diversion rate authority or acres authorized by Water Right No. 5982-3.

Application No. 7466-3 filed by Bethel Hagen Trust, c/o Bruce Hagen, 1300 W Murphy Dr. Sioux Falls SD 57108 proposes to appropriate 1.78 cfs from one well to be approximately 169 feet deep located in approximate center of the NE 1/4 Section 5 for irrigation of 152 acres located in the NE 1/4 Section 5; all in T96N-R51W.

Application No. 7467-3 filed by Cleland Hagen Trust, c/o Bruce Hagen, 1300 W Murphy Dr. Sioux Falls SD 57108 proposes to appropriate 1.78 cfs from one well to be approximately 134 feet deep located in the

approximate center of the NW 1/4 Section 13 for irrigation of 152 acres located in the NW 1/4 Section 13; all in T97N-R52W.

Application No. 7600-3 filed by Michael D Stevens, 28916 458th Ave, Viborg SD 57070 proposes to appropriate 3.56 cfs from two wells to be approximately 200 feet deep located in the NE 1/4 NW 1/4 and the approximate center of the SW 1/4 Section 12 for irrigation of 180 acres located in the NW 1/4, N 1/2 SW 1/4 Section 12; all in T96N-R52W. The applicant is proposing to locate a pivot in the center of SW 1/4 Section 12 to irrigate the entire SW 1/4. A portion of Water Permit No. 7128-3 held by Paul Shubeck authorizes irrigation of the S 1/2 SW 1/4 Section 12-T96N-R52W.

Application No. 7601-3 filed by Michael D Stevens, 28916 458th Ave, Viborg SD 57070 proposes to appropriate 1.89 cfs from one well to be approximately 200 feet deep located in the approximate center of the NE 1/4 Section 25 to irrigate 132 acres located in the NE 1/4 Section 25; all in T97N-R53W.

Application No. 7603-3 filed by Michael D Stevens, 28916 458th Ave, Viborg SD 57070 proposes to appropriate 1.78 cfs from one well to be approximately 150 feet deep located in the approximate center of the NE 1/4 Section 33 to irrigate 120 acres located in the NE 1/4 Section 33; all in T97N-R52W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Application No. 7623-3 filed by Darrell Osborn, 28838 463rd Ave, Centerville SD 57014 proposes to appropriate 1.89 cfs from one well to be approximately 140 feet deep located in the SE 1/4 NW 1/4 Section 24 for irrigation of 140 acres located in the NW 1/4, W 1/2 NE 1/4 Section 24; all in T97N-R52W.

Application No. 7653-3 filed by Jeremiah Welsh, 29217 460th Ave, Centerville SD 57014 proposes to appropriate 1.67 cfs from one well to be approximately 180 feet deep located in the approximate center of the SW 1/4 Section 8 for irrigation of 85 acres located in the W 1/2 SW 1/4, NE 1/4 SW 1/4 Section 8; all in T96N-R52W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Application No. 7690-3 filed by Tim or David Ostrem, 45924 300 St, Wakonda SD 57073 proposes to appropriate 1.78 cfs from one well to be approximately 50 - 90 feet deep located in the center of the NE 1/4 Section 29 for irrigation of 160 acres located in the NE 1/4, E 1/2 NW 1/4 Section 29; all in T96N-R52W.

Application No. 7900-3 filed by Leon Thompson, 401 S 11th St, Beresford SD 57004 proposes to appropriate 1.89 cfs from one well to be approximately 151 feet deep located in the NW 1/4 NE 1/4 Section 6 for irrigation of 136 acres located in the NE 1/4 Section 6; all in T95N-R51W.

Application No. 7919-3 filed by Larry & Marlene Erickson, 29859 461st Ave, Centerville SD 57014 proposes to appropriate 1.83 cfs from one well to be approximately 75 feet deep located in the approximate center of the NE 1/4 Section 9 for irrigation of 83.83 acres located in the NE 1/4 Section 9; all in T95N-R52W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 7441-3, 7442-3, 7466-3, 7467-3, 7600-3, 7601-3, 7603-3, 7623-3, 7653-3, 7690-3, 7900-3 and 7919-3 from the South Management Unit of the Upper Vermillion Missouri Aquifer 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.

North Management Unit of the Upper Vermillion Missouri Aquifer (Deferral Recommendation)

Application No. 7452-3 filed by Jerome Hult, 45958 Hwy 18, Davis SD 57021 proposes to appropriate 1.78 cfs from one well to be approximately 190 feet deep located in SW 1/4 NE 1/4 Section 32 for irrigation of 110 acres located in the W 1/2 NE 1/4, SE 1/4 NE 1/4 Section 32; all in T98N-R52W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Application No. 7468-3 filed by Cleland Hagen Trust, c/o Bruce Hagen, 1300 W Murphy Dr. Sioux Falls SD 57108 proposes to appropriate 1.78 cfs from one well approximately 134 feet deep located in the approximate center of the NE 1/4 Section 26 for irrigation of 152 acres located in the NE 1/4 Section 26; all in T98N-R52W.

Application No. 7558-3 filed by Cleland Trust, 38736 Nasturtium Way, Palm Desert CA 92211 has filed an application for a water permit to appropriate 1.78 cfs from one well to be approximately 275 feet deep located in the approximate center between the NW 1/4 and the SW 1/4 Section 1 for irrigation of 120 acres located in the N 1/2 SW 1/4, S 1/2 NW 1/4 Section 1; all in T98N-R52W.

Application No. 7587-3 filed by Paul Petersen, 45610 282nd St, Hurley SD 57036 proposes to appropriate 1.78 cfs from one well to be approximately 100 feet deep located in the approximate center of the SE 1/4 Section 10 for irrigation of 160 acres located in the SW 1/4 Section 10; all in T98N-R53W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends continuing DEFERRAL of Application Nos. 7452-3, 7468-3, 7558-3 and 7587-3 from the North Management Unit of the Upper Vermillion Missouri Aquifer until information is available to determine if there is reasonable probability that there is unappropriated water available for the applicant's proposed use. Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is a reasonable probability that unappropriated water is available.

West Management Unit of the Upper Vermillion Missouri Aquifer (Approval Recommendation)

Application No. 7535-3 filed by Donald D Benson, 45067 284th St, Hurley SD 57036 proposes to appropriate 1.78 cfs from one well to be approximately 220 feet deep located in the SW 1/4 NW 1/4 Section 30 for irrigation of 65 acres located in the NW 1/4 Section 30; all in T98N-R53W. The applicant is requesting a diversion rate greater than the statutory limit of 1 cfs per 70 acres.

Application No. 7588-3 filed by Paul Petersen, 45610 282nd St, Hurley SD 57036 proposes to appropriate 1.78 cfs from one well to be approximately 145 feet deep located in the approximate center of the SW 1/4 Section 19 to irrigate 160 acres located in the SW 1/4 Section 19; all in T98N-R53W.

Application No. 7602-3 filed by Michael D Stevens, 28916 458th Ave, Viborg SD 57070 proposes to appropriate 1.89 cfs from one well to be approximately 140 feet deep located in the approximate center between the NW 1/4 and the NE 1/4 Section 34 for irrigation of 132 acres located in the E 1/2 NW 1/4 and the W 1/2 NE 1/4 Section 34; all in T97N-R53W.

Application No. 7633-3 filed by Brad Farrar, 28795 452nd Ave, Viborg SD 57070 proposes to appropriate 1.78 cfs from one well to be approximately 205 feet deep located in the center of the SW 1/4 Section 32 for irrigation of 152 acres located in the SW 1/4 Section 32; all in T98N-R53W.

Application No. 7715-3 filed by Allen Vannorsdel, 45515 288th St, Viborg SD 57070 proposes to appropriate 2.22 cfs from one well to be approximately 160 feet deep located in the center of the SW 1/4 Section 16 for irrigation of 156 acres located in the SW 1/4 Section 16; all in T97N-R53W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application Nos. 7535-3, 7588-3, 7602-3, 7633-3 and 7715-3 from the West Management Unit of the Upper Vermillion Missouri Aquifer 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 a specific 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.

The Water Management Board will consider these applications beginning at 10:30 AM. on Thursday, March 6, 2014, in the Matthew Training Center, Joe Foss Building, 523 E. Capitol Ave. Pierre SD. The agenda time is an estimate. 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 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 specific applications 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 recommendation on their applications. 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 are given above. A petition filed by either an interested person or the applicant must be filed by February 24, 2014. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in any of the applications, the petitioner's reasons for opposing or supporting specific applications, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. The party that previously petitioned as an intervener retains party status. 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 March 6, 2014, 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 of an above listed application. The request for an automatic delay must be filed by February 24, 2014. If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicants and to all petitioners regarding the time, date and location.

Contact Eric Gronlund by February 24, 2014 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 February 24, 2014. 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: 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, 46-2-9, 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 74:02:01:25.02; 74:02:01:35.01.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources. Published once at an approximate cost of_____.