

NOTICE OF HEARING on Application Nos. 7878-3 thru 7884-3 to Appropriate Water

Notice is given that Oscar Inc, c/o Floyd Peterson, 209 27th Street NW, Huron SD 57350 has filed the following applications for a water permit.

Application No. 7878-3 proposes to appropriate 4.57 cubic feet of water per second (cfs) from two wells to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate centers of the NW 1/4 and SW 1/4 Section 25 for irrigation of 320 acres located in the W 1/2 Section 25; all in T114N-R62W. These acres are authorized for irrigation from the James River by Water Permit No. 7376-3.

Application No. 7879-3 proposes to appropriate 2.28 cfs from a well to be completed into the Tulare:East James Aquifer (100 feet deep) located in the approximate center of the SE 1/4 Section 22 for irrigation of 160 acres located in the SE 1/4 Section 22; all in T114N-R62W. A total of 136 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3.

Application No. 7880-3 proposes to appropriate 1.92 cfs from a well to be completed into the Tulare:East James Aquifer (100 feet deep) located in the approximate center of the S 1/2 Section 10 for irrigation of 135 acres located in the S 1/2 Section 10; all in T114N-R62W. This land is currently authorized for irrigation from the James River by Water Right No. 6182-3.

Application No. 7881-3 proposes to appropriate 2.28 cfs from a well to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate center of the SE 1/4 Section 35 for irrigation of 160 acres located in the SE 1/4 Section 35; all in T115N-R62W. This land is currently authorized for irrigation from the James River by Water Right No. 6182-3.

Application No. 7882-3 proposes to appropriate 1.71 cfs from a well to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate center of the SE 1/4 NE 1/4 Section 3 for irrigation of 120 acres located in the Lot 1, SE 1/4 NE 1/4, NE 1/4 SE 1/4 Section 3; all in T114N-R62W. A total of 68 of the requested acres are authorized for irrigation from the James River by Water Right No. 6182-3.

Application No. 7883-3 proposes to appropriate 4.27 cfs from two wells to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate centers of the NW 1/4 and NE 1/4 Section 27 for irrigation of 300 acres located in the N 1/2 Section 27; all in T114N-R62W. A portion of the requested acres are authorized for irrigation from the James River by Water Right No. 616-3 and Water Permit No. 7183-3.

Application No. 7884-3 proposes to appropriate 8.55 cfs from four wells to be completed into the Tulare:East James Aquifer (60 - 100 feet deep) located in the approximate centers of the NW 1/4, NE 1/4, SW 1/4 and SE 1/4 Section 15 for irrigation of 600 acres located in the Section 15; all in T114N-R62W. A total of 460 of the requested acres are authorized for irrigation from the James River by Water Right No. 6183-3 and Water Permit No. 7619-3.

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

applicant opposes the Chief Engineers recommendation and therefore the applications are being public noticed for hearing before the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DENIAL of Application Nos. 7878-3 thru 7884-3 because 1) SDCL 46-6-3.1 states that the annual withdrawal of groundwater shall not exceed the average estimated annual recharge to the aquifer; 2) the Water Management Board approved applications on December 6, 2012 totaling an amount of water approximately equal to the probable quantity of water remaining unappropriated from the aquifer; 3) since the Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 4) it is not in the public interest to permit additional groundwater withdrawals in excess of the average annual recharge of the Tulare:East James Aquifer.

The Water Management Board will consider these application at 1:00 p.m. on December 5, 2013 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 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 these 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 address is given above. A petition filed by either an interested person or the applicant must be filed by November 25, 2013. 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 December 5, 2013 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 November 25, 2013. 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 November 25, 2013 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 November 4, 2013. 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.