

NOTICE OF HEARING on Application Nos. 8032-3 and 8033-3 to Appropriate Water

Notice is given that Arthur E Olsen, 18526 398th Ave, Hitchcock SD 57348 has filed the following applications for a water permit.

Application No. 8032-3 proposes to appropriate 8.85 cubic feet of water per second (cfs) from four wells to be completed into the Tulare:East James Aquifer (90 feet deep) located in the center of the SW 1/4 Section 2, the center of the NE 1/4, the center of the SE 1/4 and the NE 1/4 SW 1/4 Section 11; all in T114N-R62W to irrigate 620 acres located in the SW 1/4 Section 2, N 1/2, SE 1/4, N 1/2 SW 1/4 Section 11; all in T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends denial of Application No. 8032-3 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) the Board denied one application from this aquifer on July 11, 2013; 4) since the last Board decision, there has not been a change in the appropriative status of water rights/permit within the aquifer; 6) 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.

Application No. 8033-3 proposes to appropriate 8.85 cfs from an unnamed tributary to the James River located in the SE 1/4 SW 1/4 Section 2 and the NE 1/4 NW 1/4 and SW 1/4 NW 1/4 Section 11; all in T114N-R62W to irrigate 620 acres located in the SW 1/4 Section 2, N 1/2, SE 1/4, N 1/2 SW 1/4 Section 11; all in T114N-R62W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends denial of Application No. 8033-3 because 1) based on a runoff analysis and existence of a downstream water right, unappropriated water is not available on this unnamed tributary for the applicant's proposed use, 2) the proposed diversion may unlawfully impair an existing water right, and 3) it is not in the public interest to appropriate additional diversion from this unnamed tributary.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendations of the Chief Engineer and no petition to oppose the applications is received, the Chief Engineer shall act on the applications pursuant to the Chief Engineer's recommendations 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 filed a statement opposing the recommendation which causes a hearing before the board.

The Water Management Board will consider these applications at 1:30 pm on December 3, 2014 in the Matthew Training Center, Joe Foss Bldg, 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 the 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 the 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. 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 24, 2014. In this case, the applicant has filed opposing the Chief Engineers recommendation on each application. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the applications, the petitioner's reasons for opposing or supporting 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 December 3, 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 the applications. The request for an automatic delay must be filed by November 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 all petitioners regarding the time, date and location.

Information concerning these applications is available at <http://denr.sd.gov/public>. Contact Eric Gronlund by November 24, 2014 at the above Chief Engineer's address to request copies of the staff reports, 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 November 10, 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 these applications: 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.