

NOTICE OF HEARING on Application Nos. 8047-3 and 8048-3 to Appropriate Water

Notice is given that Rockport Hutterian Brethren, c/o Donny Wipf, 26209 Rockport Rd, Alexandria SD 57311 has filed the following applications for a water permit.

Application No. 8047-3 proposes to appropriate 2.96 cubic feet of water per second (cfs) from an existing James River diversion point located in the NW 1/4 NE 1/4 Section 6-T101N-R58W to irrigate 332 acres located in the S 1/2 NW 1/4, S 1/2 NE 1/4, S 1/2 Section 36-T102N-R59W and the SW 1/4 NW 1/4, W 1/2 SW 1/4 Section 31-T102N-R58W.

Application No. 8048-3 proposes to appropriate 5.35 cfs from an existing James River diversion point located in the NW 1/4 NE 1/4 Section 6-T101N-R58W to irrigate 469 acres located in the N 1/2 Section 36 and the SW 1/4, SE 1/4 Section 35; all in T102N-R59W.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose these 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 Chief Engineer finds that these applications present important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DEFERRAL of Application Nos. 8047-3 and 8048-3 because the Water Management Board has placed a 300 cfs diversion limit on the James River in South Dakota from the North Dakota border to the Yankton-Hutchinson County line. There are three prior filed applications that if approved will cause the total appropriation from the James River based on diversion rate to reach the established 300 cfs limit in the described river segment. Application Nos. 8047-3 and 8048-3 is deferred for up to one year for DENR to study: 1) whether any existing water rights/permits are subject to cancellation due to abandonment/forfeiture; 2) the level of development of existing water permits ready for licensing; or 3) other review that may result in water becoming available for these appropriations. The Water Management Board will consider these applications at 11:00 a.m. on March 4, 2015 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 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 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 February 23, 2015. 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 March 4, 2015 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 February 23, 2015. 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 February 23, 2015 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 February 2, 2015. 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.