



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

August 22, 2016

denr.sd.gov

NOTICE OF HEARING

TO: Jeffrey Albrecht
21749 435th Avenue
DeSmet SD 57231

Michael E Unke, Attorney
PO Box 529
Salem SD 57058-0529

Brian S Caruso, Chief
Water Resources Division
US Fish and Wildlife Service
PO Box 25486 DFC
Denver CO 80225-0486

FROM: Jeanne Goodman, Chief Engineer
Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 8226-3, Jeffrey Albrecht

Petitions to the Chief Engineer's recommendation for approval of Water Permit Application No. 8226-3 were filed in response to the Notice of Application published in the DeSmet News and Madison Daily Leader. This notice schedules a hearing on Application No. 8226-3 before the South Dakota Water Management Board.

Water Permit Application No. 8226-3 proposes to appropriate 1.78 cubic feet of water per second (cfs) from two wells to be completed into the Vermillion:East Fork Aquifer (100 feet deep) located in the S 1/2 SE 1/4 Section 35 for irrigation of 102.5 acres located in the E 1/2 SE 1/4, SW 1/4 SE 1/4 Section 35; all in T110N-R56W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8226-3 with qualifications 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.

The Water Management Board will consider Application No. 8226-3 at 2:00 PM (Central Time) on Thursday, October 13, 2016, in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The agenda time is an estimate. Parties will be provided written notice if there is a change to the hearing time or date.

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 application after it reaches a conclusion based on the facts presented at the public hearing.

The October 13, 2016, 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 September 30, 2016. 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.

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. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Contact Eric Gronlund at the above Chief Engineer's address to request the staff report, recommendation, application or any 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.

Enclosed is a copy of the report, recommendation, affidavits of publication and two petitions filed in the matter of Water Permit Application No. 8226-3. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." You are encouraged to review these documents prior to the hearing.

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 direct mail to you, and the applicable date to give notice to the Chief Engineer is September 2, 2016. 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; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

Questions regarding the hearing process may be directed to Eric Gronlund, Water Rights Program at (605) 773-3352 or eric.gronlund@state.sd.us.

enclosures

c: Ann Mines-Bailey, Assistant Attorney General

