

Instruction to Newspaper - Publish first Notice on November 9, 2016. Robert Bawdon or his representative is responsible for authorizing the publication and payment.

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## NOTICE OF HEARING ON PETITION FOR A DECLARATORY RULING ON IMPAIRMENT OF WATER RIGHTS

Notice is given that Robert Bawdon, by and through legal counsel, Brett Koenecke and Terra M. Fisher, PO Box 160, Pierre SD 57501, has filed a request for the Water Management Board to issue a decision that an upstream dugout constructed by Handland LLC, c/o Paul Tschetter, 300 S Main Avenue, Sioux Falls SD 57104, is unlawfully depriving Mr. Bawdon's downstream dam of water and Handland LLC must ensure sufficient water is diverted downstream to satisfy Bawdon's claim to water.

According to South Dakota Codified Law (SDCL) 46-4-2, upper users have first priority for domestic use except it is unlawful for an upper owner to build new works that would deprive a lower owner of water which was previously constructed and regularly approved under SDCL Chapter 46-4.

The petition states that Mr. Bawdon owns land containing a drainage dam in the southeast quarter of Section 13, T111N, R71W in Hyde County. Location Notice number 570-3 was filed in October 1949 claiming a right to construct a dam across a dry draw for irrigation of the above described land and for livestock purposes. The petition indicates the location notice establishes rights to 5.0 acre feet of water annually. The location notice states the claim is for 3.0 acre feet of water annually.

The petition indicates that starting in April of 2016, Handland LLC constructed an upstream dugout in the southwest corner Section 18, T111N, R70W in Hand County. The petition indicates to the best their knowledge the Handland dugout is currently approximately 15 feet in length, 25 feet wide, and 5 feet deep.

The request seeks a declaratory ruling from the Board that:

- 1) The Handland dugout is unlawfully depriving the downstream dam of water which has been regularly approved under SDCL Chapter 46-4.
- 2) Handland must ensure sufficient water is diverted down-stream to satisfy the Bawdon Dam's legal claim of 5.0 acre-feet of water annually to which it is entitled under Chapter 46-4.

The petition for a declaratory ruling will be considered by the Water Management Board at 8:30 AM Central Time on Thursday, December 1, 2016, at the Pierre Chamber of Commerce Building, 800 West Dakota Avenue Pierre SD. The board may issue one of the following decisions regarding the petition for a declaratory ruling after all the evidence is taken at the hearing: 1) declare the Handland dugout is unlawfully depriving the Bawdon dam of water and issue an order that the downstream dam's right be satisfied each year prior to capturing water in the dugout, 2) determine that the Handland dugout does not deprive the Bawdon dam of water, 3) defer action, or 4) take no action.

Any interested person who intends to participate in the hearing by presenting evidence or

cross-examining witnesses according to SDCL 1-26, shall file by November 21, 2016, a written petition to oppose or support the petition for declaratory ruling. The petition shall be filed with the Chief Engineer and legal counsel for Mr. Bawdon and Handland LLC. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605) 773-3352"; and legal counsel's addresses are given above. The petition may be informal but must include a statement describing the petitioner's interest in the petition for a declaratory ruling, the petitioner's reasons for opposing or supporting the petition for declaratory ruling, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Mr. Bawdon and Handland LLC are parties to the hearing and need not file a petition to intervene. The December 1, 2016, hearing date will be automatically delayed for at least 20 days upon written request of either party or any person who has filed a timely petition to oppose or support the petition for declaratory ruling. The request for an automatic delay must be filed by November 21, 2016.

This hearing is an adversary proceeding. Mr. Bawdon, Handland LLC and any person filing a petition have the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. 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 Water Rights Program address to request copies of information pertaining to this petition for declaratory ruling. The declaratory ruling, Location Notice 570-3, public notice and any subsequent filings may also be found on DENR's website at <http://denr.sd.gov/contested.aspx>. 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.

According to SDCL 1-26-18.3, in any contested case, if the amount in controversy exceeds two thousand five hundred dollars 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 no later than ten days after service of a notice of hearing issued pursuant to § 1-26-17. If you choose to use the Office of Hearing Examiners rather than the hearing procedure before the Water Management Board set forth above, you need to notify the Chief Engineer (Water Rights Program, 523 E Capitol Avenue, Pierre SD) by November 21, 2016.

This petition for a declaratory ruling is made pursuant to Board General Rules, Sections 74:02:01:46 through 74:02:01:49. The Board has legal authority and jurisdiction to consider this matter pursuant to SDCL 46-2-5, 46-2-9, 46-2-11, 46-2-17, 46-2-22, 46-4-1 through and 46-4-6. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.