

State's Water-Rights System Is Being Tested In New Cases

BY BOB MERCER
State Capitol Bureau

PIERRE – The methods and judgments of two engineers for the state's water rights division came under question Wednesday.

Lawyers for two farm families who have neighboring operations in Spink and Beadle counties worked to undercut the engineers. Those tactics didn't sit well with the four members of the state Water Management Board present for the hearings.

They voted unanimously to deny both sets of applications.

One group, the Petersons, sought new wells for agricultural irrigation from the Tulare: East James aquifer.

The other group, the Olsens, sought to take surface water from an unnamed tributary of the James River for which one of the Peterson group already has a state right to use for irrigation.

The state board will consider another set of applications today

from the Petersons group for new wells for agricultural irrigation from the Tulare: Western Spink Hitchcock aquifer.

The Olsens group is fighting against those.

Ray Rylance, a Watertown lawyer who is a past member of the state board, is representing the Petersons.

Joel Arends, a Sioux Falls lawyer, is representing the Olsens.

Both lawyers seemed intent on eliciting answers from the state's witnesses that would set a basis for future arguments, if their clients take the next step and file appeals of the board's decisions to circuit court.

The board's denials upheld the recommendations of the state chief engineer for water rights, Jeanne Goodman.

The board in December 2012 granted the last round of permits from the Tulare: Western Spink Hitchcock aquifer.

Currently there's "not a reasonable probability" the aquifer will recharge faster than the proposed wells would withdraw water from the

aquifer, DENR's Ken Buhler said in a report to Goodman.

Buhler also recommended against granting more permits for the Tulare: East James aquifer because it already is fully appropriated.

If an aquifer is fully appropriated, applicants can participate in a lottery drawing to be next in line when water becomes available.

The lottery is scheduled for today (Thursday) after the hearings are concluded, according to Ann Mines-Bailey, a lawyer for the water rights division.

"The evidence you'll hear today is, Nothing's changed, there's no water available," she said at the outset of the first hearing.

Buhler said the Tulare: East James aquifer underlies about 123,500 acres in Spink and Beadle counties on the east side of the James River.

He said the data from observation wells indicate the aquifer is fully appropriated. He described the data as "the best information available" for the aquifer.

He said there isn't any additional water available for the latest applications or any others.

Buhler said he last checked observation well data in September 2014.

Rylance showed that the water levels in two of the observation wells came up more than two feet between 2012 and 2014.

"I don't think I can use the last two years isolated from the entire period of record," Buhler said.

Buhler said storage in the aquifer would be depleted if average annual withdrawal exceeded average annual recharge.

He said a prior DENR engineer raised the question whether the aquifer could be further appropriated because the water levels were rising in observation wells.

A deeper analysis in 2012 found there was additional water that could be appropriated, Buhler said.

The additional appropriation made in 2012 hasn't worked its way into the average yet, according to Buhler.

Arends asked whether the aquifer would suffer damage if more water were taken from the aquifer beyond the recharge rate.

"It certainly violates state law but it wouldn't hurt the aquifer," Buhler said.

He added that some of the new permits approved in 2012 haven't been developed yet.

Rylance portrayed Buhler as providing incomplete information to the board.

"I think I have every reason to tell you the full story," Buhler said in response to a question from board member Jim Hutmacher.

"I couldn't think of one either," Hutmacher said.

Board member Tim Bjork said he found some of the arguments disturbing.

"We seem to have lost all of the other data as we've gone through this discussion. There's much more to it than just the observation well. I think we need to keep this in mind," Bjork said.

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