

NOTICE OF HEARING on Application No. 2676-2 to Transfer Use

Notice is given that the City of Rapid City, c/o Terry Wolterstorff, Director of Public Works, 300 6th St, Rapid City SD 57701 has filed an application pursuant to 46-5-34.1 to transfer the use of a portion of Rapid Creek natural flows appropriated for irrigation use to municipal, industrial, commercial, common distribution systems, rural water system, suburban housing, and domestic use by the city of Rapid City.

Water Permit Application No. 2676-2 proposes to transfer a portion of South Side Ditch use of Rapid Creek natural flows appropriated under Vested Right No. 2040-2. The transfer is for use of a portion of Rapid Creek natural flows historically used to irrigate 154 acres from South Side Ditch. The 154 acres are owned by the city of Rapid City and located near the wastewater treatment plant. The portion of Rapid Creek natural flows to be transferred to the city is 1.73 cubic feet of water per second (cfs) with an annual volume limitation of 277.4 acre-feet, if diverted at the city's water treatment plant and infiltration galleries or 138.7 acre-feet, if stored in Pactola Reservoir. Historically, 1.73 cfs has been used to irrigate approximately 154 acres located in the E 1/2 NE 1/4, NW 1/4 NE 1/4 Section 25-T1N-R8E and SW 1/4 SW 1/4 Section 19 and W 1/2 NW 1/4 Section 30; all in T1N-R9E. The existing diversion point on Rapid Creek for South Side Ditch is located in the SE 1/4 NW 1/4 Section 15-T1N-R8E. This permit is to change the diversion point for 1.73 cfs to diversion points for use by the city to be located in the SE 1/4 NE 1/4 Section 3 (Mountain View Water Treatment Plant); SW 1/4 SW 1/4 Section 3 (Sioux Park Gallery); NW 1/4 SE 1/4 Section 8 (Jackson Springs Gallery); all in T1N-R7E or to allow storage in Pactola Reservoir. The location of the Pactola Reservoir diversion point is the NW 1/4 SW 1/4 Section 2-T1N-R5E and the reservoir impounds water in portions of Sections 2, 3, 4, 5, 10, 11 of T1N-R5E and Sections 31, 32, 33, 34 of T2N-R5E. This permit does not authorize any new water appropriations from Rapid Creek. This application, if approved, will retain the May 3, 1880 priority date established by the South Side Ditch vested water rights.

SDCL 46-2A-4(10) provides that "if the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the Chief Engineer's recommendation 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 this application presents important issues of public interest that should be heard by the Water Management Board.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2676-2 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 this application at 10:30 a.m. on October 22, 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 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 application 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 October 10, 2014. The petition may be informal, but shall be in writing and shall include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, 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 October 22, 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 application. The request for an automatic delay must be filed by October 10, 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.

Contact Eric Gronlund by October 10, 2014 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 September 8, 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 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 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.