

NOTICE OF HEARING ON APPLICATION NOS. 1986-1, 2792-2 and 2793-2 TO APPROPRIATE WATER

Notice is given that TransCanada Keystone Pipeline LP, c/o Gayle Konik, Environmental Manager US, 700 Louisiana St, Suite 700, Houston TX 77002 has filed the following three applications for a water permit. The applications with project description can be found at <https://denr.sd.gov/public/default.aspx>. Water will be used for industrial uses in pipeline construction in varying amounts as set forth in each application in the following counties: Harding, Butte, Perkins, Pennington, Haakon, Jones, Lyman, Meade, and Tripp.

Application No. 1986-1 proposes to appropriate 238.21 acre-feet of water annually at a maximum pump rate of 6.68 cubic feet of water per second (cfs) from the Cheyenne River located in the approximate center of the S 1/2 Section 1-T6N-R17E (Meade and Pennington Counties) for use in the pipeline construction which includes dust control along project right-of-way, horizontal directional drilling, pump station construction and hydrostatic testing of the pipeline. The diversion points are located approximately 36 miles south of Faith SD.

Application No. 2792-2 proposes to appropriate 223.68 acre-feet of water annually at a maximum pump rate of 6.68 cfs from the White River located in the approximate center of the S 1/2 Section 21-T103N-R78W (Lyman and Tripp Counties) for use in the pipeline construction which includes dust control along the project right-of-way, horizontal directional drilling, pump station construction and hydrostatic testing of the pipeline. The diversion points are located approximately 14 miles south and 6 miles west of Presho SD.

Application No. 2793-2 proposes to appropriate 50.44 acre-feet of water annually at a maximum pump rate of 0.67 cfs from the Bad River located in the W 1/2 Section 3-T1N-25E (Haakon County) for use in the pipeline construction which includes dust control along the project right-of-way and horizontal directional drilling. The diversion points are located approximately 2 1/2 miles east of Midland SD.

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 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 APPROVAL of Application Nos. 1986-1, 2792-2 and 2793-2 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 Chief Engineer's recommendations with qualifications, the applications, and staff reports are available at <https://denr.sd.gov/public/default.aspx> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider these applications at 1:00 PM on Wednesday, March 6, 2019, Training Center, Joe Foss Building, 523 E. Capitol Ave. Pierre SD. The hearing may continue on Thursday, March 7, 2019, if necessary to complete testimony. 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 applications 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 recommendations. 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 25, 2019.

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

The March 6, 2019, 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 25, 2019. 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.

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 11, 2019. 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 the applications: 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,; and Board Rules ARSD 74:02:01:01 thru 74:02:01:22.

Steven M. Pirner, Secretary, Department of Environment and Natural Resources.