

NOTICE OF HEARING on Application No. 8229-3 to Appropriate Water

Notice is given that Lenny Peterson, 19111 Maple Ave, Hitchcock SD 57348 has filed an application for a water permit to impound 78.3 acre-feet of water by constructing a dam on Turtle Creek located in the W 1/2 NE 1/4 Section 11-T115N-R65W to irrigate 405 acres. This application requests impoundment of sufficient water to maintain water to the outlet elevation of 1290.9 feet mean sea level. The applicant is proposing to divert at a maximum rate of 5.34 cubic feet of water per second from the proposed dam on Turtle Creek with the pump located at a site between the SW 1/4 NW 1/4 and the S 1/2 SW 1/4 Section 12 to irrigate 405 acres located in the W 1/2 Section 11 and the S 1/2 Section 12; all in T115N-R65W.

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 applicant has filed a statement opposing the recommendation of the Chief Engineer.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends DENIAL of Application No. 8229-3 because 1) unappropriated water is not available for the applicant's proposed use, 2) existing rights will be unlawfully impaired, 3) water is only available when domestic use and the five water rights appropriating 4.67 cfs and the storage water right for the dam at Redfield are satisfied, and 4) it is not in the public interest to allow new appropriations of water from Turtle Creek. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <http://denr.sd.gov/public> or contact Eric Gronlund for this information, or other information, at the Water Rights Program address provided below.

The Water Management Board will consider this application at 11:00 a.m. on December 1, 2016 at the Chamber of Commerce Bldg., 800 W. Dakota 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 November 21, 2016.

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 December 1, 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 November 21, 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.

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 November 7, 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, 46-5-46, 46-5-49; 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.