

Water Right Filing No. 0494-2 was filed by John P Plunkett and Edward Lynch in June, 1896. The water right filing was to appropriate 1,000 miners inches of water from Rapid Creek located in the NW 1/4 NE 1/4 Section 30, T1S, R11E in Pennington County for milling, manufacturing, irrigation, domestic and other useful purposes. The filing specified conveyance of water by means of ditches, dikes, flumes and canals in an easterly direction for a distance determined by the appropriators.

An investigation of the area found no evidence of a water use system. The land owner and the renter of the property have indicated they have no knowledge of a water use system located in the area described in the filing. The Chief Engineer of the Water Rights Program is recommending cancellation of Water Right Filing No. 0494-2 due to abandonment and/or forfeiture.

The Water Management Board will consider cancellation of Water Right Filing No. 0494-2 at 10:30 am, Thursday, October 13, 2016 (Central Time) in the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol, Pierre, SD (*the agenda time is an estimate and the actual time of hearing may be later*).

The October 13, 2016, hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the water right holders or any party opposing the cancellation consideration. The request for an automatic delay must be filed by October 3, 2016.

The hearing will be conducted pursuant to the provisions of SDCL 46-1-1 thru 46-1-10, 46-1-14 thru 46-1-15; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-5-36, 46-5-37, 46-5-37.1; 46-2A-1 thru 46-2A-7; and Board Rules ARSD 74:02:01:36 thru 74:02:01:41. These are contested cases pursuant to procedures contained in SDCL 1-26.

The recommendation of the Chief Engineer is not final or binding upon the Board. The Board is authorized to 1) cancel, 2) cancel portions of, 3) delay action on, or 4) take no action on Water Right Filing No. 0494-2 based upon facts presented at the public hearing.

Any person interested in opposing or supporting the cancellation that wishes to participate in the hearing before the Board and present evidence or cross-examine witnesses according to SDCL 1-26, must file a written petition with the Chief Engineer by October 3, 2016. The Chief Engineer's address is "Water Rights Program, Joe Foss Building, 523 E Capitol, Pierre, SD 57501-3181 (605) 773-3352." The petition may be informal, but it must include a statement describing the reasons for your opposition to or support of the cancellation, and your signature and mailing address or your legal counsel if legal counsel is obtained. The Board may consider any abandoned or forfeited water to be available for appropriation subject to the provisions of SDCL 46-1, 46-2, 46-2A and 46-5.

This hearing is an adversarial proceeding. Any party filing a petition has the right to be represented by a lawyer and may present evidence or cross-examine witnesses according to SDCL 1-26. 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.

Based on South Dakota Codified Law 1-26-17, 1-26-18.3 and 1-26D-10, parties to all administrative contested cases must receive notice that if the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party may require the

use of the Office of Hearing Examiners by giving notice of the request to the Chief Engineer (Water Rights Program, 523 E. Capitol Avenue, Pierre SD) no later than September 19, 2016.

Prior to October 3, 2016, contact Eric Gronlund at (605) 773-3352 if assistance is needed with the following: 1) a copy of the Chief Engineer's recommendation or further information on the proposed cancellation; 2) to assure access to the meeting room for the handicapped; or 3) to obtain an interpreter for the hearing impaired. Steven M Pirner, Secretary Department of Environment and Natural Resources.