

CHAPTER 46-1

DEFINITIONS AND GENERAL PROVISIONS

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46-1-1. Use of water of state--Paramount interest of people--Conversion to public use. It is hereby declared that the people of the state have a paramount interest in the use of all the water of the state and that the state shall determine what water of the state, surface and underground, can be converted to public use or controlled for public protection.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0101 (3).

46-1-2. Development of water resources for public benefit. It is hereby declared that the protection of the public interest in the development of the water resources of the state is of vital concern to the people of the state and that the state shall determine in what way the water of the state, both surface and underground, should be developed for the greatest public benefit.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0101 (4); SL 1972, ch 237, § 1; SL 1978, ch 323, § 1.

46-1-3. Water as property of people--Appropriation of right to use. It is hereby declared that all water within the state is the property of the people of the state, but the right to the use of water may be acquired by appropriation as provided by law.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0101 (2); SL 1983, ch 314, § 1.

46-1-4. Beneficial use of water resources--Prevention of waste--Right to water from natural stream or watercourse. It is hereby declared that, because of conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use of the water in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is limited to an amount of water reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of diversion of water.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0101 (1); SL 2011, ch 165, § 254.

46-1-5. Domestic use of water takes precedence over appropriative rights--Governmental use. It is the established policy of this state:

- (1) That the use of water for domestic purposes is the highest use of water and takes precedence over all appropriative rights, if it is exercised in a manner consistent with public interest as provided in § 46-1-2;
- (2) That the state may, through its institutions, facilities, and properties, and a water distribution system may acquire and hold rights to use water, which rights shall be protected to the fullest extent necessary for existing and future uses, but neither the state nor any water distribution system may acquire or hold any right to waste any water, to use water for other than its own purposes or to prevent the appropriation and application of water in excess of its reasonable and existing needs for useful purposes by other persons, subject to the rights of the state or a water distribution system to apply the water to use whenever necessity therefor exists.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0101 (5); SL 1966, ch 259, § 1; SL 1972, ch 237, § 2; SL 1983, ch 314, § 2.

46-1-6. Definition of terms. Terms used in this title mean:

- (1) "Artesian water," any confined groundwater that is under sufficient pressure to rise above its confining bed;
- (2) "Artesian well," any well drilled into artesian waters which flows naturally or is pumped by mechanical means;
- (3) "Beneficial use," any use of water within or outside the state, that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public of this state in the best utilization of water supplies;
- (4) "Board," the Water Management Board created by § 1-40-15;
- (5) "Chief engineer," the officer employed pursuant to § 46-2-3, or an authorized representative;
- (6) "Department," the Department of Environment and Natural Resources;
- (7) "Domestic use," use of water not exceeding eighteen gallons per minute on an average daily basis, except for larger domestic wells in operation before July 1, 1983, by an individual, or by a family unit or household, for drinking, washing, sanitary, and culinary purposes and other ordinary household purposes; irrigation of a noncommercial family garden, trees, shrubbery, or orchard not greater in area than one acre; eighteen gallons per minute or less for uses in schools, parks, and other public recreation areas; geothermal heat for a single household; or noncommercial on-farm alcohol production. The use of water supplied by a water distribution system for the preceding purposes, for the occupants of schools, hospitals, and other custodial care facilities and for fire protection is a domestic use as against appropriative rights having a priority after June 30, 1978. Stock watering is a domestic use. Use of water not exceeding eighteen gallons per minute on an average daily basis for livestock in a confinement operation, including water for drinking, sanitary and general welfare purposes and for like purposes by those caring for the livestock, is a domestic use. Use of groundwater by water distribution systems, except for irrigation purposes is a domestic use except where groundwater and water in flowing streams constitute the same water supply source, but only to the extent the water was actually used before July 1, 1978;
- (8) "Dry draw," any ravine or watercourse not having an average daily flow of at least four-tenths cubic feet per second (twenty miner's inches) of water during the period May first to September thirtieth, inclusive, except for a body of water such as a natural or publicly owned lake;
- (9) "Energy industry use," the use of water in an amount in excess of one thousand acre-feet per year as a medium for carrying coal or other energy minerals, or in the extraction or refining of energy minerals;
- (10) "Energy industry user," a natural person, firm, partnership, limited liability company, association, syndicate, corporation, joint venture, public entity, or state or federal agency using or supplying water for energy industry use;
- (11) "Energy minerals," energy minerals as that term is defined in § 10-39A-1.1;
- (12) "Groundwater," water under the surface, whatever may be the geologic reservoir in which it is standing or moving;

(13) "Large capacity well," a well capable of delivering water in excess of four one-hundredths cubic feet per second or eighteen gallons per minute;

(14) "Municipal use," the use of water by the state through its institutions, facilities, and properties or by a municipality, and, with regard to municipal rights having a priority before July 1, 1978, by the inhabitants of the municipality, for household, custodial care, and fire protection purposes, whether supplied by the government or by a privately owned public utility or other agency, primarily to promote the life, safety, health, comfort, and business pursuits of the state, municipality and the inhabitants of the municipality. The term does not include the irrigation of crops on a commercial scale, even within the limits of the state institution, facility, property, or municipality, nor does it include large recreational uses such as lakes;

(15) "Person," a natural person, a partnership, an association, a corporation, a municipality, the State of South Dakota, any political subdivision of the state, and any agency of the federal government;

(16) "Secretary," the secretary of the Department of Environment and Natural Resources;

(17) "Water distribution system," a system of piping, valves, storage tanks, pumps, and appurtenances by which water is conveyed for domestic or municipal use by a common distribution system, including a municipality as defined in § 9-1-1, a nonprofit rural water supply company as defined in § 10-36A-1, a water user district as defined in § 46A-9-2, a sanitary district as defined in chapter 34A-5, or homes, including mobile homes as defined in § 32-3-1, and manufactured homes as defined in § 34-34A-1.1 supplied by a common distribution system;

(18) "Well," an artificial excavation or opening in the ground, made by means of digging, boring, drilling, jetting, or by any other artificial method, for the purpose of obtaining groundwater. Any series of openings, borings, or drillings developed and pumped collectively by a single pump unit shall be considered as one well;

(19) "Well driller," any person or persons engaged in the commercial drilling or construction, redrilling, and rebuilding of wells in this state.

Source: SL 1955, ch 430, § 1; SL 1955, ch 431, § 1; SDC Supp 1960, §§ 61.0102, 61.0401 (1) to (9); SL 1966, ch 259, § 2; SL 1972, ch 237, §§ 3, 4; SL 1973, ch 279, § 1; SL 1978, ch 314, §§ 1, 2; SL 1981 (2d SS), ch 1, §§ 2, 8; SL 1982, ch 309, § 2; SL 1983, ch 314, §§ 3 to 8; SL 1987, ch 324; SL 1989, ch 382; SL 1991, ch 17 (Ex. Ord. 91-4), § 17; SL 1994, ch 351, § 111; SL 2012, ch 213, § 1.

46-1-7. Standards of measurement--Flow of water--Volume of water--Miner's inch. The standard of the measurement of the flow of water shall be the cubic foot per second of time; and the standard of measurement of the volume of water shall be the acre-foot, being the amount of water upon an acre covered one foot deep, equivalent to forty-three thousand five hundred sixty cubic feet. The miner's inch shall be regarded as one-fiftieth of a cubic foot per second in all cases, except when some other equivalent of the cubic foot per second has been specially stated by the contract or has been established by actual measurement or use, or by court decree.

Source: SDC 1939, § 61.0138; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0124.

46-1-8. Beneficial use--Measure and limit of right to use of waters. Beneficial use is the basis, the measure and the limit of the right to the use of waters described in this title.

Source: SL 1955, ch 430, § 1; SL 1955, ch 431, § 1; SDC Supp 1960, §§ 61.0102 (6), 61.0401 (10).

46-1-9. Vested rights defined. The term, vested rights, used in this title means:

(1) The right of a riparian owner to continue to use water actually applied to any beneficial use on March 2, 1955, or within three years immediately before that date to the extent of the existing beneficial use made of the water;

(2) Use for domestic purposes as that term is defined in subdivision 46-1-6(7);

(3) The right of a riparian owner to take and use water for beneficial purposes if the riparian owner was engaged in the construction of works for the actual application of the water to a beneficial use on March 2, 1955, and if the works were completed and water was applied to use within a reasonable time thereafter;

- (4) Rights granted before July 1, 1955, by court decree;
- (5) Uses of water under diversions and applications of water before the passage of the 1907 water law and not subsequently abandoned or forfeited.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0102 (7); SL 1983, ch 314, § 9; SL 2011, ch 165, § 255.

46-1-10. Vested rights acquired before July 1, 1955, validated. All vested rights as defined in § 46-1-9 acquired before July 1, 1955, are hereby in all respects validated.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0106.

46-1-11. Violations of water use laws as misdemeanors--Civil fine in addition--Each day as separate violation--Exemption of board and commission actions. Unless otherwise provided in this title, any person, firm, or corporation violating any of the provisions of chapters 46-4 to 46-10, inclusive, is guilty of a Class 2 misdemeanor. In addition, a civil fine of not more than five hundred dollars may be imposed for the violation. Each day of noncompliance with the provisions of this title shall be deemed a separate violation. Administrative actions of the department or Board of Water and Natural Resources, the Water Management Board, or the conservation commission are exempt from this section.

Source: SL 1955, ch 430, § 2; SL 1955, ch 431, § 2; SDC Supp 1960, §§ 61.9920, 61.9921; SL 1977, ch 347, § 1; SL 1981, ch 316, § 11.

46-1-12. Suspension or cancellation of permit or license. Any permit or license issued pursuant to this title may be suspended or canceled by order of the Water Management Board after a hearing pursuant to chapter 1-26 whenever the board finds that an individual permittee or licensee, or the agent or employee of either of them as the case may be, has violated any term of the permit or license. The board may suspend the permit or license for a period of up to one year for the first violation; for up to three years for the second violation; and may cancel the permit or license for a third violation.

Source: SL 1977, ch 350; SL 1983, ch 314, § 10.

46-1-13. Grant of water right for use outside state. A water right may be granted for uses outside this state on the same basis and subject to the same terms and conditions as water rights are granted to persons for use of water within this state, subject to the principle of beneficial use as defined in subdivision § 46-1-6(3).

Source: SL 1978, ch 311; SL 1981 (2d SS), ch 1, § 11; SL 1983, ch 314, § 11.

46-1-14. Terms and conditions of permits and licenses--Amendment. The Water Management Board may issue any permit or license subject to terms, conditions, restrictions, qualifications, quantifications, or limitations on perpetuity consistent with this chapter which it considers necessary to protect the public interest and which are related to matters within the jurisdiction of the board. Water rights issued pursuant to this section may be amended by the board and priority is retained upon amendment. Upon amendment the board may alter terms, conditions, restrictions, qualifications, or quantifications consistent with this chapter.

Source: SL 1978, ch 312; SL 1983, ch 314, § 12.

46-1-15. Permit required for appropriation of waters. Except as otherwise provided throughout this title, no person may appropriate the waters of this state for any purpose without first obtaining a permit to do so.

Source: SL 1983, ch 314, § 13.

46-1-16. Authority of chief engineer to issue permits--Scheduling application. The provisions of § 46-1-14 notwithstanding, the board may promulgate rules pursuant to chapter 1-26 to delegate the authority to issue permits to the chief engineer if the applicant does not contest the recommendation of the chief engineer and no person has filed a petition to oppose the application as provided in chapter 46-2A. Upon such delegation, the recommendation of the chief engineer shall become the decision of the board and the chief engineer shall issue the permit as recommended. However, the chief engineer may schedule an application, even if uncontested, for hearing by the board pursuant to chapter 46-2A upon finding that an application presents important issues of public policy or public interest that should be heard by the board.

Source: SL 1990, ch 355, § 1; SL 1992, ch 254, § 85.
