

CHAPTER 46-2

WATER MANAGEMENT BOARD AND CHIEF ENGINEER

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[46-2-1](#), [46-2-1.1](#). Superseded

[46-2-1.2](#). Repealed by SL 1983, ch 314, § 14

[46-2-2](#). Superseded

[46-2-3](#). Chief engineer--Employment--Advice to board. The secretary may employ a licensed engineer, trained or experienced in hydrology as chief engineer, and other personnel as may be necessary. The chief engineer shall act as adviser to the Water Management Board in all matters pertaining to the distribution and conservation of waters of the state as provided by this title.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0104; SL 1965, ch 299; SL 1983, ch 314, § 15.

[46-2-3.1](#). Delegation of authority to chief engineer--Restrictions. The Water Management Board may delegate to the chief engineer authority to act on its behalf concerning the quasi-judicial functions of interpreting, applying, and enforcing existing rules and laws and ordering action or abatement of action. The board may not delegate any other quasi-judicial functions as defined in § 1-32-1, except as otherwise provided by law. The board may promulgate rules pursuant to chapter 1-26 to delegate to the chief engineer the authority to issue permits pursuant to § 46-1-14.

Source: SL 1978, ch 315; SL 1983, ch 314, § 16; SL 1990, ch 355, § 2.

46-2-4. Attorneys to advise board--Employment of other counsel. The attorney general shall assign one or more attorneys to advise the Water Management Board on legal matters and perform any and all legal duties necessary in connection with the board's work. The board may also employ other legal counsel.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0104; SL 1965, ch 299; SL 1983, ch 314, § 18.

46-2-4.1. Attorneys to advise chief engineer. The attorney general shall assign one or more attorneys to advise the chief engineer in the exercise of his duties. No attorney may represent both the Water Management Board and the chief engineer during a hearing by the board.

Source: SL 1983, ch 314, § 17.

46-2-5. Rules to establish procedures and practices of board. The Water Management Board may promulgate rules pursuant to chapter 1-26 to:

- (1) Establish procedures for submitting applications;
- (2) Establish procedures and criteria for issuing, amending, renewing, qualifying, inspecting, reinstating, suspending, and cancelling permits, rights, and licenses;
- (3) Establish procedures and criteria for regulating water uses;
- (4) Establish practice requirements and procedures for issuing declaratory rulings and conducting contested cases; and
- (5) Establish procedures for determining ordinary high and low water marks and outlet elevations.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0103; SL 1983, ch 314, § 19; SL 1990, ch 356, § 1.

46-2-6, 46-2-7. Repealed by SL 1983, ch 314, §§ 20, 21

46-2-7.1. Minutes and records of board actions. The Water Management Board shall keep accurate minutes and records of its actions. The records shall show in full all permits and licenses issued, together with all related action, and all acts or decisions of the board affecting any rights or claims to appropriate water.

Source: SL 1983, ch 314, § 22.

46-2-8. Repealed by SL 1983, ch 13, § 18; SL 1983, ch 314, § 23

46-2-9. Powers, functions, and duties of board. The Water Management Board, created in § 1-40-15, may perform all the duties and carry out all the functions assigned to it by law and shall have general supervision of the waters of the state, including measurement, appropriation, and distribution thereof, and may exercise any powers, functions, and duties as the Legislature may provide.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0104; SL 1965, ch 299; SL 1983, ch 314, § 24.

46-2-10. Repealed by SL 1983, ch 314, § 25

46-2-11. Regulatory authority of board. The Water Management Board shall regulate and control the development, conservation, and allocation of the right to use the waters of the state according to the principles of beneficial use and priority of appropriation established by this title. The board may require reports and other information as it may deem advisable from all claimants or holders of any water permits or right.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0104; SL 1965, ch 299; SL 1983, ch 314, § 26.

46-2-12. Repealed by SL 1983, ch 314, § 27

46-2-13. Fees of department--Payment to state treasury to environment and natural resources fee fund. The department shall charge and receive the following fees, to be collected in advance:

(1) For filing and examining a location notice required for construction of a structure across a dry draw or nonnavigable watercourse for the purpose of diverting or collecting storm water and of applying the water to beneficial use, fifty dollars;

(2) For filing and examining an application for a permit to appropriate water, to construct works and to put the water to beneficial use, including filing of proofs of publication, recording the permit to appropriate water and action on all other papers relating to the application up to and including issuance of the permit, five hundred dollars for the first one hundred twenty acre feet per year or fraction thereof, two hundred fifty dollars for the second one hundred twenty acre feet or fraction thereof and one hundred dollars for each subsequent one hundred twenty acre feet or fraction thereof. If the water permit is denied, seventy-five percent of the fee shall be returned to the applicant. The fee for an application to appropriate 0.1 cubic feet per second or less, to change a diversion point or to add a diversion point with no new appropriation of water is one hundred dollars. The fee for filing and examining an application to appropriate water for future use is equal to ten percent of the fee charged for an application to appropriate water, construct works and put the water to beneficial use. The fee for maintaining the effectiveness of a future use permit after the period of seven years as set out in § 46-5-38.1 is likewise equal to ten percent of the fee charges for an application to appropriate water, construct works, or put the water to beneficial use. If an application to put part or all of the water reserved by a future use permit to beneficial use is filed, the entire fee for an application to appropriate water, construct works, or put water to beneficial use shall be paid;

(3) For each inspection of constructed water use works, including diversion works, dams, pumping plants, canals, or other conduits and for confirming the application of water to beneficial use under provisions of a permit to appropriate water, including issuance of a water license, two hundred dollars. The fee shall be submitted with the application to appropriate water and be refunded if the application is denied;

(4) For officially filing a transfer of ownership of an application or permit to appropriate water, fifty dollars;

(5) For filing and examining an application to reinstate a permit filed pursuant to § 46-2A-8.1, one hundred dollars; and

(6) For filing and examining an application to claim a vested right pursuant to §§ 46-5-49 and 46-6-2, fifty dollars, which may not be refunded.

All fees received by the department shall be paid into the state treasury to the environment and natural resources fee fund established in § 1-40-30.

Source: SDC 1939, § 55.1806; SL 1959, ch 450, § 1; SDC Supp 1960, § 61.0159; SL 1977, ch 348, § 1; SL 1978, ch 316; SL 1981, ch 314; SL 1983, ch 314, §§ 28 to 28B; SL 1985, ch 345, § 1; SL 1986, ch 363, § 7; SL 1992, ch 254, § 81; SL 1993, ch 334, § 1; SL 1994, ch 23, § 11; SL 2009, ch 13, § 8.

46-2-14. Experimental and observation stations. The Water Management Board may establish experimental and observation stations, including observation wells and stream gauging stations, wherever they may be beneficial.

Source: SL 1983, ch 314, § 29.

46-2-15, 46-2-16. Repealed by SL 2006, ch 2, §§ 30, 31.

46-2-16. Repealed by SL 2006, ch 2, § 31.

46-2-17. Chief engineer's general enforcement authority. The chief engineer may:

- (1) Investigate the use of the waters of the state and compliance with the provisions of water permits, licenses, rules, regulations, and laws relating to water rights;
- (2) Institute enforcement and other proceedings before the Water Management Board;
- (3) Enforce orders of the board; and
- (4) Perform other acts authorized by statute or regulation.

Source: SL 1983, ch 314, § 32.

46-2-18. Chief engineer's authority to order discontinuance of water use. The provisions of chapter 1-26 notwithstanding, the chief engineer may, after appropriate investigation, issue an order to any person to shut off or limit the person's use of surface or groundwater, or to plug or otherwise control a well. The order may be issued only to protect another user who has higher or earlier priority or to cause a user of water to discontinue the use of water to which the user has no legal right. Upon a refusal to obey the order, the chief engineer may request a court of proper jurisdiction to issue a temporary restraining order or injunction to effectuate the provisions of the order.

Source: SL 1983, ch 314, § 33; SL 2011, ch 165, § 256.

46-2-19. Chief engineer's authority to enter property. The chief engineer, in the performance of duties under this title, may enter upon the lands of any person making appropriative use of the waters of the state after the chief engineer has made a reasonable attempt to notify the owner or possessor of the property of the entry. This section does not apply to entry into a house or the curtilage of a home.

Source: SL 1983, ch 314, § 34; SL 2011, ch 165, § 257.

46-2-20. Cooperation with United States agencies. The Water Management Board may cooperate with agencies of the United States engaged in similar surveys and investigations and in construction of works for development and use of the water supply of the state, expending for those purposes any money available for the work of the board, and may accept and use, in connection with the work of the board, the results of the work of agencies of the United States.

Source: SL 1983, ch 314, § 35.

46-2-21. County appropriations for geologic or groundwater studies. A board of county commissioners may appropriate funds for the purpose of defraying the expense of having geologic or groundwater studies conducted within its county.

Source: SL 1983, ch 314, § 36.

46-2-22. Enforcement dry-draw dam domestic use limitations restricted. The Water Management Board may not enforce limitations on domestic use of water from dry-draw dams complying with § 46-4-3 except in response to a written complaint from a person claiming interference with water permits or rights on the same watercourse. The dry-draw dam owner shall first be given an opportunity for a hearing before the board in accordance with the provisions of chapter 1-26.

Source: SL 1985, ch 344.

46-2-23. Establishment of well rehabilitation and plugging subfund--Source of subfund--Expenditures--Unexpended funds--Uses of fund. There is hereby established in the state treasury a subfund of the water and environment fund to be designated as the South Dakota well rehabilitation and plugging subfund. This subfund shall consist of all moneys, including legislative appropriations; interest on the well rehabilitation and plugging subfund; and, notwithstanding the provisions of § 34A-12-15, all money collected by the department in the

enforcement of the provisions of Title 46, chapter 34A-2A, or in any other action, proceeding or settlement based upon violation of the state's water laws, excluding criminal proceedings for criminal fines. Expenditures from this subfund shall be appropriated through the normal budget process. Unexpended funds and interest shall remain in the subfund until appropriated by the Legislature. The Water Management Board may expend appropriated money from the well rehabilitation and plugging subfund to rehabilitate wells that were not constructed pursuant to board rules governing well construction, to rehabilitate wells that a well driller has refused to correct or to plug abandoned wells or uncontrolled flowing wells.

Source: SL 1992, ch 254, § 79.
