

CHAPTER 46-4

DRY-DRAW AND NONNAVIGABLE STREAM DAMS

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46-4-1. Dry-draw on agricultural lands--Right to construct dam--Right or permit for dam on stream or dry-draw subject to prior appropriation. Upon compliance with § 46-4-3, any person who has or holds any possession, right or title to any agricultural lands may construct a dam across a dry-draw without obtaining a permit to appropriate water unless the dam will impound more than twenty-five acre feet of water. Any water right or permit for a dam on a stream or a dry-draw for domestic or other use is subject to the doctrine of prior appropriation.

Source: SDC 1939, § 61.0133; SL 1955, ch 430, § 1; SL 1957, ch 490, § 3; SL 1959, ch 451; SDC Supp 1960, § 61.0138 (1); SL 1983, ch 318, § 1.

46-4-1.1. Nonnavigable stream--Right to construct and maintain dam. Any person owning land through which any nonnavigable stream passes may construct and maintain a dam across the nonnavigable stream if the course of the water is not changed, vested rights are not interfered with and no land flooded other than that belonging to the owner of the dam or upon which an easement for that purpose has been secured.

Source: SL 1983, ch 318, § 2.

46-4-2. Upper users priority for domestic use--Exception--Contest resolution--Appeal. For the uses stated in this chapter, upper users have first priority for domestic use except that it is unlawful for an upper owner to build new works that would deprive a lower owner of water which has been regularly approved under this chapter. Any contest between upper and lower dry-draw owners shall be brought to the Water Management Board first for resolution. The board's ruling may be appealed to circuit court under the provisions of chapter 1-26.

Source: SL 1957, ch 490, § 3; SDC Supp 1960, § 61.0138 (5); SL 1983, ch 318, § 3.

46-4-3. Location notice required--Filing. Any person desiring to take advantage of any of the rights provided in this chapter shall file a location notice with the register of deeds of the county in which the right is located and shall mail a copy of the notice to the Water Management Board.

Source: SDC 1939, § 61.0133; SL 1955, ch 430, § 1; SL 1957, ch 490, § 3; SDC Supp 1960, § 61.0138 (2); SL 1983, ch 318, § 4; SL 2011, ch 165, § 263.

46-4-4. Location notice--Contents--Verification. The location notice required under the provisions of § 46-4-3 shall contain the following information:

- (1) The name and address of the landowner and of the locator;
- (2) The date of the notice;
- (3) The legal description of the land upon which the dam is to be located;

- (4) The total number of acre-feet of water claimed for all purposes for each year;
- (5) The acre-foot storage capacity of the reservoirs;
- (6) The estimated surface area of the storage basin; and
- (7) The number of acres of watershed above the dam.

The location notice shall be subscribed and sworn to by the applicant before a notary public or other officer having a seal.

Source: SDC 1939, § 61.0133; SL 1955, ch 430, § 1; SL 1957, ch 490, § 3; SDC Supp 1960, § 61.0138 (3); SL 1983, ch 318, § 5.

46-4-5. Vested right to water from dry-draw. The right of any person to continue the use of water from any dry-draw is a vested right, to the extent it is not abandoned or forfeited and:

- (1) The water had actually been applied to a beneficial use on March 18, 1957, or within three years immediately before that date to the extent of the actual beneficial use of the water; or
- (2) The dry-draw owner was engaged in the construction of works for the actual application of water to a beneficial use on March 18, 1957, if the works were completed and water actually applied for such use within a reasonable time after that date, to the extent of actual beneficial use of the water; or
- (3) The dry-draw owner filed a location notice and constructed or was in the process of constructing the dry-draw structure on December 31, 1982, if the works were completed and water actually applied to beneficial use within a reasonable time after that date to the extent of actual beneficial use.

Source: SL 1957, ch 490, § 3; SDC Supp 1960, § 61.0138 (4); SL 1981, ch 315; SL 1983, ch 318, § 6; SL 2011, ch 165, § 264.

46-4-6. Time for construction and completion of dam. Any person appropriating the waters of any dry-draw or watercourse within this state, within sixty days after the filing of the notice provided for in §§ 46-4-3 and 46-4-4, shall begin the construction of the dam mentioned in § 46-4-1 for the storage or diversion of the waters, shall proceed diligently to complete the dam and shall divert the waters for beneficial use as rapidly as possible.

Source: SDC 1939, § 61.0133; SL 1955, ch 430, § 1; SL 1957, ch 490, § 3; SL 1959, ch 451; SDC Supp 1960, § 61.0138 (1); SL 1983, ch 318, § 7.

46-4-7, 46-4-8. Repealed by SL 1992, ch 254, §§ 82, 83
