

CHAPTER 46-5

APPROPRIATION OF WATER

- [46-5-1](#) Natural flow of stream or spring--Restrictions on riparian use.
- [46-5-1.1](#) Obstruction of navigable watercourse or interference with stage, level, or flow of public waters prohibited--Contests resolved by Water Management Board.
- [46-5-1.2](#) Removal of obstructions built by beavers if lands flooded or water rights impaired.
- [46-5-2](#) Nonnavigable stream--Right to construct and maintain dam.
- [46-5-3](#) Natural spring forming part of stream--Right to appropriate flow from spring.
- [46-5-4](#) Priority of appropriative rights granted since March 7, 1907.
- [46-5-4.1](#) Validation of prior licenses.
- [46-5-5](#) Waters flowing in definite stream subject to appropriation--Beneficial use--Excessive appropriation not allowed.
- [46-5-6](#) Appropriation of water for irrigation--Limitation of amount.
- [46-5-6.1](#) Restrictions on appropriation of Missouri River water for irrigation.
- [46-5-6.2](#) to [46-5-6.10](#). Repealed.
- [46-5-6.11](#) Authority of chief engineer to issue appropriation permits.
- [46-5-7](#) Priority of appropriation--Date of filing application.
- [46-5-8](#) Permit not required for domestic use--Permit required for dams on streams or dry-draws--Registration of domestic wells.
- [46-5-8.1](#) Permit issued by board to effectuate contract between district and energy industry user--Cancellation of permit or license.
- [46-5-8.2](#) Permit required for water distribution system.
- [46-5-9](#) Construction of works prior to obtaining permit to appropriate water prohibited.
- [46-5-10](#) Appropriation of water--Application for permit required.
- [46-5-11](#) Application--Information required.
- [46-5-12](#) Repealed.
- [46-5-13](#) Diversion rate and amount allowed by permit.
- [46-5-13.1](#) Change of location of diversion point.
- [46-5-14](#) Water which may be reclaimed.
- [46-5-15](#) Water diverted for municipal use--Issuance of permit--Contest and appeal.
- [46-5-16](#) Repealed.
- [46-5-17](#) to [46-5-19](#). Repealed.
- [46-5-20](#) Repealed.
- [46-5-20.1](#) Legislative approval required for large-scale appropriation--Eminent domain powers denied for unauthorized appropriation.
- [46-5-21](#) Repealed.
- [46-5-21.1](#) Permits for energy industry use--Period for application of water to beneficial use.
- [46-5-22](#) Repealed.
- [46-5-23](#) Repealed.
- [46-5-24](#) Amendment or change of plans of construction or place of diversion.
- [46-5-25](#) Diligent prosecution of construction work--Forfeiture of rights--Extension.
- [46-5-26](#) Extension of time for completion of construction or application to beneficial use.
- [46-5-27](#) to [46-5-29](#). Repealed.
-
- [46-5-30](#) Inspection of works by chief engineer before use--Authority to require changes.
- [46-5-30.1](#) License issued by chief engineer.
- [46-5-30.2](#) Limitations on rights given by permit or license.
- [46-5-30.3](#) Sale or transfer of application, permit, or license--Notice to chief engineer.
- [46-5-30.4](#) Amendment of permits or rights.
- [46-5-30.5](#) Unpermitted acreage developed for irrigation--Requirement.

- [46-5-31](#) Change of use or place of diversion.
- [46-5-31.1](#) Abandoned permitted irrigation use--Stock watering permitted.
- [46-5-32](#) Assignment of application, permit, or license.
- [46-5-33](#) Irrigation application, permit, or right not assignable apart from land.
- [46-5-34](#) Irrigation rights appurtenant to land--Amendment of permit required for severance and transfer.
- [46-5-34.1](#) Transfer of irrigation rights apart from land--Restricted purposes--Protection of other users.
- [46-5-35](#) Repealed.
- [46-5-36](#) Abandonment of use of water appurtenant to land--Public water subject to general appropriation.
- [46-5-37](#) Failure to use beneficially appropriated water--Forfeiture for nonuse--Reversion to public.
- [46-5-37.1](#) Abandonment or forfeiture of permits or rights--Recommendation of chief engineer for cancellation.
- [46-5-37.2](#) Exceptions to forfeiture for nonuse.
- [46-5-38](#) Future use of water--Entities entitled to reservation.
- [46-5-38.1](#) Future use of water--Permit required for actual use--Review of future use permits.
- [46-5-39](#) Temporary use permits--Authorization for.
- [46-5-40](#) Temporary use permits--Cancellation.
- [46-5-40.1](#) Temporary permits for use of public water for construction, testing, or drilling purposes--Term of permit--Qualifications and limitations.
- [46-5-41](#) to [46-5-43](#). Repealed.
- [46-5-44](#) United States withdrawal of unappropriated waters--Cancellation.
- [46-5-45](#) Repealed.
- [46-5-46](#) Unauthorized use or waste of water or violation of permit or license prohibited.
- [46-5-47](#) Flood control--Permit required.
- [46-5-48](#) Flood control--Emergency facilities authorized.
- [46-5-49](#) Filing of vested right claim--Hearing--Mandatory filing--Waiver of right.
- [46-5-50](#) Drip irrigation defined.
- [46-5-51](#) Permit not required for drip irrigation.
- [46-5-52](#) Noncommercial purposes defined.

46-5-1. Natural flow of stream or spring--Restrictions on riparian use. No landowner may prevent the natural flow of a stream, or of a natural spring from where it starts its definite course, or of a natural spring arising on his or her land which flows into and constitutes a part of the water supply of a natural stream, nor pursue nor pollute any of these, except as provided by § 46-5-2.

Source: SDC 1939, § 61.0101; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0137; SL 1983, ch 314, § 39; SL 2011, ch 165, § 265.

46-5-1.1. Obstruction of navigable watercourse or interference with stage, level, or flow of public waters prohibited--Contests resolved by Water Management Board. No person may obstruct the free navigation of any navigable watercourse within this state. No person, except under lawful authority to do so, may intentionally obstruct, tamper with, or interfere with the stage, level, or flow of the public waters of this state by any means, including a ditch, drain, or dike, so that the stage, level, or flow of water in any lake, stream, river, or other public watercourse is raised or lowered or its natural flow interfered with in any way. At the request of any person, unit of local government, or political subdivision of the state, any contest pertaining to the restrictions set forth in this section may be brought to the Water Management Board for resolution. The board may require the parties to any contested case under this section to submit the matter for mediation prior to a hearing before the board. Mediation may be informal or through a trained professional mediator as may be directed by the board. All costs of mediation shall be equally shared by the parties unless the parties agree to some other apportionment of costs. The parties shall report to the board at its next regularly scheduled meeting the status of the mediation. If the parties are unable to resolve the matter through mediation, the matter shall be submitted to the board for resolution by contested case hearing. The board's ruling may be appealed to the circuit court under the provisions of chapter 1-26.

Source: SDC 1939, § 13.1615; SL 1955, ch 435; SDC Supp 1960, § 13.4522; SDCL, §§ 46-26-1, 46-26-2; SL 1983, ch 314, § 38; SL 1996, ch 264.

46-5-1.2. Removal of obstructions built by beavers if lands flooded or water rights impaired. No person owning land through which a watercourse passes may prohibit the removal of obstructions built by beavers in the watercourse, if the beavers have obstructed or interfered with the flow of water through the watercourse in a manner that floods land belonging to others or impairs existing water rights. Upon written request, the Department of Game, Fish and Parks may authorize removal of the beavers.

Source: SL 1987, ch 332, § 6.

46-5-2. 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 such 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 such dam or upon which an easement for such purpose has been secured.

Source: SDC 1939, § 61.0101; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0137.

46-5-3. Natural spring forming part of stream--Right to appropriate flow from spring. Nothing in § 46-5-1 or 46-5-2 may be construed to prevent the owner of land on which a natural spring arises and which constitutes the source or part of the water supply of a definite stream from acquiring a right to appropriate the flow from the spring as provided by law for appropriation of waters.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0137; SL 1983, ch 314, § 40.

46-5-4. Priority of appropriative rights granted since March 7, 1907. Appropriative rights to water granted since March 7, 1907, are in full force and effect and their respective priority dates retained according to valid legal records.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0108; SL 1983, ch 314, § 41.

46-5-4.1. Validation of prior licenses. Any license issued prior to January 1, 1983, by the chief engineer or the Water Management Board is hereby cured, legalized, and validated as fully as if the license had been issued in full compliance with all existing provisions of this title.

Source: SL 1983, ch 314, § 60.

46-5-5. Waters flowing in definite stream subject to appropriation--Beneficial use--Excessive appropriation not allowed. Subject to vested rights and prior appropriations, all waters flowing in definite streams of the state may be appropriated only as provided in chapters 46-1 to 46-10, inclusive. A water right does not constitute absolute ownership of the water, but shall remain subject to the principle of beneficial use. No appropriation in excess of the reasonable needs of the appropriators may be allowed.

Source: SDC 1939, § 61.0102; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0109; SL 1983, ch 314, § 42.

46-5-6. Appropriation of water for irrigation--Limitation of amount. In the issuance of permits to appropriate water for irrigation or in the adjudication of rights to the use of water for such purpose, the amount allowed may not be in excess of the rate of one cubic foot of water per second for each seventy acres, or the equivalent thereof, and the volume of water diverted for use may not exceed two acre-feet per acre, delivered on the land for a specified time each year. The Water Management Board may allow a greater diversion, in volume or rate or both, if the method of irrigation, any time constraints on diversion of water, or the type of soil so requires. However, no annual volume may be greater than three acre-feet per acre delivered to the land. The

above rate of one cubic foot per second for each seventy acres does not apply in cases of flood water at such times when the flow of the stream is much in excess of the total recorded and approved rights on the stream.

Source: SDC 1939, § 61.0140; SL 1955, ch 430, § 1; SL 1957, ch 490, § 2; SDC Supp 1960, § 61.0126; SL 1976, ch 274; SL 1978, ch 308; SL 1996, ch 263, § 2.

46-5-6.1. Restrictions on appropriation of Missouri River water for irrigation. The seventy acre restriction set forth in § 46-5-6 does not apply to permits to appropriate water for irrigation from the Missouri River. The Water Management Board shall establish by rules promulgated pursuant to chapter 1-26, acreage restrictions to apply to permits to appropriate water for irrigation from the Missouri River.

Source: SDCL § 46-5-6 as added by SL 1976, ch 274; SL 2011, ch 165, § 266.

46-5-6.2 to 46-5-6.10. Repealed by SL 1994, ch 313, § 6

46-5-6.11. Authority of chief engineer to issue appropriation permits. As provided in § 46-1-16, the board may delegate to the chief engineer the authority to issue a permit for the appropriation of water if the applicant does not contest the recommendation of the chief engineer and no person has filed a petition to oppose the application.

Source: SL 1990, ch 355, § 4.

46-5-7. Priority of appropriation--Date of filing application. As between appropriators, the first in time is the first in right. The priority of the appropriation shall date from the time of filing of the application therefor in the office of the Water Management Board.

Source: SDC 1939, § 61.0102; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0109.

46-5-8. Permit not required for domestic use--Permit required for dams on streams or dry-draws--Registration of domestic wells. Any person desiring to make reasonable domestic use of water from any source may do so without obtaining a permit from the Water Management Board, except that no person may construct a dam across any dry-draw for any purpose, including domestic use, if the dam will impound more than twenty-five acre-feet of water, without first obtaining a permit from the board. Permits for dams on streams or dry-draws for domestic or other uses are subject to the doctrine of prior appropriation. Domestic users other than water distribution systems may register a domestic well with the board to document the location and output of their water supply and the quality of its water. The registration of a domestic well is not subject to the procedures for appropriation of water under chapters 46-5, 46-6, and the procedure contained in chapter 46-2A. The fee for registration is twenty-five dollars.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0107; SL 1978, ch 319, § 1; SL 1983, ch 314, § 45.

46-5-8.1. Permit issued by board to effectuate contract between district and energy industry user--Cancellation of permit or license. The Water Management Board may issue a permit to appropriate up to fifty thousand acre-feet of water for use per year to the South Dakota Conservancy District to effectuate the provisions of a contract executed between the district and an energy industry user under § 46A-2-19. An appropriation authorized under this section shall be licensed as provided in this chapter. Upon the receipt by the Division of Water Rights of a notice of cancellation from the district, the division shall cancel the permit or license specified in the notice.

Source: SL 1981 (2d SS), ch 1, § 5.

46-5-8.2. Permit required for water distribution system. If water is to be conveyed to users by a water distribution system diverting more than eighteen gallons per minute, the system shall comply with the provisions of § 46-5-10.

Source: SL 1983, ch 314, § 47.

46-5-9. Construction of works prior to obtaining permit to appropriate water prohibited. No person may begin or carry on any construction of works for storing or carrying water until a permit to appropriate the water has been issued.

Source: SDC 1939, §§ 61.9907, 61.9910; SL 1965, ch 304, § 2; SL 1981, ch 316, § 1; SL 1983, ch 314, § 46.

46-5-10. Appropriation of water--Application for permit required. Any person intending to acquire a right to beneficial use of water shall, before starting construction or placement of works for that purpose or before taking the water from any constructed works, make an application to the Water Management Board for a permit to appropriate water, in the form required by rules promulgated pursuant to chapter 1-26 by the board.

Source: SDC 1939, § 61.0122; SL 1955, ch 430, § 1; SL 1957, ch 490, § 1; SDC Supp 1960, § 61.0110; SL 1983, ch 314, § 48; SL 1993, ch 256, § 56.

46-5-11. Application--Information required. Water Management Board rules shall, in addition to providing the form and manner of preparing and presenting an application, require the applicant to state the amount of water, periods of annual use, and all other data necessary for proper description and limitation of the right applied for, together with such information, maps, field notes, plans, and specifications as may be necessary to show the method and practicability of construction.

Source: SDC 1939, § 61.0122; SL 1955, ch 430, § 1; SL 1957, ch 490, § 1; SDC Supp 1960, § 61.0110; SL 1983, ch 314, § 49; SL 2011, ch 165, § 267.

46-5-12. Repealed by SL 1985, ch 345, § 4

46-5-13. Diversion rate and amount allowed by permit. A permit may allow diversion from a designated source of water from one or more points within an area described in the permit. However total diversion rate and amount may not exceed the rate and amount allowed by the permit.

Source: SL 1955, ch 430, § 1; SL 1957, ch 490, § 1; SDC Supp 1960, § 61.0110; SL 1983, ch 314, § 50.

46-5-13.1. Change of location of diversion point. The location of a point of diversion may be changed or additional points of diversion may be approved if the new or additional point of diversion is from the same source of water, no additional water is appropriated, and, if the water use is for irrigation, no new land is to be irrigated. The change in location of diversion points may be allowed without application or publication pursuant to § 46-2A-4, if the chief engineer is contacted and makes a finding that the change does not increase the potential for interference with existing diversions.

Source: SL 1987, ch 327; SL 1994, ch 344.

46-5-14. Water which may be reclaimed. Water turned into any natural or artificial watercourse for means of transport by any person entitled to the use of the water may be reclaimed below and diverted by that person, subject to existing rights, accurate allowance for losses to be made, as approved by the Water Management Board.

Source: SDC 1939, § 61.0118; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0153; SL 1983, ch 314, § 51.

46-5-15. Water diverted for municipal use--Issuance of permit--Contest and appeal. Natural flow water of any stream appropriated or diverted for municipal use is subject to downstream senior priority water rights. Any contest between water right 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.

No water permit to appropriate natural flow of a stream by a municipality may be issued unless the board determines, based upon the evidence presented at a hearing that questions on impairment of downstream senior priority water rights have been resolved.

Source: SDC 1939, § 45.1903; SL 1993, ch 334, § 3.

46-5-16. Repealed by SL 1985, ch 345, § 6

46-5-17 to 46-5-19. Repealed by SL 1983, ch 316, §§ 7 to 9

46-5-20. Repealed by SL 1983, ch 316, § 15

46-5-20.1. Legislative approval required for large-scale appropriation--Eminent domain powers denied for unauthorized appropriation. Any application for appropriation of water, pursuant to this chapter, in excess of ten thousand acre feet annually shall be presented by the Water Management Board to the Legislature for approval prior to the board's acting upon the application and all powers of eminent domain shall be denied any common carrier appropriating over ten thousand acre feet of water per annum which has not obtained such prior legislative approval. Legislative approval does not mandate approval by the Water Management Board and does not constitute an issuance of a water permit. This section does not apply to applications by the South Dakota Conservancy District or applications for the approval of water permits for energy industry use.

Source: SL 1975, ch 275; SL 1981 (2d SS), ch 1, § 12.

46-5-21. Repealed by SL 1983, ch 316, § 17

46-5-21.1. Permits for energy industry use--Period for application of water to beneficial use. Section 46-2A-8 does not apply to permits issued to the South Dakota Conservancy District for energy industry use or to any permit or right held by an energy industry user acquired pursuant to an assignment by the district. Periods for completion of construction or application of water to beneficial use for rights transferred by the district to energy industry users shall be fixed in the instrument of transfer but may not exceed ten years from the date the contract is executed for application of water to beneficial use.

Source: SL 1981 (2d SS), ch 1, § 13; SL 1987, ch 29, § 23; SL 1987, ch 332, § 5.

46-5-22. Repealed by SL 1983, ch 316, § 14

46-5-23. Repealed by SL 1981 (2d SS), ch 1, § 14

46-5-24. Amendment or change of plans of construction or place of diversion. The plans of construction or place of diversion may be amended, but no amendment may authorize any extension of time for construction beyond five years from the date of the permit, except as provided by this chapter. A change in the proposed point of diversion of water or change of construction plans shall be subject to the procedures contained in chapter 46-2A and may not be allowed to the detriment of the rights of others having valid water permits or rights to the use of the water.

Source: SDC 1939, § 61.0123; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0111; SL 1983, ch 314, § 52.

46-5-25. Diligent prosecution of construction work--Forfeiture of rights--Extension. The work of construction shall be diligently prosecuted to completion. If one-fifth of the work is not completed within one-half the time allowed, as determined by the Water Management Board, the board may accept and approve an application for the use of any of the waters included in the permit issued to the prior applicant, and the right to use the waters under the former permit are forfeited. However, the Water Management Board shall allow an extension of time at the request of the prior applicant, equal to the time during which work was prevented by the operation of law beyond the power of the applicant to avoid. This section does not apply to permits or licenses issued under § 46-5-8.1.

Source: SDC 1939, § 61.0127; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0115; SL 1981 (2d SS), ch 1, § 15; SL 2011, ch 165, § 268.

46-5-26. Extension of time for completion of construction or application to beneficial use. A permit may be amended by extending the time for the completion of construction, or for application to beneficial use, for a reasonable time, but only on account of delays due to physical or engineering difficulties which could not have been reasonably anticipated, due to operation of law beyond the power of the applicant to avoid, or due to other exigent circumstances identified by the Water Management Board.

Source: SDC 1939, § 61.0132; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0120; SL 1983, ch 314, § 53.

46-5-27 to 46-5-29. Repealed by SL 1983, ch 314, §§ 54 to 56

46-5-30. Inspection of works by chief engineer before use--Authority to require changes. Within a reasonable time before the date set for the application of the water to a beneficial use, the chief engineer shall inspect the works, if any, after due notice to the holder of the permit. If the works are not properly and safely constructed, the chief engineer may require the necessary changes to be made within a reasonable time.

Source: SDC 1939, § 61.0131; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0119; SL 1983, ch 314, § 57.

46-5-30.1. License issued by chief engineer. Upon completion of an inspection, upon completion of any required changes and upon payment of any applicable fees, the chief engineer shall issue a license to appropriate water to the extent and under the conditions of the actual application of water to beneficial use, but he may not extend the rights described in the permit. No permit holder may divert water until the assessed license fee has been paid.

Source: SL 1983, ch 314, § 58.

46-5-30.2. Limitations on rights given by permit or license. Neither a permit to appropriate water nor a license to appropriate water may become a right to use the water for any purpose or in any manner other than that specified on the permit or license, unless amended pursuant to the provisions of this title.

Source: SL 1983, ch 314, § 59.

46-5-30.3. Sale or transfer of application, permit, or license--Notice to chief engineer. Notice of any sale, grant, lease, conveyance, or other transfer of an application, permit, or license to appropriate water under the provisions of this title shall be filed with the chief engineer within ninety days.

Source: SL 1983, ch 314, § 66; SL 2008, ch 230, § 1.

46-5-30.4. Amendment of permits or rights. Subject to the limitations in §§ 46-5-33 and 46-5-34 governing changes in irrigation rights from one parcel of land to another, any water permit or right holder may apply for a

change of use of the water, a change of location of the use or other amendment to the permit or right. Permits or rights may be amended pursuant to the procedure contained in chapter 46-2A. Priority shall be retained upon amendment. An amendment of a water permit or right may not increase the rate of diversion or increase the volume of water to be appropriated under the original water permit or right. The amendment may not impair existing rights.

Source: SL 1983, ch 314, § 67.

46-5-30.5. Unpermitted acreage developed for irrigation--Requirement. Acreage developed for irrigation outside of the acreage described on the permit may be licensed pursuant to § 46-5-30.1, if no increase occurs in either permitted acreage or water appropriated. The unpermitted acreage shall be contiguous to the permitted acreage, owned by the same property owner, and developed as part of the original irrigation project within the time period designated for completion of works. The unpermitted acreage added to a license under this section retains the priority date assigned to the original permit. Licensing of the unpermitted acreage may occur without application or publication pursuant to § 46-2A-4, if the chief engineer makes a finding that existing water rights will not be impaired and the overall project, as developed, is consistent with the original application. This section does not apply to the transfer of licensed acreage from one parcel of land to another as provided for by § 46-5-34.

Source: SL 1996, ch 263, § 5.

46-5-31. Change of use or place of diversion. Any appropriator of water may use the water for purposes other than for which it was appropriated, or may change the place of diversion, storage, or use, in a manner and under conditions approved by the Water Management Board, except that changes in irrigation permits shall be as prescribed by §§ 46-5-34 to 46-5-36, inclusive.

Source: SDC 1939, § 61.0142; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0129; SL 1983, ch 314, § 61.

46-5-31.1. Abandoned permitted irrigation use--Stock watering permitted. If permitted irrigation use from a storage dam is abandoned or forfeited but the storage dam is used for stock watering, stock watering may be added to the license or permit upon the request of the permit or license holder. A license or permit modified under this section retains the priority date of the original license or permit. This addition of stock watering to the license or permit may occur without application or publication pursuant to § 46-2A-4, if no diversion is made from the stock dam and the chief engineer makes a finding that existing water rights will not be impaired.

Source: SL 1996, ch 263, § 6.

46-5-32. Assignment of application, permit, or license. Subject to the limitations provided in §§ 46-5-33 and 46-5-34, any application, permit, or license to appropriate water, including a permit issued under § 46-5-8.1, may be assigned, but no assignment is binding, except upon the parties thereto, unless filed for record with the chief engineer. No assignment may carry with it the right to use the water for any purpose or in any manner other than that specified in the application, permit, or license without the approval of the Water Management Board. Transfer of an application to appropriate water does not confer any right to use of water. The evidence of the right to use water from any works constructed by the United States, or its duly authorized agencies, shall in like manner be filed with the chief engineer, upon assignment. A sale, grant, conveyance, assignment, lease, or other transfer of a permit or license issued under § 46-5-8.1 may be assigned only in accordance with the terms of the contract or instrument of conveyance between the district and the energy industry user.

Source: SDC 1939, § 61.0134; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0127; SL 1981 (2d SS), ch 1, § 9; SL 1983, ch 314, § 62; SL 2008, ch 230, § 2.

46-5-33. Irrigation application, permit, or right not assignable apart from land. No application, permit, or right to appropriate water for irrigation purposes may be assigned, nor may the ownership of an application, permit, or right in any manner be transferred, apart from the land to which it is appurtenant, except in the manner provided by law. A transfer of title to land shall carry with it all rights to the use of water appurtenant to the land for irrigation purposes.

Source: SDC 1939, § 61.0134; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0127; SL 1983, ch 314, § 63; SL 2008, ch 230, § 3.

46-5-34. Irrigation rights appurtenant to land--Amendment of permit required for severance and transfer. All water used in this state for irrigation purposes shall remain appurtenant to the land upon which it is used. However, if for any reason it should become impracticable to use all or any part of the water beneficially or economically for irrigation of any land to which the right of its use is appurtenant, all or any part of the right may be severed from the land and simultaneously transferred and become appurtenant to other land without losing priority of right previously established, subject to existing rights, upon approval of an application for an amended permit. No increase in total acres irrigated may be allowed under this section.

Source: SDC 1939, § 61.0141; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0128; SL 1983, ch 314, § 64.

46-5-34.1. Transfer of irrigation rights apart from land--Restricted purposes--Protection of other users. The provisions of §§ 46-5-33 and 46-5-34 notwithstanding, irrigation rights may be transferred apart from the land to which they are appurtenant if they are transferred for domestic use or use within a water distribution system. Such irrigation rights may be transferred or leased in whole or in part and may be acquired only through the exercise of powers possessed independently of this section. No transfer, however, may be approved by the Water Management Board unless the transfer can be made without detriment to existing rights having a priority date before July 1, 1978, or to individual domestic users. No land which has had an irrigation right transferred from it pursuant to this section, may qualify for another irrigation right from any water source.

Source: SL 1978, ch 320; SL 1983, ch 314, § 65; SL 1989, ch 383; SL 1992, ch 314; SL 1994, ch 345.

46-5-35. Repealed by SL 1996, ch 263, § 3

46-5-36. Abandonment of use of water appurtenant to land--Public water subject to general appropriation. If the owner of the land to which water has become appurtenant abandons the use of such water upon such land, such water shall become public water, subject to general appropriation.

Source: SDC 1939, § 61.0141; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0128.

46-5-37. Failure to use beneficially appropriated water--Forfeiture for nonuse--Reversion to public. If any person entitled to the use of appropriated water fails to use beneficially any part of the water for the purpose for which it was appropriated, for a period of three years, the unused water shall revert to the public and shall be regarded as unappropriated public water.

Source: SDC 1939, § 61.0139; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0125; SL 2011, ch 165, § 269.

46-5-37.1. Abandonment or forfeiture of permits or rights--Recommendation of chief engineer for cancellation. Upon the initiative of the chief engineer or upon petition by any interested person and after reasonable notice to the holder of the right or permit, if the holder can be located, the chief engineer may investigate whether or not a water permit or right has been abandoned or forfeited. After the investigation, the chief engineer may recommend cancellation of the permit or right for reason of abandonment or forfeiture. The recommendation, notice, and hearing shall be conducted pursuant to the procedure contained in chapter 46-2A.

Source: SL 1983, ch 314, § 69; SL 2011, ch 165, § 270.

46-5-37.2. Exceptions to forfeiture for nonuse. The provisions of § 46-5-37 notwithstanding, no water right or permit may be forfeited for nonuse if land authorized for irrigation by a permit or right is placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal program, if the water source is not fully appropriated, if the withdrawal from use does not prevent approval of new permits from the same source, and if the appropriated water has been applied to beneficial irrigation use prior to participation in a federal program.

Source: SL 1989, ch 384.

46-5-38. Future use of water--Entities entitled to reservation. The following entities may reserve water for contemplated future needs upon a showing of availability of unappropriated water and future need pursuant to procedures set forth in chapter 46-2A:

- (1) A state institution, facility, or agency;
- (2) A municipality as defined in § 9-1-1;
- (3) The South Dakota Conservancy District or a water development district as defined in § 46A-2-4;
- (4) A water user district as defined in § 46A-9-2;
- (5) A nonprofit rural water supply company as defined in § 10-36A-1 engaged in the treatment, distribution, and sale of water primarily for domestic purposes to a rural area. The term "rural area" may include a municipality;
- (6) A sanitary district as defined in chapter 34A-5;
- (7) An irrigation district as defined in chapter 46A-4; and
- (8) A water project district as defined in chapter 46A-18.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0122; SL 1961, ch 456; SL 1966, ch 259, § 3; SL 1978, ch 322; SL 1983, ch 314, § 70; SL 1984 (SS), ch 1, § 60.

46-5-38.1. Future use of water--Permit required for actual use--Review of future use permits. Water Management Board approval of an application to appropriate water for future use is a reservation of a definite amount of water with a specified priority date and is not a grant of authority to construct the works or to put the water to beneficial use. Before the time that the holder of a future use permit initiates construction of the works and puts water to beneficial use, the holder shall file an application for a water permit pursuant to the procedure contained in chapter 46-2A. If the holder of the future use permit is granted a water permit to develop only a portion of the water reserved by the future use permit, the holder shall apply for and receive an additional water permit, or permits, before developing and using the remaining water reserved in the future use permit. Permits for future uses shall be reviewed by the board every seven years and are subject to cancellation if the board determines that the permit holder cannot demonstrate a reasonable need for a future use permit.

Source: SL 1983, ch 314, § 71; SL 2011, ch 165, § 271.

46-5-39. Temporary use permits--Authorization for. Before an entity described in § 46-5-38 is ready to use part or all of the water subject to a future use permit or permits, temporary appropriations may be made of the water. Any person desiring to appropriate the water shall make an application to the chief engineer for a temporary permit pursuant to the procedure contained in chapter 46-2A.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0122; SL 1961, ch 456; SL 1966, ch 259, § 3; SL 1983, ch 314, § 72.

46-5-40. Temporary use permits--Cancellation. The chief engineer may not cancel a temporary use permit with less than six months notice to the permit holder. In no case may a temporary use permit be cancelled prior to the time at which facilities are constructed and water may be put to beneficial use by an entity described in

§ 46-5-38 holding a permit under the provisions of § 46-5-38.1. No person may acquire any right under a temporary permit to the use of water beyond the time of cancellation of the temporary use permit.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0122; SL 1961, ch 456; SL 1966, ch 259, § 3; SL 1983, ch 314, § 73.

46-5-40.1. Temporary permits for use of public water for construction, testing, or drilling purposes--Term of permit--Qualifications and limitations. The Water Management Board may promulgate rules to authorize the chief engineer to issue temporary permits for the use of public water for construction, testing, or drilling purposes. No temporary permit is valid after December thirty-one of the year in which the permit is issued. No temporary permit may be issued if the permit interferes with or adversely affects prior appropriations or vested rights. A temporary permit shall contain qualifications and limitations necessary to protect the public interest. The issuance of a temporary permit is permission to use public water on a temporary basis and does not grant any water rights.

Source: SL 1987, ch 328, § 5.

46-5-41 to 46-5-43. Repealed by SL 1983, ch 314, §§ 74 to 76

46-5-44. United States withdrawal of unappropriated waters--Cancellation. As soon as the Water Management Board is satisfied that the construction of works by the United States subject to a United States withdrawal approved prior to July 1, 1983, is no longer contemplated, it shall cancel its withdrawal of those waters from appropriation and the waters again shall be subject to general appropriation.

Source: SDC 1939, § 61.0137; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0123; SL 1983, ch 314, § 77.

46-5-45. Repealed by SL 1983, ch 314, § 78

46-5-46. Unauthorized use or waste of water or violation of permit or license prohibited. No person may engage in unauthorized use of water, may waste water, or may violate the terms or conditions of a permit or license to appropriate water.

Source: SDC 1939, §§ 61.9907, 61.9910; SL 1965, ch 304, § 2; SL 1981, ch 316, § 2; SL 1983, ch 314, § 79.

46-5-47. Flood control--Permit required. No person may construct facilities on any watercourse to control floods for the purpose of preventing or alleviating damage without a permit issued pursuant to the procedure contained in chapter 46-2A. The permit may be approved subject to conditions deemed necessary, including conditions to safeguard water supplies for existing water permits and licenses, to assure the safety of works, and to prevent damage to property. No person may construct works in a manner not approved in the permit for those works. This section applies only to watercourses whose flow exceeds that of a dry-draw as defined in subdivision 46-1-6(8).

Source: SL 1983, ch 314, § 80; SL 2011, ch 165, § 272.

46-5-48. Flood control--Emergency facilities authorized. Section 46-5-47 does not apply to temporary emergency facilities constructed for the immediate protection of life or property. The chief engineer shall be promptly notified of the construction of such emergency facilities.

Source: SL 1983, ch 314, § 81.

46-5-49. Filing of vested right claim--Hearing--Mandatory filing--Waiver of right. Any person claiming to be owner of a vested right to appropriate water from any surface water source for beneficial use other than domestic use as defined in subdivision § 46-1-6(7), may file with the chief engineer a vested right claim in a form and manner prescribed by the Board of Water Management. The claim shall set forth the amount of water used, when the water was used, purpose of use, the location of the diversion works and, if the water has been used for irrigation purposes, the legal description of the land upon which the water has been used, and the name of the owner of the land. The claim shall be signed under oath and shall be either from the claimant's own personal knowledge or on information and belief. The hearing on the vested right claim shall be conducted pursuant to the procedures contained in chapter 46-2A. If, in the course of an investigation conducted by the chief engineer pursuant to subdivision 46-2-17(1), a person asserts the existence of a vested water right, the chief engineer may require that person to file a vested right claim within ninety days pursuant to this section. Failure to file in the absence of such a requirement by the chief engineer does not constitute a waiver of a vested water right.

Source: SL 1986, ch 363, § 5.

46-5-50. Drip irrigation defined. For purposes of § 46-5-51, the term, drip irrigation, means a planned irrigation system in which water is applied directly to the root zone of plants by means of applicators, such as orifices, emitters, porous tubing, or perforated pipe, that are operated under low pressure and are placed on or below the surface of the ground.

Source: SL 1990, ch 358, § 1; SL 2011, ch 165, § 273.

46-5-51. Permit not required for drip irrigation. A permit to appropriate water, pursuant to §§ 46-1-15 and 46-5-10, is not required for drip irrigation, as defined in § 46-5-50, if the drip irrigation meets the following conditions:

- (1) The irrigation is for noncommercial purposes; and
- (2) Use of water does not exceed eighteen gallons per minute.

Source: SL 1990, ch 358, § 2; SL 1996, ch 263, § 4.

46-5-52. Noncommercial purposes defined. For purposes of § 46-5-51, the term, noncommercial purposes, means tree plantings specifically for conservation purposes, excluding trees planted for ornamental or commercial purposes.

Source: SL 1990, ch 358, § 3.
