

## CHAPTER 46-6

## GROUNDWATER AND WELLS

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46-6-1. Vested rights defined. The term, vested rights, as used in this chapter, means:

- (1) Beneficial uses of groundwater under diversions and applications of water before February 28, 1955;
- (2) The right to take and use groundwater for beneficial purposes if an owner or lawful agent was engaged in the construction of works for the actual application of water to a beneficial use on February 28, 1955, if the works are completed and water is actually applied for such use within a reasonable time after that date.

**Source:** SL 1955, ch 431, § 1; SDC Supp 1960, § 61.0401 (11); SL 2011, ch 165, § 274.

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46-6-2. Filing of vested right claim by claimant of vested right to groundwater--Hearing--Mandatory filing--Waiver of right. Any person claiming to be the owner of a vested right to appropriate water from any underground source for beneficial use other than for domestic use as defined by subdivision § 46-1-6(7) may file a vested right claim with the chief engineer 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 well 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 1955, ch 431, § 1; SDC Supp 1960, § 61.0403; SL 1983, ch 314, § 91; SL 1986, ch 363, § 6.

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46-6-3. Appropriation of groundwater authorized. Subject to vested rights and prior appropriations, groundwaters of the state may be appropriated pursuant to the procedures contained in chapter 46-2A.

**Source:** SL 1955, ch 431, § 1; SDC Supp 1960, § 61.0404; SL 1971, ch 252, § 1; SL 1972, ch 237, § 5; SL 1973, ch 279, § 2; SL 1977, ch 364, § 7; SL 1978, ch 319, § 2; SL 1983, ch 314, § 92.

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46-6-3.1. Annual withdrawal of groundwater not to exceed recharge--Exception for water distribution systems. No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source. An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems.

**Source:** SL 1978, ch 323, § 2; SL 1983, ch 314, § 93.

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46-6-4. Repealed by SL 1983, ch 314, § 94

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46-6-5. Repealed by SL 1982, ch 309, § 14

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46-6-6. Collection, preservation, and publication of data on underground water. The collection, preservation, and publication of data with respect to the occurrence, quantity, quality, and hydraulic characteristics of underground water and the nature and identity of the subsurface geological formations in which it occurs are required by the public interest.

To this end the Water Management Board shall promulgate rules pursuant to chapter 1-26 governing the collection, preservation, and publication of such data.

**Source:** SDCL, § 46-6-6 as enacted by SL 1971, ch 252, § 2; SL 1972, ch 237, § 7; SL 1983, ch 314, § 95; SL 1993, ch 256, § 57.

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46-6-6.1. Rules and regulations governing large capacity wells--Criteria and contents. In addition to powers otherwise provided the Water Management Board shall promulgate rules pursuant to chapter 1-26 controlling the

location and capacity of irrigation, industrial, municipal, and other large capacity wells for the purpose of ensuring or protecting water for reasonable domestic use, without the necessity of requiring maintenance of artesian head pressure in a domestic use well. In addition the rules shall provide:

- (1) For regulation of the use of large capacity wells in the degree necessary to maintain an adequate depth of water for reasonable domestic needs and for a prior appropriator at his point of diversion, in wells which meet minimum well construction standards;
- (2) For minimum construction standards for all wells in South Dakota which standards shall be based upon the ability of a well to produce water independent of artesian pressure;
- (3) For regulation so the waste or deterioration of the quantity of groundwater through surface or underground leakage will be minimal;
- (4) Standard which will provide for lowering of a water lift mechanism to a depth near the bottom of the groundwater supply or, in artesian water to a substantial depth below the geological formation confining the groundwater; and
- (5) For regulation which will provide for a reasonable life of all wells.

**Source:** SL 1955, ch 431, § 1; SDC Supp 1960, § 61.0402; SDCL, § 46-6-6; SL 1972, ch 237, § 6; SL 1993, ch 256, § 58.

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46-6-6.2, 46-6-7. Repealed by SL 1983, ch 314, §§ 96, 97

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46-6-8. Repealed by SL 1974, ch 55, § 50

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46-6-9. Well driller license--Fee--Issuance. Any well driller, before doing any well drilling and before contracting for any such work, shall first secure and thereafter maintain a license. The words "South Dakota Licensed Well Driller No." shall be plainly displayed at a conspicuous place on the premises where the work is being conducted. The fee for the license is two hundred dollars for a resident, and three hundred dollars for a nonresident. The same amounts shall be paid each calendar year for renewal of the license. A resident is any person whose primary residence is located in South Dakota and has not claimed residency in any other state within ninety days of filing an application to become licensed. The fee shall be paid to the Department of Environment and Natural Resources and deposited with the state treasurer in the environment and natural resources fee fund established in § 1-40-30. The license shall be issued pursuant to the procedures contained in chapter 46-2A. No license may be issued unless the applicant is experienced and knowledgeable in good well construction methods. The Water Management Board shall promulgate rules pursuant to chapter 1-26 establishing qualifications for well drillers.

**Source:** SL 1955, ch 431, § 1; SDC Supp 1960, § 61.0415; SL 1977, ch 365; SL 1981, ch 317; SL 1983, ch 314, § 98; SL 1993, ch 256, § 59; SL 2009, ch 13, § 9.

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46-6-9.1. Well driller or well pump installer license--Revocation. The chief engineer may initiate an action before the Water Management Board to revoke the license of any well driller or well pump installer upon refusal by the driller to properly complete any well or well pump installation in accordance with rules governing well construction or well pump installation or upon violation of this title, or any rule or order promulgated pursuant to this title. Any action for the revocation of a well driller's or well pump installer's license shall comply with the provisions of § 1-26-19. A well driller or well pump installer whose license has been revoked may not apply for a new license sooner than six months after the effective date of the revocation.

**Source:** SL 1983, ch 314, § 99; SL 2001, ch 241, § 7.

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46-6-9.2. Well driller's license or well pump installer's license required for certain persons. Any person who performs work for compensation in the repair of wells or as a well pump installer shall obtain a well driller's license issued pursuant to § 46-6-9 or a well pump installer's license issued pursuant to § 46-6-9.3 before conducting or contracting for such work.

**Source:** SL 2001, ch 241, § 5.

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46-6-9.3. Well pump installer license--Fee--Issuance. The Water Management Board shall issue a well pump installer license to any applicant who meets the requirements specified in this section. The fee for the license is two hundred dollars for a resident, and three hundred dollars for a nonresident. The same amounts shall be paid each calendar year for renewal of the license. A resident is any person whose primary residence is located in South Dakota and has not claimed residency in any other state within ninety days of filing an application to become licensed. The fee shall be paid to the Department of Environment and Natural Resources and deposited by the state treasurer in the environment and natural resources fee fund established in § 1-40-30. The license shall be issued pursuant to the procedures contained in chapter 46-2A. No license may be issued unless the applicant is experienced and knowledgeable in well pump installation methods. The Water Management Board shall promulgate rules pursuant to chapter 1-26 establishing well pump installation qualifications.

**Source:** SL 2001, ch 241, § 6; SL 2009, ch 13, § 10.

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46-6-9.4. Certain persons exempt from well pump installer license requirements. Any plumbing contractor licensed under chapter 36-25, any electrical contractor licensed under chapter 36-16, and any mechanical contractor licensed under municipal ordinances may be exempt from the well pump installer licensure requirements of § 46-6-9.2.

**Source:** SL 2001, ch 241, § 8.

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46-6-9.5. Well pump installers and well drillers prohibited from performing certain acts without appropriate license. No licensed well pump installer or well driller may perform any electrical, plumbing, or mechanical act regulated by state law unless licensed to do so. All applicable rules and regulations of state law and municipal ordinances shall apply regarding any permit and any installation practice.

**Source:** SL 2001, ch 241, § 9.

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46-6-10. Wells to be constructed so as to prevent waste--Methods of construction, specification by board. The Water Management Board shall require every well to be so constructed and finished as to prevent waste of its waters or underground leakage of these waters into other reservoirs. To this end it may specify methods of construction, kinds, size, and number of casings used, valves or other control devices to regulate artesian flow, and any other device or construction which may be necessary to prevent waste through faulty construction or through corrosion.

**Source:** SDC 1939, § 61.0404; SL 1955, ch 431, § 1; SDC Supp 1960, § 61.0409.

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46-6-11. Records of well construction required. On each well drilled the driller shall keep accurate records and complete a record of well construction on a form supplied by the chief engineer. If for any reason well construction is begun but not completed, the well driller shall complete the record of well construction to the extent possible. Within one month of completion of a well driller's work on a well, the well driller shall file all well construction records with the chief engineer for placement on permanent file. Access to the records is available to the public at any time during normal business hours.

**Source:** SL 1955, ch 431, § 1; SDC Supp 1960, § 61.0406; SL 1971, ch 252, § 3; SL 1983, ch 314, § 100; SL 2011, ch 165, § 275.

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46-6-12. Inspection of wells by chief engineer or state geologist. The chief engineer or the state geologist may inspect wells for the purpose of making electric or radioactivity logs, caliper, leakage, and other surveys that pertain to the condition of the wells.

**Source:** SL 1955, ch 431, § 1; SDC Supp 1960, § 61.0406; SL 1983, ch 314, § 101.

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46-6-13. Measurement of flow and pressure of wells by chief engineer. The chief engineer may measure the flow and pressure of any well, public or private, for the purpose of determining the increase or diminution of the flow or pressure of the well.

**Source:** SDC 1939, § 61.0403; SL 1955, ch 431, § 1; SDC Supp 1960, § 61.0408; SL 1983, ch 314, § 102.

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46-6-14. Waste of water from large capacity well prohibited. No owner of property on which a large capacity artesian well is located may allow the water of the well to flow to waste if the board determines it is feasible to control the flow.

**Source:** SDC 1939, § 61.0405; SL 1955, ch 431, § 1; SDC Supp 1960, § 61.0410; SL 1983, ch 314, § 103.

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46-6-15. Uncontrolled artesian well--Definition--Owner to notify board of size and location. The owner of an uncontrolled artesian well shall notify the Water Management Board in writing of the location and size of the well. An uncontrolled artesian well is one that cannot be controlled by mechanical means.

**Source:** SL 1955, ch 431, § 1; SDC Supp 1960, § 61.0411; SL 2011, ch 165, § 276.

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46-6-16. Uncontrolled artesian well from oil and gas exploration--Notice to chief engineer. The Board of Minerals and Environment shall notify the chief engineer in writing of the location of any uncontrolled artesian well resulting from oil and gas exploration.

**Source:** SL 1955, ch 431, § 1; SDC Supp 1960, § 61.0412; SL 1983, ch 314, § 104.

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46-6-17. Repealed by SL 1983, ch 314, § 105

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46-6-18. Plugging abandoned or forfeited well by owner--"Owner" defined. Any abandoned or forfeited well shall be plugged by its owner so that no leaking of its waters occurs underground or over the surface. The owner of property on which an abandoned or forfeited well is located is deemed to be the owner of the well.

**Source:** SL 1955, ch 431, § 1; SDC Supp 1960, § 61.0412; SL 1983, ch 314, § 107.

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46-6-19. Repealed by SL 1983, ch 314, § 108

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46-6-20. Rules and regulations of board relating to wells. The Water Management Board shall promulgate rules pursuant to chapter 1-26 providing for or directing, as appropriate:

- (1) Rehabilitation of wells;
- (2) Construction of wells;
- (3) Prevention of underground leakage or other waste of water; and
- (4) Plugging or other control of abandoned, forfeited, or uncontrolled artesian wells.

**Source:** SDC 1939, § 61.0414; SL 1955, ch 431, § 1; SL 1983, ch 314, § 109; SL 1993, ch 256, § 60.

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46-6-21. Control of large capacity well required. No owner or person in control of a large capacity artesian well may allow it to flow without a proper or sufficient casing or without a valve or contrivance for checking or preventing the flow of water if the Water Management Board determines that installation of a casing, valve, or contrivance is feasible. The provisions of this section also apply to any officer in charge of wells belonging to the state or any county, township, or municipality.

**Source:** SDC 1939, § 61.9916; SL 1981, ch 316, § 3; SL 1983, ch 314, § 112.

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46-6-22, 46-6-23. Repealed by SL 1983, ch 314, §§ 113, 114

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46-6-24. Liability for damages to domestic and municipal wells. The failure of a well to meet standards established pursuant to § 46-6-6.1 is not a defense in any action or proceeding regarding damage, loss of water production or quality, replacement cost, or increased operating expenses incurred by a municipal or domestic use well located in a formation older than or stratigraphically lower than the greenhorn formation caused by any person using or withdrawing groundwater for mine dewatering in a formation older than or stratigraphically lower than the greenhorn formation.

**Source:** SL 1980, ch 304, § 1; SL 1982, ch 311.

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46-6-25. Domestic and municipal well protection--Enforceability--Fees and costs. Section 46-6-24 is enforceable in circuit court by the damaged owner or user of a domestic or municipal well. Attorney's fees, expert fees, and court costs may be awarded the plaintiff at the discretion of the court.

**Source:** SL 1980, ch 304, § 2.

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46-6-26. Permits may be denied or conditioned to protect domestic or municipal wells or natural springs. The Water Management Board or chief engineer pursuant to § 46-1-16 may deny or condition any permit in conformity with § 46-6-24 as is determined necessary to protect domestic wells, municipal wells, or natural springs of this state.

**Source:** SL 1980, ch 304, § 3; SL 1990, ch 355, § 5.

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46-6-27. Plugging, sealing, or capping abandoned wells required--Rules. If the owner of an existing well drills a replacement well and if the owner has no plan to use the existing well, the existing well is considered abandoned. The well owner shall plug the abandoned well within thirty days after the new well is ready for use. Any well that is being used or is not considered abandoned shall be sealed or capped at the surface. The Water Management Board shall promulgate rules pursuant to chapter 1-26 providing for plugging, capping, or sealing of wells to protect the health and safety of the public and to prevent contamination of groundwater by surface waters.

**Source:** SL 1983, ch 319, § 1; SL 1993, ch 256, § 61.

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46-6-28. Geological survey to plug unused wells. The state geological survey shall plug its test holes, observation wells, and any other of its borings or wells, pursuant to the provisions of § 46-6-27, if they are no longer being used.

**Source:** SL 1983, ch 319, § 2.

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46-6-29. Plugging or controlling large capacity well by chief engineer--Costs. If an owner of property fails to plug or otherwise control a large capacity artesian well on his property after receiving an order to do so from the Water Management Board under the provisions of § 46-6-14, the chief engineer may enter upon the property where the well is located and plug or otherwise control the well. The cost of plugging or controlling the well shall be borne by the owner of the property and shall be recorded with the county register of deeds as a lien against the property until paid. This section does not limit or foreclose any other remedy against the owner of the property.

**Source:** SL 1983, ch 314, § 106.

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46-6-30. Order of chief engineer for proper construction or repair of well--Plugging or controlling well--Costs. The chief engineer, during or immediately following construction of a well, may order the owner or driller of the well to properly construct or repair the well if the chief engineer determines that there is a serious and imminent threat to health or property. The chief engineer, upon failure of an owner or driller to comply with an order issued pursuant to this section, may enter upon the property where the well is located and plug or otherwise control the well. The cost of plugging or controlling the well shall be borne by the owner of the property and shall be recorded with the county register of deeds as a lien against the property until paid. This section does not limit any other remedy against an owner or driller of a well.

**Source:** SL 1983, ch 314, § 110; SL 2011, ch 165, § 277.

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46-6-31. Plugging or controlling well by chief engineer--Bidding provisions. The chief engineer, if plugging or otherwise controlling a well pursuant to the provisions of §§ 46-6-29 and 46-6-30, shall comply with the bidding provisions of chapters 5-18A and 5-18B unless the chief engineer determines that compliance with those provisions will result in harm to health or property or will result in an unreasonable waste of water.

**Source:** SL 1983, ch 314, § 111; SL 2011, ch 2, § 144; SL 2011, ch 165, § 278.

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