

CHAPTER 46-10

ADJUDICATION OF WATER RIGHTS

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46-10-1. Action for general adjudication of water or water use rights--When attorney general to bring. It shall be the duty of the attorney general to bring an action for the general adjudication of the nature, extent, content, scope, and relative priority of the water rights and the rights to use water of all persons, or entities, public or private, on any river system and on all other sources, when in his judgment, or in the judgment of the Water Management Board, the public interests require such action.

Source: SDC 1939, § 55.1811; SL 1980, ch 305, § 1.

46-10-1.1. Procedure in actions for general adjudication. The procedure in any case of general adjudication shall be as in other civil cases, insofar as that procedure is not inconsistent with this chapter.

Source: SL 1980, ch 305, § 15.

46-10-1.2. Orders in actions involving one hundred or more defendants. In the conduct of actions to which § 46-10-3.3 applies, the court may make appropriate orders

- (1) Providing for the limitation of service and filing, or substitutes therefor, of pleadings, briefs, orders, motions, demands, appearances, claim forms, discovery materials, and similar documents;
- (2) Requiring, for the fair conduct of the action, that notice be given all parties in a reasonable manner of any document served or filed in this action;

- (3) Providing for simplified discovery from any party, upon such terms and conditions as the court determines are advisable;
- (4) Adopting permissive or mandatory forms for the submission of claims to water rights or rights to use water; provided, however, that a party shall not be precluded from filing an answer or other pleading in addition to said forms;
- (5) Determining the course of proceedings and prescribing measures to prevent undue repetition or complication in the presentation of evidence and arguments;
- (6) Dealing with similar procedural matters.

The orders may be combined with an order under § 15-6-16 and may be altered or amended from time to time as the court deems advisable.

Source: Supreme Court Rule 82-19.

46-10-2. Jurisdiction and venue of action for general adjudication. The court in which any action involving the general adjudication of water rights or rights to use water may be properly brought, shall have exclusive jurisdiction to hear and determine all questions necessary for the adjudication of all water rights and the rights to use water within the river system and all other sources involved; and the attorney general may bring suit as provided by law in any court having jurisdiction over any part of the river system and all other sources, which shall likewise have exclusive jurisdiction for such purposes.

Source: SDC 1939, § 61.0119; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0154; SL 1980, ch 305, § 2.

46-10-2.1. Deposit of documents and orders with court. The court conducting a general adjudication may direct the chief engineer of the Water Management Board to deposit with the court certified copies of every water permit, water license, certificate of construction, or other document or order and every cancellation of each document or order in the river system and all other sources involved, within a time set by the court. This section does not in any manner limit the powers of the court.

Source: SL 1980, ch 305, § 3; SL 2011, ch 165, § 283.

46-10-2.2. Documents and orders as prima facie evidence--Certified copies admissible. The court conducting a general adjudication shall regard any water permit, water license, certificate of construction, or other document or order issued by or under the authority of the Water Management Board or its predecessors, including the state engineer, and not subsequently cancelled by it or under its authority or its predecessors, including the state engineer, to be prima facie evidence of the right purported to be conferred. A certified copy of any such document or order shall be admissible in evidence.

Source: SL 1980, ch 305, § 4.

46-10-2.3. Powers and duties of court conducting general adjudication. The court conducting a general adjudication shall, in addition to exercising any other power or duty conferred by law:

- (1) Confirm those rights evidenced by previous court decrees when those rights have not been forfeited, abandoned, or otherwise lost;
- (2) Adjudicate the validity of all cancelled and uncanceled permits, certificates of construction, or licenses or other documents or orders purported to be granted by or under the authority of the Water Management Board or its predecessors, including the state engineer, and not heretofore adjudicated;
- (3) Determine the extent and priority of and adjudicate any interest in any water right or right to the use of water of the river system or on all other sources not otherwise represented by the aforesaid permits, licenses, certificates, documents, orders, or decrees;
- (4) Establish, in whatever form determined to be most appropriate by the court, one or more tabulations or lists of water rights or rights to use water which tabulations or lists may include a notation of the water right or right to use water adjudged to each party, the priority, the amount or rate, the purpose, the periods or place of use, and, as to water used for irrigation, the specific tracts of land to which it shall be appurtenant

together with other conditions as may be necessary to define a right and its priority.

Source: SL 1980, ch 305, § 5.

46-10-3. Parties to action for general adjudication. In any action for the general adjudication of the rights to use water and water rights on any river system and all other sources all those whose claims to the use of such waters or claims of water rights are of record, and all other claimants so far as they can be ascertained with reasonable diligence, shall be made parties.

Source: SDC 1939, § 61.0119; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0154; SL 1980, ch 305, § 6.

46-10-3.1. Adding additional defendants as parties. Defendants in addition to those named in the original complaint may be added within a reasonable time and defendants may be added throughout the duration of the suit, as appropriate.

Source: SL 1980, ch 305, § 9.

46-10-3.2. Commencement of action for general adjudication--Service. Except as provided in § 46-10-3.3 for actions in which the named defendants number one hundred or more, an action for general adjudication shall be commenced and service shall be made as in other civil cases.

Source: SL 1980, ch 305, § 8.

46-10-3.3. Defendants numbering one hundred or more--Commencement of action--Service. An action for general adjudication is commenced by the filing of a complaint in circuit court in any case in which the named defendants number one hundred or more. In such a case personal service of a summons and complaint is not required but may be made. If personal service is not made, the court shall order service to be made by the plaintiff on named defendants by mailing a court approved notice of the action by registered or certified mail, return receipt requested. The court shall order the plaintiff to obtain service on all unnamed defendants by publication of the notice for four consecutive weeks in a newspaper published in each of the counties within which interest in rights to use of the water and water rights may be affected by the adjudication. If there is no newspaper in one or more of the counties, then publication for the counties shall be in one or more newspapers published in the state, and of general circulation within the counties. If publication is in a daily newspaper, one insertion a week is sufficient.

Source: SL 1980, ch 305, § 8; SL 1987, ch 29, § 31; SL 2011, ch 165, § 284.

46-10-3.4. Captioning complaint for general adjudication. The complaint for such general adjudication shall be captioned: In re the general adjudication of all rights to use water and water rights in the (to be specified) river system and all other sources, State of South Dakota.

Source: SL 1980, ch 305, § 10.

46-10-4. Repealed by SL 1980, ch 305, § 7

46-10-4.1. Action to determine conflicting water or water use rights--Court's powers and duties--Caption of action. The attorney general in lieu of bringing an action for a general adjudication may or any person may bring an action for the purpose of determining conflicting water rights or rights to use water. The court before which any such action may be properly brought may exercise the powers and duties set out by this chapter, as appropriate. An action for the determination of conflicting water rights shall be captioned as set forth in Title 15 of the South Dakota Codified Laws.

Source: SL 1980, ch 305, § 11.

46-10-5. Action for general adjudication or to determine conflicting water rights--Copies of complaints mailed to Water Management Board. Whenever suit is brought for general adjudication or to determine conflicting water rights in any of the courts of this state, a copy of the complaint shall be by the complainant mailed by registered or certified letter to the Water Management Board at its office at the state capital, at the time of the first service of summons in the action, and likewise a copy of any amended complaint or cross-complaint shall be mailed in like manner to the board immediately after service thereof upon the opposing party.

Source: SDC 1939, § 55.1811; SL 1980, ch 305, § 12.

46-10-6. Action for general adjudication or to determine conflicting rights--Proof of notice of suit to water management board. No final decree may be issued in any action for general adjudication or in an action for determination of conflicting water rights unless it appears that the water management board has had reasonable notice of the suit.

Source: SDC 1939, § 55.1811; SL 1980, ch 305, § 13.

46-10-7. Intervention by attorney general. If, in the judgment of the Water Management Board, the public interests require action adverse to any party thereto, it may call upon the attorney general to intervene in the action. The attorney general shall then appear on behalf of the state and take whatever steps are necessary to protect the interests of the public, of the state or of any of its institutions.

Source: SDC 1939, § 55.1811; SL 1983, ch 314, § 157.

46-10-8. Judgment in action for general adjudication or to determine conflicting rights--Certified copy filed with board. The court before which any action for general adjudication or any action for the determination of conflicting rights is conducted shall file a certified copy of any final judgment in such case with the Water Management Board.

Source: SDC 1939, § 61.0120; SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0155; SL 1980, ch 305, § 14.

46-10-8.1. Appointment of water master to administer interim or final decree. The authority of a court to appoint a water master to administer any interim or final decree relating to water, including any interim or final decree issued under the provisions of §§ 46-10-1 to 46-10-8, inclusive, is hereby granted.

Source: SL 1983, ch 314, § 178.

46-10-9 to 46-10-12. Repealed by SL 1983, ch 314, §§ 158 to 161

46-10-13. Appeal to board from acts or decisions of water master--Appeal to circuit court. Any interested person may appeal from acts or decisions of the water master to the Water Management Board and the board shall promptly and at a stated time and place fixed by it, after due notice to the parties, hear and determine the matter in dispute. Its decision shall be final, unless an appeal is taken to the circuit court having jurisdiction, in conformity with the law governing appeals.

Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0141; SL 1983, ch 314, § 162.

46-10-14 to 46-10-26. Repealed by SL 1983, ch 314, §§ 163 to 175

46-10-27. Transferred to § 46-10A-16

46-10-28. Repealed by SL 1983, ch 314, § 177
