



Unauthorized Fence Crossing

South Dakota Rivers and Streams Requiring Gates in Fences

Pursuant to South Dakota Codified Law 43-17-38 and Administrative Rules of South Dakota Chapter 74:02:10, following is a complete list of streams as of June 25, 2009, which requires gates in fences crossing these waterways:

- (1) Big Sioux River from the Grant-Codington County boundary to a point five miles north of the Missouri River located in Union County;
- (2) Turtle Creek, from Highway 26 to the James River, located in Spink County;
- (3) Elm River, from Elm Lake to the James River, located in Brown County;
- (4) Moccasin Creek, from 18th Avenue Southwest to 8th Avenue Northwest in the City of Aberdeen, located in Brown County;
- (5) Flandreau Creek, from the Minnesota state boundary to the Big Sioux River, located in Moody County;

- (6) Vermillion River, from Lake Vermillion to the Missouri River;
- (7) East Fork of the Vermillion River, from Interstate 90 to Lake Vermillion, located in McCook County;
- (8) Split Rock Creek, from the Minnesota state boundary to the Big Sioux River, located in Minnehaha County;
- (9) Firesteel Creek, that portion located in Davison County;
- (10) Little White River, from the Bennett-Todd County boundary to the White River, located in Todd and Mellette Counties;
- (11) White River, from the Nebraska state boundary to the Missouri River;
- (12) Bad River, from the Stanley-Jones County boundary to the Missouri River, located in Stanley County;
- (13) Cheyenne River, from the Custer-Fall River County boundary to Highway 44 in Pennington County, and from the confluence of the Belle Fourche-Cheyenne Rivers to the Missouri River;
- (14) Cheyenne River, from Hat Creek to Angostura Dam in Fall River County;
- (15) Moreau River, from Highway 63 to the Missouri River;
- (16) Grand River, from Shadehill Reservoir to the Missouri River, and
- (17) Redwater River, from Highway 85 to the Belle Fourche River, located in Butte County.

Because the Missouri River, James River, Boise des Sioux River and the lower five miles

of the Big Sioux River have been designated as navigable pursuant to federal law, fencing, with or without gates, across the federally-navigable portions of these rivers is not permitted.

This pamphlet does not address the issue of liability for injuries occurring while recreating on these streams.

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Environment and
Natural Resources
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<http://denr.sd.gov/des/wr/fence.aspx>



Landowner and Recreationist Guide to Fencing of Navigable Streams



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South Dakota Department of Environment and
Natural Resources

South Dakota Department of Game, Fish and Parks

Stream Fence Crossings:

When is a gate needed?

Informational sheet

According to South Dakota law, navigable rivers and streams are public highways. This allows the public to use these waterways for any lawful activity such as wading, floating, boating, snowmobiling, fishing, and hiking. However, these activities need to occur within the boundaries of the “public highway,” which is located between the ordinary high water marks on each stream bank. Any public use above the ordinary high water mark (outside the stream banks) or crossing private property to access the stream is trespassing unless landowner permission has been obtained.

In 1990, legislation was enacted to address both the public’s right of access and the landowner’s right to fence across “navigable” rivers and streams. Navigable rivers and streams are designated by the South Dakota Legislature as being capable of supporting a manned canoe or other vessel throughout the summer in two out of every ten years. The South Dakota Legislature and the South Dakota Water Management Board have designated that certain segments of these navigable rivers and streams have gates installed to allow public access through any fence crossing these waterways. A complete list of these affected rivers and streams is available in this publication.

Recreationist Requirements

Gates and fences over the listed waterways are legal structures. Please respect the private property of landowners. Please do not trespass on private property or vandalize these fences and gates. Trespassing is a Class 2 misdemeanor and vandalism can range from a Class 2 misdemeanor to a Class 4 felony, depending upon severity. Anyone encountering a fence over a designated navigable stream that does not have a gate installed to allow public access should contact the South Dakota Department of Environment and Natural Resources (DENR) Water Rights Program to report its location.

Above all, utmost caution should be exercised when traveling on unfamiliar rivers and streams. Assume there will be fences across the waterway. Fences across rivers and streams are for the purpose of containing livestock; livestock can be unpredictable especially around strangers. Caution should be taken to avoid livestock.



Landowner Responsibilities

A landowner who fences any navigable waterway must register the fence location, and mark the fence and gate, so both are visible upstream and downstream. Landowners intending to build fences and landowners who already have fences in place must comply with these laws. Failure to comply with these laws is a Class 2 misdemeanor. Following is a complete list of landowner requirements and gate specifications.

Landowner Requirements

- 1) Registration of the fence with the Chief Engineer includes the following:
 - a) The name, address, and telephone number of the landowner proposing to construct or maintain the fence.
 - b) The name, address, and telephone number of the person responsible for maintaining the fence if different than the landowner.
 - c) The location of the fence where it crosses the stream, described by its direction and distance from the nearest legal section corner, including section number, township, and range.
- 2) Install and maintain a functional gate in the fence over the stream or, if allowed by variance, immediately adjacent to the public right of way to allow passage of boats, canoes, other vessels, snowmobiles, and pedestrians.
- 3) Remove the gate or keep it open when livestock are not present, unless a variance has been granted.

Trespassing or criminal acts such as vandalism should be reported to local law enforcement.

Minimum Gate Specifications

- 1) The gate must have a minimum overhead clearance of 6 feet, and a minimum opening of 6 feet wide.
- 2) The gate opening must be outlined with reflective or highly visible material.
- 3) Fencing materials may be used to close the gap on each side of the gate between the gate and the stream bank.
- 4) Reflectors, spaced at a maximum of 25 feet, must be attached to the fencing that connects the gate to the stream banks.
- 5) All reflectors or highly visible material must be visible both upstream and downstream.



Authorized gate on the Big Sioux River

The DENR Water Rights Program is responsible for processing fence registrations and processing variance requirements. Any questions regarding fencing issues, or location of registered fences, should be made to DENR, Water Rights Program, 523 E. Capitol Ave., Pierre, SD 57501, phone (605) 773-3352. Registration forms are available on the web at: <http://denr.sd.gov/des/wr/fence.aspx>