



**DEPARTMENT OF ENVIRONMENT  
and NATURAL RESOURCES**

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**FOR IMMEDIATE RELEASE:** Friday, Jan. 22, 2016  
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**FOR MORE ON STREAM FENCING:** <http://denr.sd.gov/des/wr/fence.aspx>

## **Gates Still Required for Fences Crossing Firesteel Creek**

PIERRE, S.D. – Gates in fences crossing Firesteel Creek in Davison County are still required. Firesteel Creek enters the James River near Mitchell.

A petition filed last year failed in its effort to remove Firesteel Creek from the list of navigable streams in South Dakota where gates are required in fences crossing the stream.

Therefore, existing laws and rules continue to apply to fences crossing Firesteel Creek in Davison County.

Gates on fences are required to allow safe use and passage up and down Firesteel Creek. Laws requiring gates were enacted to provide a level of protection for the fence owner while maintaining public access to the stream. If someone is injured by a fence across the creek and the fence owner can show state requirements were met, the fence owner's liability is limited. State requirements include installing a gate in the fence to allow passage through the fence, placing reflective or highly visible material outlining the gate opening and registering the gate and fence with the state Department of Environment and Natural Resources' Water Rights Program.

Gary Bussmus petitioned the state Water Management Board last year to have Firesteel Creek removed from the list of streams where gates are required in fences crossing the stream. With a 4-3 vote, the board adopted at its December 2015 meeting a rule that would eliminate the requirement for gates in fences crossing Firesteel Creek from the Loomis Road (405<sup>th</sup> Avenue) upstream to the Davison/Aurora County line.

However, the Legislative Interim Rules Review Committee, which reviews all administrative rules adopted by agency boards and commissions, voted unanimously to revert the process back to the Water Management Board for another hearing. The committee decided the board had not adequately considered all comments during its hearing process.

Rivers and creeks in the state where gates are required in fences include portions of the Bad, Big Sioux, Cheyenne, East Vermillion, Elm, Grand, Little White, Moreau, Redwater, Vermillion and White rivers; and Flandreau, Firesteel, Moccasin, Splitrock and Turtle creeks.

A registration form is available online at <http://denr.sd.gov/des/wr/watrightsapps.aspx>.