



DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

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PIERRE SOUTH DAKOTA 57501-3182  
<http://denr.sd.gov>

August 29, 2016

Robert Bawdon  
PO Box 515  
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Mr. Bawdon:

In regard to our phone conversation on August 29, 2016, South Dakota Codified Law 46-4-2 (see below) is a basis for requesting the Water Management Board to make a declaratory ruling:

**46-4-2. Upper users priority for domestic use - Exception - Contest resolution - Appeal.** For the uses stated in this chapter, upper users have first priority for domestic use except that it is unlawful for an upper owner to build new works that would deprive a lower owner of water which has been regularly approved under this chapter. Any contest between upper and lower dry-draw 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.

The following rules (74:02:01:46 through 49) pertain to the process of requesting the Water Management Board to make a declaratory ruling:

**74:02:01:46. Request to board for declaratory ruling -- Petition contents.** A person may request the water management board to issue a decision on the applicability of a statutory provision, rule, or order pertaining to a submitted factual situation within the board's jurisdiction by submitting a petition containing the following information:

- (1) The authority by which the petition is presented;
- (2) The name of the person, agency, or groups submitting the petition;
- (3) The requested action and reasons for the action; and
- (4) The signature of the person or the authorization of the group or agency making the petition.

**Source:** 9 SDR 96, effective January 30, 1983; 13 SDR 129, 13 SDR 141, effective July 1, 1987.

**General Authority:** SDCL 46-2-5.

**Law Implemented:** SDCL 1-26-15.

**74:02:01:47. Timely consideration by board.** The board shall schedule the petition for hearing no later than its second regularly scheduled meeting unless all parties agree to postponement of the hearing.

**Source:** 9 SDR 96, effective January 30, 1983; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 20 SDR 53, effective October 20, 1993; 24 SDR 90, effective January 4, 1998.

**General Authority:** SDCL 46-2-5.

**Law Implemented:** SDCL 1-26-15.

**74:02:01:48. Petitioner to notify all affected persons.** The petitioner shall serve a copy of the petition upon all known persons whose pecuniary interests would be directly and immediately affected by a declaratory ruling on the petition. Proof of such service shall be filed with the board with the petition. All such parties shall be notified by the chief engineer at least 15 days before the petition is scheduled to be heard. In addition, the petitioner shall publish a notice of hearing describing the contents of the petition pursuant to SDCL 46-2A-4(1) to 46-2A-4(10), as applicable, and SDCL 1-26-17.

**Source:** 9 SDR 96, effective January 30, 1983; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 17 SDR 40, effective September 19, 1990.

**General Authority:** SDCL 46-2-5.

**Law Implemented:** SDCL 1-26-15, 1-26-17.1, 46-2-5.

**74:02:01:49. Declaratory rulings -- Appeal.** All declaratory rulings by the board are subject to the appeal provisions in SDCL 1-26.

**Source:** 9 SDR 96, effective January 30, 1983; 13 SDR 129, 13 SDR 141, effective July 1, 1987.

**General Authority:** SDCL 46-2-5.

**Law Implemented:** SDCL 1-26-15.

You can view the entire set of water rights laws and rules on this webpage <http://denr.sd.gov/des/wr/laws.aspx>.

Please feel free to call (605.773.5670) if you have any questions. Tim also stopped by and is searching again for the photos. If he turns up anything, I will let you know.

Sincerely,



Ron Duvall  
SD DENR Water Rights Program