

Overview of Water Regulation by the Department of Environment and Natural Resources (DENR) for the Regulation of Non-Meandered Waters 2017 Interim Study

1. DENR regulates quality of water supplied by public water supply systems to keep drinking water safe.
2. DENR regulates pollution controls to protect surface and ground water quality.
3. DENR regulates water use of surface and ground waters to avoid over appropriation and protect senior water rights.

DENR's Water Regulation Overseen by the Water Management Board

SDCL 1-40-19. Functions of Water Management Board. The Water Management Board shall perform all functions exercised by the former State Water Rights Commission. The Water Management Board shall perform the quasi-legislative, quasi-judicial, and special budgetary functions pursuant to chapters 34A-2 and 34A-3, and all advisory functions relating to water quality and water hygiene, except such functions as are specifically conferred by law upon the secretary.

Source: SL 1979, ch 354, §§ 24, 29; SL 1993, ch 257, § 10.

SDCL Chapter 34A-3A: Safe Drinking Water

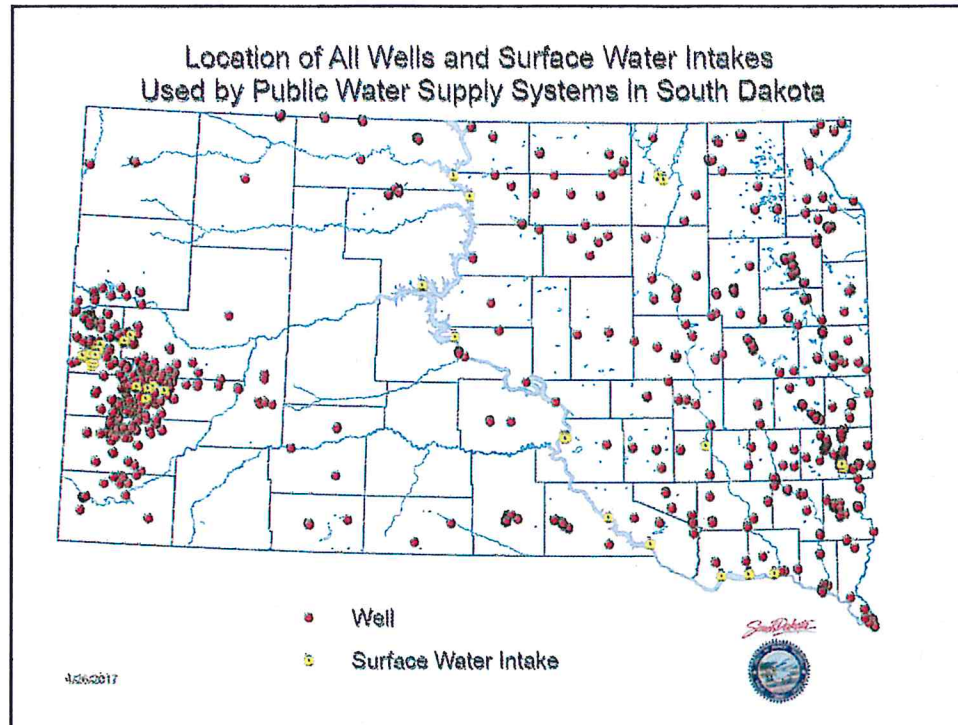
34A-3A-1. Public policy. It is hereby declared to be the public policy of the state to achieve and maintain safe drinking water for the public which will protect human health and safety and prevent the creation of public nuisances. To these ends it is the purpose of this chapter to ensure that public water systems in the state meet or exceed minimum standards for drinking water quality and to foster cooperation and coordination with other state and local agencies, other states, and the federal government pursuant to the Federal Safe Drinking Water Act, Public Law 93-523, as amended to January 1, 2011.

Source: SL 1983, ch 260, § 1; SL 1986, ch 27, § 36; SL 2011, ch 165, § 78.

Protecting Public Health by keeping Drinking Water Safe



DENR regulates 643 public drinking water systems across the state.



SDCL Chapter 34A-2: Water Pollution Control

SDCL 34A-2-1. Legislative findings and policy. Whereas the pollution of the waters of this state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish, and aquatic life, and impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality thereof for water supplies, for the propagation of wildlife, fish, and aquatic life, and for domestic, agricultural, industrial, recreational, and other legitimate uses; to provide that no waste be discharged into any waters of the state without first receiving the necessary treatment or other corrective action to protect the legitimate and beneficial uses of such waters; to provide for the prevention, abatement, and control of new and existing water pollution; and to cooperate with other agencies of the state, agencies of other states, and the federal government in carrying out these objectives.

Source: SL 1973, ch 280, § 1; SDCL Supp, § 46-25-23.

DENR Permits "Point Sources" to Control Discharge of Water Pollutants

- 2,815 stormwater permits
- 432 feedlot permits
- 363 wastewater discharge permits

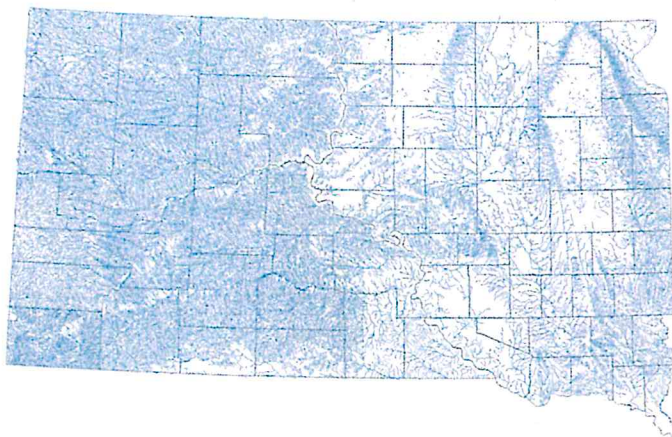


ARSD Chapter 74:51:01: Surface Water Quality Standards

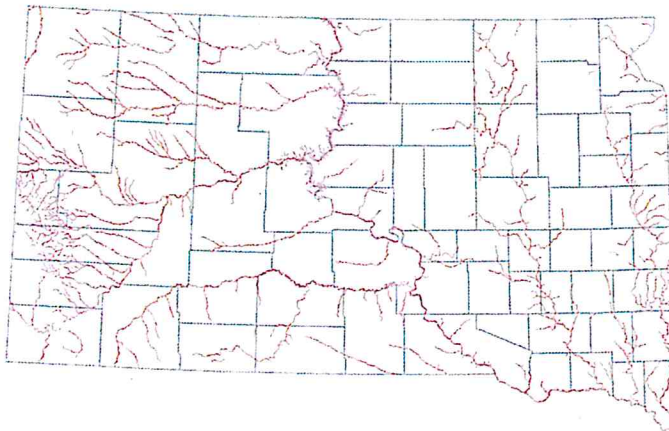
ARSD 74:51:01:42. Beneficial uses of waters established. The following are the beneficial use classifications:

- (1) Domestic water supply waters;
- (2) Coldwater permanent fish life propagation waters;
- (3) Coldwater marginal fish life propagation waters;
- (4) Warmwater permanent fish life propagation waters;
- (5) Warmwater semipermanent fish life propagation waters;
- (6) Warmwater marginal fish life propagation waters;
- (7) Immersion recreation waters;
- (8) Limited contact recreation waters;
- (9) Fish and wildlife propagation, recreation, and stock watering waters;
- (10) Irrigation waters; and
- (11) Commerce and industry waters.

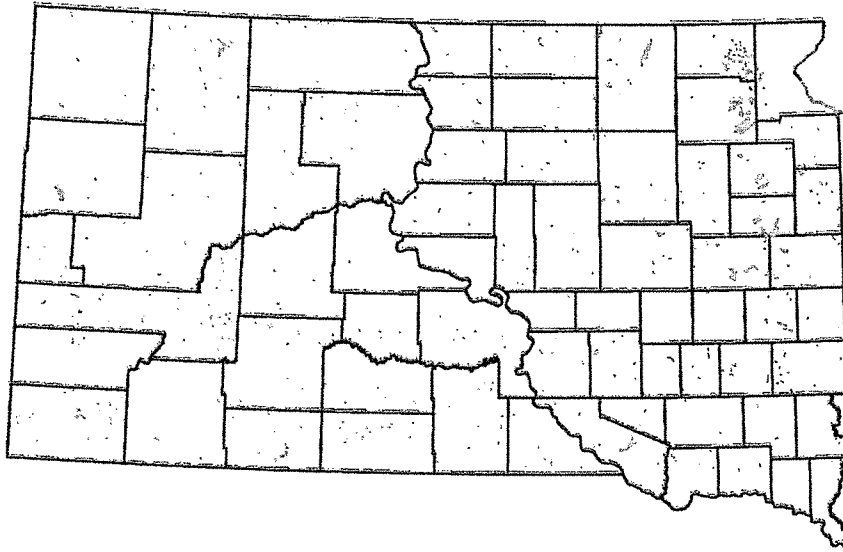
**98,009 miles of Rivers and Streams in South Dakota,
but many are
Intermittent depending on Precipitation and Snow Melt**



**11,295 miles of Rivers and Streams Assigned Cold and Warm
Water Fish Life Propagation Beneficial Uses in
ARSD 74:51:01, Surface Water Quality Standards**



**575 Lakes (about 60 are non-meandered) Assigned
Immersion and Limited Contact Recreational Beneficial Uses
in ARSD 74:51:01, Surface Water Quality Standards**



SDCL Title 46: Water Rights

- 46-1-1. Use of water of state--Paramount interest of people--Conversion to public use. **It is hereby declared that the people of the state have a paramount interest in the use of all the water of the state and that the state shall determine what water of the state, surface and underground, can be converted to public use or controlled for public protection.**
Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0101 (3).
- 46-1-2. Development of water resources for public benefit. **It is hereby declared that the protection of the public interest in the development of the water resources of the state is of vital concern to the people of the state and that the state shall determine in what way the water of the state, both surface and underground, should be developed for the greatest public benefit.**
Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0101 (4); SL 1972, ch 237, § 1; SL 1978, ch 323, § 1.
- 46-1-3. Water as property of people--Appropriation of right to use. **It is hereby declared that all water within the state is the property of the people of the state, but the right to the use of water may be acquired by appropriation as provided by law.**
Source: SL 1955, ch 430, § 1; SDC Supp 1960, § 61.0101 (2); SL 1983, ch 314, § 1.

DENR Regulates "Water Use" through Water Right Permits

- South Dakota regulates water use through the prior appropriation doctrine
 - used by most western states
 - means first in time, first in right
 - effect is that senior rights have priority over junior rights during droughts
- DENR administers 8,643 active water right permits for both surface and ground waters

Water Right Permits "Protect Uses"

Permitted uses include:

- Irrigation
- Municipal & rural water
- Commercial
- Industrial
- Fish & wildlife
- Recreation



Summary:

under the Drinking Water, Water Pollution Control, and Water Rights statutes, DENR regulates all water with no distinction between Meandered and Non-meandered water bodies.

DENR Proposals after Parks v Cooper

- Because the Water Management Board may establish ordinary high and low water marks on public lakes as per SDCL 43-17-21, and because DENR manages quality and quantity through water *“uses,”* Parks v Cooper brought pressure for DENR and the Water Management Board to address *“uses”* of non-meandered lakes.
- DENR tried, but both rulemaking and legislative attempts failed due to the controversy.

DENR forms Non-meandered Lakes Working Group

- In 2005, DENR promised the legislature it would form and host a working group to look for a solution.
- Non-meandered lakes working group members:
 - Day County Landowners – Ordean Parks, Rueben Parks, Leonard Naessig, Jack Hieb
 - GFP – Doug Hansen
 - SD Wildlife Federation – Chris Hesla
 - SD Farmers Union – Matthew McLarty
 - SD Farm Bureau – Dick Gregerson, Mike Held
 - Izaak Walton League – Carl Madsen, Russ Wilkins
 - DENR – Tim Tollefsrud, Garland Erbele, Joe Nadenicek, Steve Pirner

Non-meandered Lakes Working Group Fails

After:

- 5 meetings between April and November, 2005;
 - hours of discussion; and
 - many different ideas and draft bills,
- in the end, there was no consensus.

What we learned:

- both sides are passionate about their beliefs;
- there was no middle ground; and
- non-meandered lakes are not a water quality or water rights dispute, but really a dispute over public access for hunting and fishing.

