

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2079
(Natural Resources Committee)
(At the request of the State Engineer)

AN ACT to create and enact a new subsection to section 61-04-01.1 of the North Dakota Century Code, relating to the definition of rural water system; and to amend and reenact sections 61-04-06.2, 61-04-23, 61-04-24, and 61-04-25 of the North Dakota Century Code, relating to forfeiture of water rights held by rural water supply systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 61-04-01.1 of the North Dakota Century Code is created and enacted as follows:

"Rural water system" means a water supply system designed to serve regional needs.

SECTION 2. AMENDMENT. Section 61-04-06.2 of the North Dakota Century Code is amended and reenacted as follows:

61-04-06.2. Terms of permit. The state engineer may issue a conditional permit for less than the amount of water requested, but in no case may the state engineer issue a permit for more water than can be beneficially used for the purposes stated in the application except that water permits for incorporated municipalities or rural water systems may contain water in excess of present needs if based upon reasonable projections of future water needs of the municipality or the rural water system. The state engineer may require modification of the plans and specifications for the appropriation. The state engineer may issue a permit subject to fees for water use, terms, conditions, restrictions, limitations, and termination dates the state engineer considers necessary to protect the rights of others, and the public interest. Conditions and limitations so attached ~~shall~~ must be related to matters within the jurisdiction of the state engineer; provided, however, that all conditions attached to any permit issued prior to July 1, 1975, ~~shall be~~ are binding upon the permittee.

SECTION 3. AMENDMENT. Section 61-04-23 of the North Dakota Century Code is amended and reenacted as follows:

61-04-23. Forfeiture of water rights - Inspection of works. Any appropriation of water must be for a beneficial use, and when the appropriator fails to apply it to the beneficial use cited in the permit or ceases to use it for the beneficial use cited in the permit for three successive years, unless ~~such the~~ failure or cessation of use has been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer may declare ~~such the~~ water permit or right forfeited. For purposes of this chapter, an incorporated municipality or rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality or the rural water system. The state engineer shall, as often as necessary, examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of every water permit or right, and all ditches and other works constructed or partially constructed thereunder.

SECTION 4. AMENDMENT. Section 61-04-24 of the North Dakota Century Code is amended and reenacted as follows:

61-04-24. Forfeiture of water rights - Notice - Contents. If it ~~shall appear~~ appears that any water appropriation or portion thereof has not been used for a beneficial use, or having been so used at one time has ceased to be used for ~~such that~~ purpose for more than three successive years, unless ~~such the~~ failure or cessation of use ~~shall have been~~ is due to the unavailability of water, a justifiable

inability to complete the works, or other good and sufficient cause, the state engineer shall set a place and time for a hearing. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality or the rural water system. Any holder of a water permit using water from a common source of supply, any applicant therefor, or any interested party may request the state engineer to conduct ~~such~~ a hearing, the purpose of which ~~shall be~~ is the cancellation of any unused water rights to ~~such the~~ common source of supply. Any decision of the state engineer in denying a request for ~~such~~ a hearing may be appealed in the manner prescribed by section 61-04-07. Prior to the hearings the state engineer shall serve notice upon the permitholder and upon the owners of land benefited by ~~such the~~ appropriation or works, except where the lands benefited are within the geographical boundaries of a city, in which case notice ~~shall must~~ be given to the governing body of the city, to show cause by such time and at such place why the water appropriation or a portion thereof should not be declared forfeited and canceled.

In addition to the time and place of hearing, ~~such the~~ notice ~~shall must~~ contain:

1. A description of the water appropriation.
2. The permit number upon the records of the commission.
3. The date of priority.
4. The point of diversion.
5. A description of the lands benefited by ~~such the~~ appropriation as indicated on the application for a water permit on file in the office of the commission.
6. Notice that the permitholder, the owners of land benefited by ~~such the~~ appropriation or works, and other interested parties whose right to use water may be affected by a cancellation of the appropriation are to show cause why ~~such the~~ appropriation, or a portion thereof, should not be canceled.

The notice ~~shall must~~ be served personally or sent by registered or certified mail at least thirty days before the date of hearing to the permitholder and to the owners of land benefited by ~~such the~~ appropriation as indicated on the application for a water permit on file in the office of the commission, or to persons having an interest in works as they appear from the records of the county treasurer or the register of deeds. In addition, ~~such the~~ notice ~~shall must~~ be published in a newspaper of general circulation in the county in which the point of diversion is located once each week for two consecutive weeks prior to the date of hearing.

SECTION 5. AMENDMENT. Section 61-04-25 of the North Dakota Century Code is amended and reenacted as follows:

61-04-25. Forfeiture of water rights - Hearing - Appeal. At ~~such the~~ hearing the verified report of the state engineer or engineers of the state water commission ~~shall be~~ is prima facie evidence for the forfeiture and cancellation of ~~such the~~ water permit or portion thereof. If no one appears at the hearing, ~~such the~~ water permit or portion thereof ~~shall must~~ be declared forfeited and canceled. If interested parties ~~shall~~ appear and contest the cancellation, the state engineer shall hear the evidence and if it appears that ~~such the~~ water has not been put to a beneficial use or, having been so used at one time, has ceased to be used for such purpose for more than three successive years, unless ~~such the~~ failure or cessation of use ~~shall have been~~ is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the same, or a portion thereof, ~~shall must~~ be declared forfeited and canceled. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality or the rural water system. An appeal may be taken from the decision of the state engineer in accordance with chapter 28-32.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2079.

Senate Vote: Yeas 47 Nays 0 Absent 2

House Vote: Yeas 95 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State