

**SENATE BILL NO. 2079**

Introduced by

Natural Resources Committee

(At the request of the State Engineer)

1 A BILL for an Act to create and enact a new subsection to section 61-04-01.1 of the North  
2 Dakota Century Code, relating to the definition of rural water system; and to amend and reenact  
3 sections 61-04-06.2, 61-04-23, 61-04-24, and 61-04-25 of the North Dakota Century Code,  
4 relating to forfeiture of water rights held by rural water supply systems.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

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

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

12 **61-04-06.2. Terms of permit.** The state engineer may issue a conditional permit for  
13 less than the amount of water requested, but in no case may the state engineer issue a permit  
14 for more water than can be beneficially used for the purposes stated in the application except  
15 that water permits for incorporated municipalities or rural water systems may contain water in  
16 excess of present needs if based upon reasonable projections of future water needs of the  
17 municipality or the rural water system. The state engineer may require modification of the plans  
18 and specifications for the appropriation. The state engineer may issue a permit subject to fees  
19 for water use, terms, conditions, restrictions, limitations, and termination dates the state  
20 engineer considers necessary to protect the rights of others, and the public interest. Conditions  
21 and limitations so attached ~~shall~~ must be related to matters within the jurisdiction of the state

1 engineer; provided, however, that all conditions attached to any permit issued prior to July 1,  
2 1975, ~~shall be~~ are binding upon the permittee.

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

5 **61-04-23. Forfeiture of water rights - Inspection of works.** Any appropriation of  
6 water must be for a beneficial use, and when the appropriator fails to apply it to the beneficial  
7 use cited in the permit or ceases to use it for the beneficial use cited in the permit for three  
8 successive years, unless ~~such~~ the failure or cessation of use has been due to the unavailability  
9 of water, a justifiable inability to complete the works, or other good and sufficient cause, the  
10 state engineer may declare ~~such~~ the water permit or right forfeited. For purposes of this  
11 chapter, an incorporated municipality or rural water system has good and sufficient cause  
12 excusing the failure to use a water permit, if the water permit may reasonably be necessary for  
13 the future water requirements of the municipality or the rural water system. The state engineer  
14 shall, as often as necessary, examine the condition of all works constructed or partially  
15 constructed within the state and compile information concerning the condition of every water  
16 permit or right, and all ditches and other works constructed or partially constructed thereunder.

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

19 **61-04-24. Forfeiture of water rights - Notice - Contents.** If it ~~shall appear~~ appears  
20 that any water appropriation or portion thereof has not been used for a beneficial use, or having  
21 been so used at one time has ceased to be used for ~~such~~ that purpose for more than three  
22 successive years, unless ~~such~~ the failure or cessation of use ~~shall have been~~ is due to the  
23 unavailability of water, a justifiable inability to complete the works, or other good and sufficient  
24 cause, the state engineer shall set a place and time for a hearing. For purposes of this chapter,  
25 an incorporated municipality or a rural water system has good and sufficient cause excusing the  
26 failure to use a water permit, if the water permit may reasonably be necessary for the future  
27 water requirements of the municipality or the rural water system. Any holder of a water permit  
28 using water from a common source of supply, any applicant therefor, or any interested party  
29 may request the state engineer to conduct ~~such~~ a hearing, the purpose of which ~~shall be~~ is the  
30 cancellation of any unused water rights to ~~such~~ the common source of supply. Any decision of  
31 the state engineer in denying a request for ~~such~~ a hearing may be appealed in the manner

1 prescribed by section 61-04-07. Prior to the hearings the state engineer shall serve notice upon  
2 the permitholder and upon the owners of land benefited by ~~such~~ the appropriation or works,  
3 except where the lands benefited are within the geographical boundaries of a city, in which  
4 case notice ~~shall~~ must be given to the governing body of the city, to show cause by such time  
5 and at such place why the water appropriation or a portion thereof should not be declared  
6 forfeited and canceled.

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

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

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

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

27 **61-04-25. Forfeiture of water rights - Hearing - Appeal.** At ~~such~~ the hearing the  
28 verified report of the state engineer or engineers of the state water commission ~~shall be~~ is  
29 prima facie evidence for the forfeiture and cancellation of ~~such~~ the water permit or portion  
30 thereof. If no one appears at the hearing, ~~such~~ the water permit or portion thereof ~~shall~~ must  
31 be declared forfeited and canceled. If interested parties ~~shall~~ appear and contest the

1 cancellation, the state engineer shall hear the evidence and if it appears that ~~such~~ the water  
2 has not been put to a beneficial use or, having been so used at one time, has ceased to be  
3 used for such purpose for more than three successive years, unless ~~such~~ the failure or  
4 cessation of use ~~shall have been~~ is due to the unavailability of water, a justifiable inability to  
5 complete the works, or other good and sufficient cause, the same, or a portion thereof, ~~shall~~  
6 must be declared forfeited and canceled. For purposes of this chapter, an incorporated  
7 municipality or a rural water system has good and sufficient cause excusing the failure to use a  
8 water permit, if the water permit may reasonably be necessary for the future water requirements  
9 of the municipality or the rural water system. An appeal may be taken from the decision of the  
10 state engineer in accordance with chapter 28-32.