

OFFICIAL OPINION NO. 95-04, County Drainage Questions.

July 3, 1995

Mike Hertz
Hutchinson County Drainage Administrator
140 Euclid Room 125
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OFFICIAL OPINION NO. 95-04

County drainage questions

Dear Mr. Hertz:

You have requested an official opinion from this office with respect to seven separate questions. The following facts are concerned:

Five drainage districts were organized in Hutchinson County in the years 1907 through 1912. Open drainage ditches were constructed and the costs of construction were assessed to landowners in proportion to acreage. District boundaries were based on the legal description of each landowner's tract of land. The boundaries did not always encompass the entire drainage area (watershed) of each district. Over the years numerous other ditches or tiles were constructed by individuals in Hutchinson County for the purpose of draining farmland. Many of these ditches were then vested according to SDCL 46A-10A-31. Because of natural flow and/or flow via road ditches, some of these individual ditches contribute water to the established drainage districts.

In late 1983 several members of one organized ditch, the Olivet Ditch, proposed cleaning out silt and other debris that had accumulated over time and which had reduced the effectiveness of the original ditch. A cleanout was completed in 1985, and the costs allocated to the members in the same manner as the costs had been allocated at the time of construction. While there was some discussion at this time about including additional land in the district, land which contributes water to the district, the boundaries were left unchanged.

In one case, a landowner has filed a vested right under SDCL 46A-10-31 claiming authority to drain water into a ditch maintained by a drainage district, despite the fact that his land

had never been included within the established drainage district. Also, the same landowner has an option to drain his land in a different direction which would flow away from the drainage ditch district.

Additional facts pertaining to individual questions will be addressed within the context of those questions.

Your request raises the following questions:

QUESTIONS:

1. Since SDCL chs. 46A-10 and 46A-12 (pertaining to drainage districts) were repealed in 1985, what statutes now control and guide drainage districts organized prior to 1985 and which remain in effect pursuant to SDCL 46A-10A-8?
2. Do the owners of ditches outside of drainage districts have the right to benefit from the ditching in the organized district without sharing the costs?
3. If the owner of a ditch outside a drainage district does not have a legal right to maintain his existing ditch and contribute water to a drainage district's ditch, does that mean that the landowner's ditch is an illegal drain irrespective of whether a vested right has been filed pursuant to SDCL 46A-10A-31?
4. May a board of resolution acting pursuant to SDCL 46A-10A-34 require that landowners appearing before it hire professional engineers or surveyors to submit reports (and further require the parties to pay for the costs)?
5. Is it permissible for a board of resolution acting under SDCL 46A-10-34 to delegate to township governments the responsibility to resolve drainage disputes involving township road rights-of-way?
6. Are SDCL 46A-10A-71 and SDCL 46A-10A-72 inconsistent?
7. Is the language in SDCL 46A-10A-70 inconsistent with the remedies set forth in SDCL 21-1-1 and the principles set forth in SDCL 46A-10A-20?

Several of the questions you pose have to do with drainage districts. To address those questions it is necessary to examine how drainage districts have developed statutorily.

Historically, county commissioners held authority to establish and locate drainage ditches if (a) such ditches were conducive to public health, convenience, or welfare, (b) the route of the ditch was practicable, and (c) assessments made by the county for the construction of the ditch were in proportion to the benefits to be derived therefrom. Rev. Code ch. 25 (1903), 2588, 2589, 2603, and 2618. The ditches were bid and constructed by counties. Rev. Code ch. 25 (1903), 2605.

County authority for public drainage was broadened or clarified in 1907 to include "the purpose of draining agricultural land." S.L. 1907, ch. 134. The 1907 changes also authorized counties to issue bonds for developing drainage ditches and increased other county drainage authority. Among other provisions, the 1907 law specifically provided that:

All drains that have been constructed under any law of this state, or that may be constructed under the provisions of this act, shall, except as otherwise provided, be under the charge of the board of county commissioners and their successors in office and be by them kept opened and in repair. The cost of such repairs shall in all cases be assessed, levied and collected in the same manner as is provided herein for the construction of drains originally and in all cases when no assessments or benefits shall have been made, the board of county commissioners having charge of such drain shall make such assessment.

S.L. 1907, ch.134, 20. Based upon the foregoing, it is clear that early drainage projects were developed and controlled by counties.

In 1921, the South Dakota Legislature amended the drainage laws to allow for drainage districts. S.L. 1921, ch.194, 1 and 5. Drainage districts consisted of an assigned area established by the board of county commissioners and approved by the state engineer. Under the 1921 law, drainage projects within drainage districts were bid, constructed, and governed by the board of county commissioners.

In 1955, the Legislature amended the drainage district laws by providing, specifically, for management of drainage districts by trustees. S.L. 1955, chapters. 432 through 435. The 1955 Session Laws, at chapter 434, provided for election of trustees and set forth the powers and duties of trustees. Under the 1955 law, trustees were "clothed with all of the powers now conferred on the board or boards of county commissioners for the control, management, and supervision of drainage districts under the laws of the state, including the power to acquire lands for right-of-way for ditches and settling basins within or without the district and to annex lands to the district" S.L. 1955, ch. 434, 25. This Act provided

that any land previously within a drainage district could be placed under the control and management of a board of three trustees.

Thus, after 1955 two types of situations were permitted. It was possible for the board of county commissioners to create (pursuant to landowner petition) a drainage district, construct the project, and serve as the governing board of the district. See generally, SDCL ch.46A-10 (repealed 1985). It was also possible for the management of a drainage district to be handled by a board of trustees. See SDCL ch. 46A-12 (repealed 1985). The powers exercised by the trustees were the same as those exercised by the county commissioners. SDCL 46A-10-26 (repealed 1985).

IN RE QUESTION 1:

You inquire whether, and in what manner, the 1985 repeal of SDCL chs. 46A-10 and 46A-12 effected drainage districts. The 1985 law made several changes. In addition to the repeal of SDCL ch. 46A-10 and SDCL ch. 46A-12, the Legislature adopted SDCL 46A-10-43, which provides:

Any drainage district established under the laws of this state that has functioned in its capacity as a drainage district within three years prior to July 1, 1985 or that has assessed real property in its capacity as a drainage district within three years prior to July 1, 1985 shall be allowed to continue in that status. However, the landowners in such existing drainage district may choose by majority vote at a general election under the general election laws of this state to dissolve in order to join one or more drainage projects or drainage methods or to become or join a coordinated drainage area. Any county drainage plan shall include functioning drainage districts, vested rights described in 46A-10A-31, the drainage plans or projects of a unit of local government and existing coordinated drainage areas formed pursuant to 46A-10A-47. (Emphasis added.)

For those drainage districts still in existence, and which chose not to dissolve to join a project or a coordinated drainage area, there is a problem. The statutes governing how drainage districts function were repealed effective July 1, 1985. (SDCL ch. 46A-10 and ch. 46A-12). SDCL 46A-10A-43, however, makes clear the legislative intent that existing, functioning drainage districts be allowed to continue at their discretion, even though the laws for governing drainage districts were repealed. AGR 91-14.

It is not clear what the effect of the repeal is. Arguably, to give effect to SDCL 46A-10A-43, it is necessary to imply the continued application of chapter 46A-12 to those districts. In short, the repeal of SDCL chapters 46A-10 and 46A-12 may not be effective to override the specific legislative intent evident in SDCL 46A-10A-43. Compare, *Jacobi v. Clarkson*, 60 S.D. 401, 244 N.W. 535, 536 (1932).

To further cloud the issue, in 1986 the Legislature amended SDCL 46A-10A-8 by adding that "[t]he provisions of this chapter may affect drainage districts only as outlined under provisions of 46A-10A-43." Of course, by that time the repealer had already taken effect; sections 1 and 136 of the 1985 Session Laws, which repealed SDCL ch. 46A-10 and SDCL ch. 46A-12 were not part of the "chapter" amended in 1986. The 1986 amendment reaffirmed, however, the legislative intent that functioning drainage districts were to continue operating as they had.

The question is what the Legislature intended when it said in 1985 that drainage districts that functioned as a district in the three years prior to the 1985 law were "to continue in that status" (SDCL 46A-10A-43), and then in 1986 added that drainage districts would only be effected by the 1985 law as set out in SDCL 46A-10A-43. It is a question for which the rules of statutory construction do not provide a clear answer.

The goal is to determine the intent of the Legislature. That intent to be determined not only from the words used in the statute at issue, but also from other statutes on the subject as well. Words used in the statute are to be given their plain, ordinary and popular meaning, unless the context clearly requires otherwise. *American Rim and Brake Inc. v. Zoellner*, 382 N.W.2d 421 (S.D. 1986); *Border States Paving v. Department of Revenue*, 437 N.W.2d 872, 874 (S.D. 1989); *Whalen v. Whalen*, 490 N.W.2d 276 (S.D. 1992); SDCL 2-14-1. The presumption is that the statutes "mean what they say and that the legislators have said what they meant." *Crescent Electric Supply Co. v. Nerison*, 232 N.W.2d 76, 80 (S.D. 1975).

The interpretation of legislative intent that is most consistent with the legislative statement that drainage districts be allowed to continue is that SDCL ch. 46A-12 continues to apply to those districts existing at the time of the repeal, but that no new drainage districts may be formed. Ordinarily the effect of a repeal is to destroy the effectiveness of the repealed act for all future purposes. *Schultz v. Jibben*, 513 N.W.2d 923 (S.D. 1994). Exceptions exist where there is a savings clause within the repeal itself or where a general savings statute exists to "prescribe the governing rule for the effect of the repeal." *Id.*

Here, a savings clause exists (SDCL 46A-10A-43). The "guidance" on what statutory guidelines are applicable is found in the phrase in SDCL 46A-10A-43 that functioning drainage districts "shall be allowed to continue in that status." While the guidance could have been clearer, the legislative intent is ascertainable.

The legislature intended to leave functioning drainage districts unaffected by the 1985 drainage law. See 91 AGR 14. The situation is similar to that resolved by the Court in *Vinz v. Nord*, 70 S.D. 304, 17 N.W.2d 299 (1945). There the Court was faced with a statute that was not only amended by two different acts during the same session, but was repealed by a third act during that session. The repealing act made no mention of the two amendatory acts. The question was whether the repeal of the section impliedly repealed the amendments.

The Court concluded that the amendments survived the repeal, finding that it was illogical to assume the Legislature adopted an amendment, just to repeal it during the same session.

It would be equally unreasonable to infer that the legislature, which had the described amendatory and repealing measures under consideration at the same time, would have adopted both unless it intended both should become effective.

17 N.W.2d at 302.

Furthermore, repeals by implication are viewed with disfavor. [R]epeals by implication are not favored and should be found only where there is a manifest and total repugnancy between the statutes and where both acts cannot be reconciled through a reasonable construction.

Parsons v. South Dakota Department of Social Services, 314 N.W.2d 863, 865 (S.D. 1982). If the conflicting statutes can be reconciled by any reasonable construction, they should be.

Where conflicting statutes appear, it is the responsibility of the court to give a reasonable construction to both . . . and to give effect, if possible, to all provisions under consideration, construing them together to make them harmonious and workable.

Matter of Sales Tax Refund Applications, 298 N.W.2d 799, 803 (S.D. 1980).

Here it is possible to harmonize SDCL 46A-10A-43 and SDCL 46A-10A-8 with the repeal of SDCL 46A-10 and SDCL 46A-12. The Legislature intended that functioning drainage districts continue to exist as before, but made no provision for the creation of new districts. SDCL ch. 46A-10 and SDCL ch. 46A-12 continue to apply to those districts existing at the time of the repeal, but have no other application because no new drainage districts may be formed. Existing districts may continue to rely on SDCL ch. 46A-10 and SDCL ch. 46A-12 as before, but those chapters are repealed for all other purposes.

Thus, while the Legislature could have been clearer in providing how it intended matters to work, the inconsistency and uncertainty are not such that SDCL 46A-10A-43 is invalid. Here it is possible to discern what the Legislature intended and carry out the statutes in a manner consistent with that intent. *Estate of Bode*, 273 N.W.2d 180, 182 (S.D. 1979).

Therefore, my answer to your first question is that existing drainage districts as defined in SDCL 46A-10A-43 may continue to utilize the provisions of SDCL ch. 46A-10 and SDCL ch. 46A-12 to operate those districts, notwithstanding the repeal of those statutes for other purposes. This is a situation, however, that should be clarified legislatively.

IN RE QUESTION NO. 2:

Your second question is whether an individual has the legal right to connect or continue to maintain a drainage ditch into a drainage district's ditch even though that individual is not a member of the established drainage district involved. If the drainage is legal, the answer to your question is "yes".

Under longstanding South Dakota case law, owners of agricultural property in South Dakota have a right to construct artificial drains or ditches to accelerate and hasten the flow of waters and to cast those waters on servient lands lower on the same natural drainage water course. *Thompson v. Andrews*, 39 S.D. 477, 165 N.W.9 (1917). This right does not allow landowners to cast unusual or unnatural quantities of water upon their neighbors. Likewise, it does not allow for cutting or removal of permanent natural barriers so that water can flow into a different drainage basin. *Thompson*, 165 N.W. at 14. See also, *Johnson v. Metropolitan Life Insurance Co.*, 71 S.D. 155, 22 N.W. 2d 737 (1946). This body of law recognizes natural conditions and affords landowners drainage rights so long as their drainage (natural or artificial) was patterned after nature. Since this right to drain is a right in property ownership, it may be claimed against both public entities (including drainage districts) or private parties.

If, however, the general course and direction of the flow of water by means of the drainage concerned is different than the general course and direction of the natural flow, if water is cast in unusual or unnatural quantities of water upon others, or if permanent natural barriers are cut or removed so that water can flow into a different drainage basin, then a different situation is involved. In those instances the right to drainage must be acquired in some other manner, such as by purchase, condemnation, or some other affirmative act.

If the drainage involved is permissible under South Dakota law, (a) whether acquired pursuant to the civil law rule adopted in *Thompson v. Andrews*, or (b) whether acquired by purchase, condemnation, or other legal means, and has not been lost by prescription or a failure to protect the right, then the drainage is allowed in South Dakota. This legal drainage would not be affected by issues such as whether the drainage happens to fall into a drainage basin with a drainage channel is maintained by a drainage district; whether the landowner is paying fees into the drainage district or the county; or whether the landowner has other alternatives which would drain his property adequately.

If a landowner is legally draining his agricultural property, the fact that the water eventually flows into a drain ditch maintained by a drainage district does not alter the legality of the drainage. Unless the drainage district encompasses the entire watershed, there will always be upstream landowners who derive benefit from the downstream works, but do not contribute to the maintenance of those works. The drainage district's remedy, assuming the drainage is legal, is to ask the county to become involved in the maintenance of the drains under state statute, and assess fees against all landowners benefitted by the maintenance, whether part of the drainage district or not.

IN RE QUESTION 3:

As discussed above, drainage rights are either recognized to be part of the landowner's rights if the drainage follows the natural flow pattern of the ground, or are acquired by purchase, condemnation, or some other legal means. SDCL 46A-10A-31 is a legal procedure which allows the landowner to confirm, validate, or vest either of these types of drainage rights as against various parties.

Under SDCL 46A-10A-31, vesting of drainage rights is permitted for those "lawfully acquired prior to July 1, 1985," and filed within seven years after July 1, 1985. SDCL 46A-10A-31 also provides that a challenge to the vesting of a drainage right may be brought within two

years of filing. Thus, a valid vested right as against other landowners may be acquired simply because those landowners failed to contest the filing.

An established drainage district as defined in SDCL 46A-10A-43, however, may not be required to contest these filings in order to preserve its own rights. This office has previously offered the opinion that drainage districts are not required to file vested drainage rights under SDCL 46A-10A-31. AGR 91-14. This determination is based on SDCL 46A-10A-8 and SDCL 46A-10A-43, which provide that operating drainage districts are not affected by the 1985 drainage statutes, including those statutes requiring the filing of vested drainage rights.

The same rationale applies in this situation. Although the filing of a vested drainage right would be effective as against other landowners, it would not be effective as against an established drainage district due to the terminology in SDCL 46A-10A-8 and SDCL 46A-10-43. (See also *City of Rapid City v. Hoogterp*, 85 S.D. 176, 179 N.W.2d 15, 17 (1970) (estoppel against public entities is little favored.)

It must be remembered, however, that this rationale would apply only to an functioning drainage district which continues to operate as described in SDCL 46A-10A-43. This rationale does not apply to other governmental entities or to drainage enterprises operated by informal accommodation.

Finally, it should be recognized that the legislature intended that 1985 changes provide for certainty in drainage rights. The foregoing answer is not necessarily consistent with that overall purpose. The pertinent language excepting drainage districts from SDCL ch. 46A-10A, however, was added in 1986. The presumption is that the Legislature knew what the impact of the amendment would be. Therefore, even though my answer to this question is inconsistent with the uniformity sought in 1985, it is compelled by the 1986 amendment to SDCL 46A-10A-8. Your question is whether the filing of a vested drainage right under SDCL 46A-10A-31 is effective as against an established drainage district. The answer to your question is "No."

IN RE QUESTION 4:

You inquire whether the county board of resolution acting pursuant to SDCL 46A-10A-34 may require individual landowners bringing disputes before it to hire professional engineers

or surveyors and require the filing of those expert reports. The answer to your question is "yes."

SDCL 46A-10A-34 allows the board of resolution to adjudicate individual disputes between landowners. As with any other adjudicatory system (i.e., courts and administrative agencies), the person seeking relief is responsible for hiring his/her own experts or calling any other necessary witnesses to establish that relief should be granted.

Correspondingly, the landowner against whom relief is sought is responsible for hiring experts or calling other witnesses to refute the complainant's assertions. The landowner failing to hire experts or provide witnesses risks a finding by the board of resolution that inadequate evidence was presented to support his/her case.

In addition, the county has ample authority to establish procedures for presenting disputes to the board of resolution, either by adopting ordinances, resolutions or other "official controls", or by limiting the cases the board of resolution will hear pursuant to SDCL 46A-10A-34. Under these provisions, the board of resolution could well provide that it will not hear drainage disputes unless a professional engineer, surveyor, or other expert witness has submitted a report. Such a limitation is clearly within the authority of the county or the board of resolution.

You also inquire whether a landowner may be required to pay a professional engineer or surveyor to submit a report. The issue of whether a landowner is required to pay an engineer or surveyor or other expert is a private matter between the landowner and the expert. I expect, however, that the real question you are asking is whether the board of resolution is required to pay for experts. The answer is clearly "no."

Although the county does have authority to hire an engineer or hydrologist, or both, it is not required to do so. SDCL 46A-10A-6 provides only that the county "may" hire such experts; it does not require that it must do so. Moreover, SDCL 46A-10A-6 applies generally to all county drainage functions and does not describe any particular duties. The scope of the services as an engineer or hydrologist hired by the county is within the discretion of that county. Even when a county exercises its authority to hire such an expert for planning functions, it is not required to hire that expert to serve the board of resolution.

IN RE QUESTION NO. 5:

You inquire whether it is permissible for the board of resolution acting under SDCL 46A-10-34 to delegate to township governments the responsibility to resolve drainage disputes involving township road rights-of-way. Two statutes pertaining to boards of resolution demonstrate that this would be improper.

Under SDCL 46A-10A-34.1, a "board" or "commission" may serve as a board of adjudication for another county. This statute is limited to a board or commission. These terms are defined by SDCL 46A-10A-1(1) and -1(3) as a board of county commissioners or a county drainage commission. No other type of governmental entity may enter into such an arrangement under SDCL 46A-10-34.1.

SDCL 46A-10-34 does provide that a board may refrain from hearing specified types or categories of drainage disputes. That statute also provides, however, that when a board of resolution does not exercise its authority to handle drainage disputes, the circuit court is the entity with jurisdiction to hear those disputes. Thus, SDCL 46A-10-34 does not give a county authority to delegate its responsibility to townships.

It should also be recognized that, as a political subdivision of the state, a township's authority is limited by statute. A township has only those powers expressly delegated by statute or "necessarily implied" from delegated powers. *Breckweg v. Knochenmus*, 81 S.D. 234, 133 N.W.2d 860 (1965). A review of township statutes indicates that township governments do not have the authority to adjudicate drainage disputes among or between landowners.

IN RE QUESTION NO. 6:

You have inquired whether SDCL 46A-10A-71 and SDCL 46A-10A-72 are inconsistent. The answer to your question is "no." Those statutes provide:

Subject to any official controls pursuant to this chapter and chapter 46A-11, drains may be laid along, within the limits of or across any public highway. If a highway is constructed along or across a drain, the board or officers in charge of such highway shall keep the drain free and clear of obstruction.

SDCL 46A-10A-71. (Emphasis added.)

No open ditch may be constructed within the limits of any public highway unless the topography makes such construction advisable. If construction is advisable, the ditch shall be located at a sufficient distance from the center of the highway to permit construction of a highway of standard width.

SDCL 46A-10A-72. (Emphasis added.)

In interpreting statutes, the South Dakota Supreme Court has consistently stated that "where possible, statutes should be read in harmony and be construed so as to give effect to each statute." *National Farmer's Union Property and Casualty Company v. Bang, et al.*, 516 N.W.2d 313 (S.D. 1994); *In re Silver King Mines*, 323 N.W.2d 858, 860 (S.D. 1982).

The foregoing two statutes can be construed harmoniously. SDCL 46A-10A-71 applies to drains generally. Although a specific definition of the word "drain" is not contained within SDCL ch. 46A-10A, other definitions in that chapter indicate that the term is broadly used to mean "a drainage system or scheme." See SDCL 46A-10A-1(2), 46A-10A-1(14), and 46A-10A-1(18). This broad term could include various types of schemes or systems, including an open ditch, a closed drain, or a blind drain.

SDCL 46A-10A-72 applies only to open ditches. This term is more specific. Only open ditches are prohibited under SDCL 46A-10A-72 (depending on the topography). Other types of drains, such as closed drains or blind drains, are permissible. Under SDCL 46A-10A-1(2), closed drains or blind drains are man-made drain or drainage schemes utilizing pipes, tile or other material and constructed in such a way that flow of water is not visible. Thus, in order to construct a drain along or across a highway as generally authorized by SDCL 46A-10A-71, a person must construct a closed drain or blind drain, unless the specific topography of the land makes the construction of an open ditch advisable. Thus, SDCL 46A-10A-71 and SDCL 46A-10A-72 are harmonious.

IN RE QUESTION 7:

You have inquired whether the language in SDCL 46A-10A-70 is inconsistent with the remedies set forth in SDCL 21-1-1 and the principles set forth in SDCL 46A-10A-20. The answer to your question is "no."

SDCL 46A-10A-70 provides:

Subject to any official controls pursuant to this chapter and chapter 46A-11, owners of land may drain the land in the general course of natural drainage by constructing open or covered drains and discharging the water into any natural watercourse, into any established watercourse or into any natural depression whereby the water will be carried into a natural watercourse, into an established watercourse or into a drain on a public highway, conditioned on consent of the board having supervision of the highway. If such drainage is wholly upon an owner's land, he is not liable in damages to any person. Nothing in this section affects the rights or liabilities of landowners in respect to running waters or streams.

SDCL 46A-10A-20 provides:

Official controls instituted by a board may include specific ordinances, resolutions, orders, regulations or other such legal controls pertaining to other elements incorporated in a drainage plan, project or area or establishing standards and procedures to be employed toward drainage management. Any such ordinances, resolutions, regulations or controls shall embody the basic principle that any rural land which drains onto other rural land has a right to continue such drainage if:

(1) The land receiving the drainage remains rural in character; (2) The land being drained is used in a reasonable manner; (3) The drainage creates no unreasonable hardship or injury to the owner of the land receiving the drainage; (4) The drainage is natural and occurs by means of a natural water course or established water course; (5) The owner of the land being drained does not substantially alter on a permanent basis the course of flow, the amount of flow or the time of flow from that which would occur; and (6) No other feasible alternative drain-age system is available that will produce less harm without substantially greater cost to the owner of the land being drained.

Such provisions do not necessarily apply within municipalities, but if a municipality drains water onto rural lands lying outside the boundaries of the municipality, the municipality is subject to the above provisions, if adopted by the board.

The foregoing statutes specifically apply to drainage matters. SDCL 21-1-1 generally provides that legal actions may be brought for loss or harm to property. Specific statutes governing particular circumstances prevail over the general terms of another statute. *Meyerink v. Northwestern Public Service Company*, 391 N.W.2d 180, 183-84 (S.D. 1986). SDCL 21-1-1 is much more general than the terminology set forth in SDCL 46A-10A,

particularly SDCL 46A-10A-70 which pertains to civil liability for drainage. Thus, they are not inconsistent.

In addition to inquiring about the remedies set forth in SDCL ch. 21-1, you have also inquired whether the two drainage statutes involved (SDCL 46A-10A-20 and SDCL 46A-10A-70) are themselves inconsistent. In order to respond to this question, it should be recognized that SDCL 46A-10A-20 and 46A-10A-70 are essentially legislative adoptions of drainage principles developed from various South Dakota Supreme Court cases. For example, SDCL 46A-10A-70 follows the rules set forth in *Thompson v. Andrews*, 39 S.D. 477, 167 N.W. 9 (1917), wherein the South Dakota Supreme Court held that a landowner may drain land by means of artificial drains or ditches constructed wholly upon his/her own land in order to accelerate the flow of waters through an otherwise natural channel or drainage.

The principles set forth in SDCL 46A-10A-20 are a codification of the various factors the courts have relied on to determine if drainage is proper under the test codified at SDCL 46A-10A-70. SDCL 46A-10A-20 provides that drainage should not impose unreasonable hardship or injury to the owner of the land receiving the drainage. This is consistent with longstanding South Dakota court precedent providing that waters may not accumulate on the lands of another or be cast in unusual or unnatural quantities on a servient estate. *Thompson v. Andrews*; *Johnson v. Metropolitan Life Insurance Company*, 71 S.D. 155, 22 N.W.2d 737 (1946), *Winterton v. Elverson*, 329 N.W.2d 633 (S.D. 1986).

SDCL 46A-10A-20 must therefore not only be read in harmony with SDCL 46A-10A-70, but both statutes must also be considered in light of opinions of the South Dakota Supreme Court. In short, far from being inconsistent, SDCL 46A-10A-20 and SDCL 46A-10A-70 are a codification of drainage laws developed by the South Dakota Supreme Court over the last 80 years.

The foregoing opinion does not constitute an opinion of the application of federal law, the law of water rights as set forth in SDCL title 46, or ordinances or controls developed by any particular county, including Hutchinson County.

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