

CHAPTER 46A-4

ORGANIZATION, BOUNDARIES AND DISSOLUTION OF IRRIGATION DISTRICTS

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46A-4-1. Creation of irrigation district--Filing petition--Number of electors required. Twenty-five percent of the electors as defined in § 46A-4-2 owning or holding lands in any proposed district for irrigation may propose organization of an irrigation district by filing a petition with the Board of Water and Natural Resources in compliance with the requirements of this chapter. The minimum number of electors required to propose an irrigation district shall be three. However, if the number of electors in a proposed irrigation district is less than seven, all electors within the proposed district must join in the petition.

Source: SDC 1939, § 61.0801; SL 1947, ch 417, § 1; SL 1963, ch 455, § 1; SDCL, § 46-12-1; SL 1976, ch 275, § 1; SL 1984, ch 294, § 1; SL 1986, ch 376, § 1.

46A-4-2. Elector defined. The term, elector, as used in this chapter and chapters 46A-5 to 46A-7, inclusive, means any person, the United States of America, the State of South Dakota or any political subdivision of the state, or any corporation authorized to do business in the state and owning not less than thirty-five acres of land within any district. If the elector is the owner or entryman of land in more than one division of the irrigation district and resides without the district, the elector is considered an elector in the division of the district in which the major portion of the elector's land is situated. If the qualifying thirty-five acres or more of land is sold under a contract for deed which is of record in the office of the register of deeds of the county, both the landowner and the individual purchaser of the land, as named in the contract for deed, shall be treated as an elector.

Source: SDC 1939, § 61.0801; SL 1947, ch 417, § 1; SL 1963, ch 455, § 1; SDCL § 46-12-2; SL 1979, ch 299, § 1; SL 1984, ch 294, § 2; SL 2011, ch 165, § 331.

46A-4-3. Petition to organize irrigation district--Number of signers--Boundaries to be described--Request for organization. A petition to organize an irrigation district shall be presented to the Board of Water and Natural Resources and signed by twenty-five percent of the electors of the proposed irrigation district. The petition shall include the legal description of all the lands proposed for inclusion in the district and shall request that the proposed district be organized under the provisions of this chapter.

Source: SDC 1939, § 61.0802; SL 1947, ch 417, § 2; SL 1963, ch 455, § 2; SDCL, § 46-12-3; SL 1984, ch 294, § 3.

46A-4-3.1. Petition--Signing by electors--Form--Affidavit of circulator. Each elector signing a petition shall add to the elector's signature, in the elector's own handwriting, the elector's post office address, the legal description of sufficient land to qualify as an elector, and the date of signing. The petition may contain any number of pages, and each page shall have an identical heading. Any number of identical petition forms may be circulated as a part of the petition. Every page of a petition containing signatures shall have below the signatures an affidavit by the circulator in substantially the following form:

State of South Dakota)
) SS
 County of _____)

I, the undersigned, being first duly sworn, depose and say that I am the circulator of the foregoing petition containing _____ signatures; that each person whose name appears on the petition sheet personally signed the petition in the presence of the affiant; that the affiant believes that each of the signers is an owner or entryman of the land described opposite the signer's signature, to be included within the proposed district, and residing at the address written opposite the signer's name; and that affiant stated to every petitioner before the petitioner affixed his or her signature the legal effect and nature of the petition.

Circulator

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

Source: SL 1984, ch 294, § 4; SL 2011, ch 165, § 332.

46A-4-4. Petition for formation of irrigation district--Map of proposed district to accompany, contents. When a petition is filed with the Board of Water and Natural Resources, it shall be accompanied by a map of the proposed district. The map shall show at an appropriate scale the location of the proposed canal or the works intended to irrigate the lands of the proposed district and the canals situated within the boundaries of the proposed district, except those canals that merely pass through the lands and do not irrigate any of those lands. If the water supply is from a natural stream, the flow of the stream shall be stated in cubic feet per second. If the water supply for the district is to be gathered by a storage reservoir, the map shall show the location of the proposed reservoir and shall give its capacity in acre-feet. Cross sections of proposed canals and all proposed dams and embankments shall be submitted in sufficient detail to show the contemplated method of construction. The capacity shall be stated in cubic feet per second of such proposed and such existing canals. The map and cross sections shall be certified as accurate by a competent irrigation engineer.

Source: SDC 1939, § 61.0802; SL 1947, ch 417, § 2; SL 1963, ch 455, § 2; SDCL, § 46-12-4; SL 1984, ch 294, § 5.

46A-4-4.1. Notice of hearing to consider petition--Publication--Contents--Approval of petition--Fixing date for election. After a petition is filed with the Board of Water and Natural Resources, the board shall publish a notice of a hearing to consider the petition. The publication shall be once a week for two consecutive weeks in at least one official newspaper in each county where any portion of the proposed district will lie. The second publication may not be more than thirty nor less than twenty days before the hearing. The notice shall inform landowners of their right to inclusion or exclusion of their lands in the proposed district pursuant to §§ 46A-4-8 and 46A-4-12. After determining that the petition is in compliance with the provisions of this chapter, the board shall examine the petition, maps, related documents, and statements of interested persons. If necessary, the board shall further examine the proposed district, the works proposed to be utilized and the proposed location of the works. If the board determines that the proposed district is feasible and practicable, it shall by resolution approve the formation of an irrigation district as set forth in the petition, including any modifications of boards, and fix a date for an election on the question of formation.

Source: SL 1984, ch 294, § 6; SL 1986, ch 27, § 49.

46A-4-5 to 46A-4-7. Repealed by SL 1984, ch 294, §§ 7 to 9

46A-4-8. Inclusion in irrigation district of lands capable of being irrigated from works in proposed district. Upon application of the owner or entryman prior to the board's hearing on the question of district formation, the Board of Water and Natural Resources shall include lands capable of being irrigated from the proposed works in the proposed district, if the board determines that the inclusion of the lands is feasible and will not unreasonably compromise the ability of feasibly irrigable lands originally proposed for inclusion by petitioners to obtain the water to which they would be entitled and capable of receiving from the proposed district.

Source: SDC 1939, § 61.0802; SL 1947, ch 417, § 2; SDCL, § 46-12-8; SL 1984, ch 294, § 10.

46A-4-9. Ditches or canals constructed before July 1, 1917, and lands watered by them--Exemption--Rights of ditches already constructed. Any ditch or canal constructed before July 1, 1917, of sufficient capacity to water the lands for which the water was appropriated, together with the land subject to be watered by the ditch, canal, or franchise, is exempt from the operation of this chapter, unless an irrigation district is formed under the provisions of this chapter for the purpose of purchasing the ditches, canals, and franchises. This chapter and chapters 46A-5 to 46A-7, inclusive, do not affect the rights of ditches already constructed.

Source: SDC 1939, § 61.0801; SL 1947, ch 417, § 1; SL 1963, ch 455, § 1; SDCL § 46-12-9; SL 2011, ch 165, § 333.

46A-4-10. Holding or taxing nonirrigable land for irrigation purposes. In no case may any land be held by any district or taxed for irrigation purposes if the land cannot from any natural cause be irrigated by the district.

Source: SDC 1939, § 61.0832; SDCL § 46-12-10; SL 2011, ch 165, § 334.

46A-4-11. Repealed by SL 1984, ch 294, § 11

46A-4-12. Change in proposed boundaries by board--Exclusion of certain lands from district. The Board of Water and Natural Resources may make changes in the proposed boundaries as it deems proper and shall exclude from the district proposed by the petitioners land that is not susceptible of irrigation by the proposed system of works. The board may not allow land which will not be benefited by irrigation by the system of works or a portion thereof to be included in the proposed district. Upon written request by an owner or entryman before

the board's hearing on the question of formation, the board shall exclude the owner's or entryman's land from the proposed district.

Source: SDC 1939, § 61.0802; SL 1947, ch 417, § 2; SDCL § 46-12-12; SL 1984, ch 294, § 12; SL 2011, ch 165, § 335.

46A-4-13. Repealed by SL 1984, ch 294, § 13

46A-4-14. District divided into divisions by board--Size and number--Election of directors--Terms--Assessment of property within district. The Board of Water and Natural Resources shall make an order by resolution dividing the proposed district into three, five, or seven divisions as nearly equal in size as practicable. However, if the proposed irrigation district includes less than fifty electors, the board may establish the number of directors at not less than three and may permit the directors to be elected at large within the boundaries of the district. The board shall establish staggered terms of one to three years for the directors to be elected at the first election and all directors shall be elected for three-year terms thereafter. The county director of equalization shall assess the property within a district pursuant to this chapter.

Source: SDC 1939, § 61.0802; SL 1947, ch 417, § 2; SDCL, § 46-12-14; SL 1976, ch 275, § 2; SL 1984, ch 294, § 14; SL 1989, ch 82, § 35; SL 1991, ch 17 (Ex. Ord. 91-4), § 17.

46A-4-14.1. Division representing tribal or trust lands--Excepted from chapter. In any existing or proposed irrigation district containing Indian tribal or trust lands, the Board of Water and Natural Resources shall establish one division to represent all such tribal and trust lands upon application of any holder of Indian trust land, including an Indian tribe. The appropriate tribe shall appoint the director for that division and shall fill any vacancy in that office. If a holder of trust lands who has applied for inclusion within the district does not wish to be represented by the tribal representative, the Board of Water and Natural Resources shall include the land in one of the other divisions of the district. The other provisions of this chapter pertaining to the nomination of director candidates, the election of directors, and the filling of vacant director positions do not apply to the division representing tribal and trust lands or to any director or candidate for director for the division representing tribal or trust lands.

Source: SL 1986, ch 376, § 2.

46A-4-15. Notice of election on proposed district--Date of election--Contents of notice--Publication--Ballot form. The Board of Water and Natural Resources shall then give notice of an election for the purpose of determining if the proposed district shall be organized under the provisions of this chapter. The election shall be conducted as provided in §§ 6-16-4 to 6-16-6, inclusive.

Source: SDC 1939, § 61.0802; SL 1947, ch 417, § 2; SDCL, § 46-12-15; SL 1972, ch 239, § 2; SL 1978, ch 326, § 1; SL 1984, ch 294, § 15; SL 1998, ch 36, § 51.

46A-4-15.1, 46A-4-16. Repealed by SL 1998, ch 36, §§ 52, 53

46A-4-17. Persons qualified to vote at elections. No person may vote at any election held under the provisions of this chapter unless the person is a qualified elector as provided in § 46A-4-2.

Source: SDC 1939, § 61.0802; SL 1947, ch 417, § 2; SDCL § 46-12-17; SL 2011, ch 165, § 336.

46A-4-18. Corporate ownership of lands within proposed or existing irrigation districts--Designation of agent to vote in behalf of elections for organization of district. Where lands which are within a proposed or existing irrigation district are owned by a corporation, by the United States, or by this state, such corporation,

and any department or agency of the United States or of this state, in order to participate in any district election, by an instrument in writing, executed and acknowledged by the proper officer or officers of such corporation, department, or agency, shall designate an agent to vote in its behalf. Such instrument shall be presented to and filed with the county auditor by such agent.

Source: SDC 1939, § 61.0802 as added by SL 1947, ch 417, § 2; SDCL, § 46-12-18.

46A-4-19. Election procedure--Applicability of general laws--Resolution declaring district organized--District as political subdivision. If a majority of all the votes cast are "Irrigation District-Yes," the board shall, by resolution, declare the territory duly organized as an irrigation district, under the name and style designated. Upon filing of a true copy of the resolution with the secretary of state, the irrigation district shall become a political subdivision of the state with the authority, powers, and duties prescribed in chapters 46A-4 to 46A-7, inclusive.

Source: SDC 1939, § 61.0803; SDCL, § 46-12-19; SL 1984, ch 294, § 18; SL 1993, ch 256, § 71; SL 1998, ch 36, § 54.

46A-4-20. Resolution declaring district organized--Filing for record. The Board of Water and Natural Resources shall file a copy of the resolution immediately for record in the office of the register of deeds of each county in which any of the land is situated. The board shall also immediately forward a copy of the resolution to the county auditor of each of the counties in which any portion of the district may lie.

Source: SDC 1939, § 61.0803; SDCL, § 46-12-20; SL 1984, ch 294, § 19.

46A-4-21. Election of director for each division. There shall be elected at the same election one director for each division.

Source: SDC 1939, § 61.0803; SDCL, § 46-12-21; SL 1978, ch 325, § 1; SL 1978, ch 326, § 3; SL 1984, ch 294, § 20.

46A-4-22. Unentered public lands a major portion of district--Appointment of majority of directors by secretary of interior--Term of office. If the majority of the lands within the district are unentered public lands, a majority of the board of directors shall be appointed by the secretary of the interior. The directors shall be residents of the state and are subject to removal from office, and any vacancy shall be filled by the secretary of the interior. The directors shall hold office until the unentered public lands within the district constitute a minority of the total area, after which a general election shall be called by the board of directors, when their successors shall be elected.

Source: SDC 1939, § 61.0803; SDCL § 46-12-22; SL 2011, ch 165, § 337.

46A-4-23. Directors elected at large as a result of appointment of majority of directors by secretary of interior--Term of office. If a majority of said board of directors are appointed by the secretary of the interior, as provided for in this chapter, then the remaining directors shall be elected at large within the entire irrigation district for terms of three years each, which terms, however, shall be limited to and expire at the same time as the terms of members appointed by the secretary of the interior, after which the directors shall be elected in the same manner and for the same terms as provided herein in the case of the first general election of directors.

Source: SDC 1939, § 61.0804; SDCL, § 46-12-23.

46A-4-24. Directors elected at election to establish district--Terms of office--Tie election, procedure. At the election to establish the district, if the district is divided into three divisions, the member of the board of directors from division one shall be elected for a term of three years; the member from division two shall be

elected for a term of two years; and the member from division three shall be elected for a term of one year. If the district is divided into five or seven divisions, the members of the board from divisions one and two shall be elected for terms of three years; the members from divisions three and four shall be elected for terms of two years and the remaining members of the board shall be elected for a term of one year. In case of a tie, the election shall be determined as provided in chapter 12-21.

Source: SDC 1939, § 61.0804; SDCL, § 46-12-24; SL 1984, ch 294, § 21.

46A-4-25. Annual election of directors--Nomination--Election by receiving highest number of votes. Each year after establishing the district, there shall be elected for a term of three years one or more members of the board of directors, as the case may be. The member of the board of directors from each division shall be nominated as provided in this chapter and shall be elected by receiving the highest number of votes cast by the electors of the division in the irrigation district for which the member is to serve as a director. The regular election of such districts shall be held on the last Tuesday in October.

Source: SDC 1939, § 61.0804; SDCL § 46-12-25; SL 1976, ch 276, § 1; SL 1984, ch 294, § 22; SL 2011, ch 165, § 338.

46A-4-26. Hours of voting. Notwithstanding any other provision of this chapter and chapters 46A-5 to 46A-7, inclusive, the provisions of the general election law concerning the hours during which polls shall be open for voting shall apply to each irrigation district annual election.

Source: SDC 1939, § 61.0806; SDCL, §§ 46-12-25.1, 46-12-34; SL 1978, ch 327, § 1; SL 1998, ch 36, § 55.

46A-4-27. Directors to be electors of division--Residence. Each director shall be an elector of the division which the director represents; or the director shall be an elector of the district, if elected at large. Each director shall reside within the district or within fifteen miles of the district boundary as provided by the bylaws.

Source: SDC 1939, § 61.0803; SDCL, §§ 46-12-21, 46-12-25.2; SL 1978, ch 325, § 2; SL 1984, ch 294, § 23; SL 2003, ch 232, § 1.

46A-4-27.1. Nominating petitions for initial board of directors--Election not required if only one petition--Notice of vacancies and election--Results and certificate of election. The results of the election for the organization of the district shall be transmitted to the Board of Water and Natural Resources.

Source: SL 1984, ch 294, § 24; SL 1986, ch 376, § 3; SL 1998, ch 36, § 56.

46A-4-28. Nominating petition for directors--Filing--Form--Signers. Subsequent to the election for organizing the district and for the first set of directors, the directors shall be nominated by filing with the auditor of the county or counties where the district is located, not less than forty-five days before any annual election, nominating petitions for the vacancies to be filled. The petitions shall be in the form prescribed by the State Board of Elections. To nominate directors by division, the petitions shall be signed by at least ten qualified electors of the district division or ten percent of the qualified electors of the division, whichever is less. To nominate directors at large, the petitions shall be signed by at least twenty-five qualified electors of the district or ten percent of the qualified electors of the district, whichever is less. No petition may contain the name of more than one candidate for any vacancy to be filled, but each elector may sign as many petitions as there are directors to be elected and no elector may sign more than one petition for any particular vacancy.

Source: SDC 1939, § 61.0805; SL 1947, ch 417, § 3; SDCL, § 46-12-26; SL 1975, ch 276, § 1; SL 1984, ch 294, § 25; SL 1985, ch 359; SL 1986, ch 376, § 4.

46A-4-29. Repealed by SL 1984, ch 294, § 26

46A-4-30. Election not required where no question or contest--Retention of office by incumbent. If there is no question to be submitted to the electors and if only one nominating petition for any vacancy to be filled has been filed, then no election may be held to fill the vacancy; and the secretary shall issue a certificate of election to the nominee in the same manner as to a successful candidate after election. If no nominating petition has been filed, the incumbent is entitled to remain in office for an additional term.

Source: SDC 1939, § 61.0805; SL 1947, ch 417, § 3; SDCL § 46-12-28; SL 1984, ch 294, § 27; SL 1987, ch 332, § 2; SL 2011, ch 165, § 339.

46A-4-31. Notices of election after organization of district--Publication and posting. Before any election held subsequent to the organization of the district, the secretary of the board of directors shall publish notice of the time and place of the election once each week for at least two consecutive weeks prior to the election. The second publication shall be at least thirty days prior to the election. The notice shall be published in an official newspaper in each county where a portion of the district lies as designated by the board of directors. The secretary shall also post the notice in the office of the district.

Source: SDC 1939, § 61.0805; SL 1947, ch 417, § 3; SDCL, § 46-12-29; SL 1977, ch 367; SL 1984, ch 294, § 28.

46A-4-32. Elections after district organized and first set of directors elected--Voting by mail. After the election to organize the district and for the first directors, all other elections may be conducted under a system of voting by mail as may be provided in the bylaws of the district. The board of directors of any irrigation district may provide in the bylaws of the district for a system of voting by mail for resident and nonresident electors alike, in any election subsequent to the one to organize the district and for the election of the first set of directors. Such system shall afford a secret ballot and provide the general safeguards included in the absentee voting law relating to general state elections. It shall, however, be optional with the electors to return their ballots by ordinary mail or by registered or certified mail and either with or without special delivery postage.

Source: SDC 1939, §§ 61.0804, 61.0856; SDCL, § 46-12-30; SL 1984, ch 294, § 29.

46A-4-33. Precinct election officers--Appointment by board of directors or electors. Before the time for posting the notices, the board of directors shall appoint from each precinct participating in the election from the electors of the precinct, one clerk and two judges, who shall constitute a board of election for the precinct, in any election not conducted under a district system of voting by mail. If the board fails to appoint a board of election or the members appointed do not attend at the opening of the polls on the morning of election, the electors of the precinct present at the hour may appoint the board or supply the place of an absent member of the board of election. The board of directors shall, in its order appointing the board of election, designate the hour and place in the precinct where the election will be held.

Source: SDC 1939, § 61.0805; SL 1947, ch 417, § 3; SDCL § 46-12-31; SL 2011, ch 165, § 340.

46A-4-34. Chair of election board--Oaths. One of the judges shall be chair of the election board and may administer all oaths required in the progress of an election. The chair may appoint judges and clerks, if during the progress of the election any judge or clerk ceases to act. Any member of the board of election, or any clerk of the board of election, may administer and certify oaths required to be administered during the progress of an election.

Source: SDC 1939, § 61.0806; SDCL § 46-12-32; SL 2011, ch 165, § 341.

46A-4-35. Precinct election boards--Oaths of members, administration, and certification. Before opening the polls each member of the election board must take and subscribe an oath faithfully to perform the duties imposed by law. Any elector of the precinct may administer and certify such oath.

Source: SDC 1939, § 61.0806; SDCL, § 46-12-33.

46A-4-36. Canvass of votes by board--Time and place. The board of directors shall meet at its usual place of meeting on the first Monday after each election and canvass the return. If at the time of meeting the returns from each precinct in the district in which the polls were opened have been received, the board of directors shall proceed to canvass the returns. However, if some of the returns have not been received, the canvass shall be postponed from day to day until all the returns have been received, or until postponements have been had. The canvass shall be made in public and by opening the returns and ascertaining the vote of the district for each person voted for and declaring the results of the canvass. No list, tally paper, or certificate returned from any election may be set aside or rejected for want of form if it can be satisfactorily understood.

Source: SDC 1939, § 61.0807; SDCL § 46-12-35; SL 2011, ch 165, § 342.

46A-4-37. Declaration of election results--Certificate of election. The board of directors shall declare the person having the highest number of votes cast for each vacancy elected. The secretary shall immediately make out and deliver to that person a certificate of election, signed by the secretary and authenticated with the seal of the district.

Source: SDC 1939, § 61.0808; SDCL § 46-12-36; SL 1984, ch 294, § 30; SL 2011, ch 165, § 343.

46A-4-38. Statement of election results--Filing--Contents. The secretary of the board of directors shall, as soon as the result is declared, enter upon the records of the board and file in the office of the auditor of each county in which the district is located a statement of the results. The statement shall show:

- (1) The whole number of votes cast in the district and in each division of the district;
- (2) The names of the persons voted for;
- (3) The office to fill which each person was voted for;
- (4) The number of votes given in each precinct for each of such persons; and
- (5) The number of votes given in the district for each of such persons.

Source: SDC 1939, § 61.0808; SDCL § 46-12-37; SL 1975, ch 276, § 2; SL 2011, ch 165, § 344.

46A-4-39. Vacancy in office of board of directors--Filling--District treasurer appointed by board. In case of a vacancy in the office of a member of the board of directors, the vacancy shall be filled by appointment by a majority of the remaining members of the board. Any director so appointed shall hold office until the next general election of the division and until the director's successor is elected and qualified. The district treasurer shall be appointed by the board of directors and shall serve at the pleasure of the board.

Source: SDC 1939, § 61.0808; SDCL § 46-12-38; SL 1984, ch 294, § 31; SL 1989, ch 82, § 36; SL 2011, ch 165, § 345.

46A-4-40. Elected directors--Qualifying--Term of office--Time for assumption of duties. The directors elected in compliance with § 46A-4-21 may enter immediately into the duties of their respective offices upon qualifying as provided in §§ 46A-4-41 to 46A-4-43, inclusive, and shall hold their respective offices until the next general election for the irrigation district, when their successors are elected. The directors elected after the first election shall assume the duties of their office on the last Tuesday in November after their election and all incumbents shall hold their respective offices until their successors are elected and qualified.

Source: SDC 1939, §§ 61.0803, 61.0804; SDCL, § 46-12-39; SL 1976, ch 276, § 3; SL 1984, ch 294, § 32.

46A-4-41. Directors' and officers' oath of office--Official bonds. Before assuming the duties of their offices, all directors and officers shall take and subscribe the official oath. The district treasurer shall execute an official

bond, approved by the board of directors, in the sum of not less than one thousand dollars plus such additional amounts as shall be determined by the board of directors.

Source: SDC 1939, § 61.0804; SDCL, § 46-12-40; SL 1974, ch 55, § 47; SL 1977, ch 366, § 1; SL 1984, ch 294, § 33; SL 1989, ch 82, § 37.

46A-4-42. District appointed fiscal agent of United States to collect money for federal reclamation project--Additional bond required--Right to sue on bond. If any district organized under this chapter is appointed fiscal agent of the United States or is authorized by the United States to make collections of money for and on behalf of the United States in connection with any federal reclamation project, the treasurer and each director shall execute an additional official bond in such sum as the secretary of the interior may require. The bond shall be conditioned for the faithful discharge of the duties of the office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization. The additional bonds shall be approved, recorded, and filed as provided in § 46A-4-41 for other official bonds, and any such additional bonds may be sued upon by the United States or any person injured by the failure of the officer or the district fully, promptly, and completely to perform their respective duties.

Source: SDC 1939, § 61.0804; SDCL § 46-12-41; SL 2011, ch 165, § 346.

46A-4-43. Bond of officers and directors--Form--Obligee--Cost of surety bonds, payment by the district. All official bonds for which no specific provision is made shall be in the form prescribed by law for official bonds of county officers, except the obligee named in such bond shall be the district, and where approved surety company bonds are furnished, the cost of such bonds may be paid by the district.

Source: SDC 1939, § 61.0804; SDCL, § 46-12-42.

46A-4-44. Organization meeting of board of directors--Election of president and vice-president--Appointment of secretary. On the regular November meeting in each year the directors shall meet and organize as a board for the ensuing year, elect a president and vice-president from their number and appoint a secretary who need not be a member of the board.

Source: SDC 1939, § 61.0809; SDCL, § 46-12-43; SL 1976, ch 276, § 4.

46A-4-45. Meetings of directors--Special meetings--Open to public--Quorum--Vote required for action. The board of directors shall hold regular meetings in its office each month on a day specified in the bylaws of the district at such time as the president shall designate and shall hold such special meetings as may be required for proper transaction of business. All special meetings shall be ordered by the president of the board, the order to be entered of record, and five days' notice thereof shall be given to each member unless notice is either waived in writing or by the presence of the director at the special meeting. The president shall also order a special meeting upon the request of any two directors. The order shall specify the business to be transacted and no other business than that specified shall be transacted at a special meeting. All meetings of the board shall be public. A majority of the members shall constitute a quorum for the transaction of business. Upon all questions requiring a vote there shall be a concurrence of at least a majority of the board.

Source: SDC 1939, § 61.0810; SL 1953, ch 482; SDCL, § 46-12-44; SL 1976, ch 276, § 5; SL 1978, ch 328; SL 1984, ch 294, § 34.

46A-4-46. Records of board of directors open for inspection--Publication of statement of proceedings--Filing of list of expenditures. All records of the board of directors shall be open to the inspection of any elector during business hours, and the board shall cause to be published at the close of each regular or special meeting a brief statement of the proceedings of the board in one newspaper of general circulation in the district, at the legal rate for advertising legal notices. The board shall file an itemized list of all expenditures approved at any such

meeting at the office of the auditor of the county or counties where the district is located within ten days of any such meeting.

Source: SDC 1939, § 61.0810; SL 1953, ch 482; SDCL § 46-12-45; SL 1975, ch 276, § 3; SL 2011, ch 165, § 347.

46A-4-47. Compensation of district directors--Payment from district fund. For the time actually and necessarily employed in the duties of their office and in attending and returning from the sessions of the board of directors, the district directors may receive travel and subsistence expense in accordance with the rules promulgated by the State Board of Finance. In addition, per diem, not to exceed the Board of Water and Natural Resources' per diem, may be paid each member for each day of actual service for attending meetings, hearings, or investigations of the irrigation district board. Travel, subsistence, and per diem shall be paid out of the district general fund on vouchers duly verified and approved according to the rules promulgated by the Board of Finance.

Source: SDC 1939, § 61.0815; SL 1967, ch 341; SDCL, § 46-12-46; SL 1979, ch 299, § 2; SL 1984, ch 294, § 35; SL 1992, ch 319.

46A-4-48. Powers and duties of board of directors of district--Distribution and printing of bylaws and procedures--Water rights appurtenant to land. The board of directors shall manage and conduct the business affairs of the district, make and execute all necessary contracts, employ such agents, officers, and employees as may be required and prescribe their duties, adopt a seal for such district, establish equitable bylaws and procedures for the distribution and use of water, and generally perform all such acts necessary to carry out fully the purposes of this chapter and chapters 46A-5 to 46A-7, inclusive. The bylaws and procedures shall be printed in convenient form for distribution, and all water rights shall be appurtenant to the land.

Source: SDC 1939, § 61.0809; SDCL, § 46-12-47; SL 1993, ch 256, § 72.

46A-4-49. Interest in contract of district or acceptance of bribe by director or officer as felony. No director or officer named in this chapter, or chapters 46A-5 to 46A-7, inclusive, may be interested in any manner, directly or indirectly, in any contract awarded, or to be awarded, by the irrigation district board, or in the profits to be derived from the contract. No such director or officer may receive any bonds, gratuity, or bribe. Any such director or officer who is interested in any manner, directly or indirectly, in any contract awarded, or to be awarded, by the board of directors provided for in chapters 46A-5 to 46A-7, inclusive, or in the profits derived from the contract, or who receives any bonds, gratuity, or bribe, is guilty of a Class 5 felony.

Source: SDC 1939, §§ 61.0816, 61.9917; SDCL § 46-12-48; SL 1983, ch 15, § 24; SL 2011, ch 165, § 348.

46A-4-50. Change of irrigation district boundaries--Exclusion of land within boundaries. The boundaries of any irrigation district organized under the provisions of this chapter may be changed, and tracts of land included within the boundaries of the district at or after its organization under the provisions of this chapter may be excluded from the district in the manner prescribed in this chapter. However, neither a change of boundaries of the district nor an exclusion of lands from the district may impair or affect its organization, or its rights in or to property, or any of its rights or privileges, of whatever kind or nature. No such boundary change or exclusion of lands may affect, impair, or discharge any contract, obligation, lien, or charge for or upon which the district is or might become liable or chargeable, had such change of its boundaries not been made or had not any land been excluded from the district.

Source: SDC 1939, § 61.0818; SDCL § 46-12-49; SL 2011, ch 165, § 349.

46A-4-51. Common school and endowment irrigable lands within district--Sale--Inclusion in district. All common school and endowment lands located within any irrigation district and susceptible of irrigation shall be

offered for sale, according to law, within five years after the time water is available for irrigation, and after sale shall be included within the district as in this chapter provided for including additional lands.

Source: SDC 1939, § 61.0819; SDCL, § 46-12-50.

46A-4-52. Assent of secretary of interior necessary for change in boundaries of district contracting with United States. If any contract has been made between the district and the United States as provided in chapters 46A-5 and 46A-6, no change may be made in the boundaries of the district. The board of directors may make no order changing the boundaries of the district until the secretary of the interior assents to the change in writing and the assent is filed with the board of directors.

Source: SDC 1939, § 61.0824; SDCL § 46-12-51; SL 2011, ch 165, § 350.

46A-4-53. Petition for inclusion of tract of land within boundaries of irrigation district--Contents. The holder or holders of title or evidence of title, or the secretary of the interior for unentered public land, representing one-half or more of any body of lands which, taken together, constitute one tract of land, may file with the board of directors of such district a petition in writing, praying that the boundaries of such district may be so changed as to include such lands. The petition shall describe the boundaries of the parcel or tract of land and shall also describe the boundaries of the several parcels owned by the petitioners, if the petitioners be the owners, respectively, of distinct parcels, but such description need not be more particular than may be required when such lands are entered by the county director of equalization in the assessment book. Such petition must contain the assent of the petitioners to the inclusion in such district of the parcels or tracts of land described in the petition, and of which the petition alleges that they are respectively the owners; and it must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

Source: SDC 1939, § 61.0819; SDCL, § 46-12-52; SL 1977, ch 366, § 9.

46A-4-54. Participation by conservators and personal representatives of estates. A conservator or personal representative of an estate, who is appointed as such under the laws of this state and who, as conservator or personal representative, is entitled to the possession of the lands belonging to the estate which the conservator or personal representative represents, may on behalf of his or her ward or the estate which he or she represents, upon being authorized by the proper court, sign and acknowledge the petition provided in this chapter, and may show cause, as provided in this chapter, why the boundaries of a district should not be changed.

Source: SDC 1939, § 61.0828; SDCL § 46-12-53; SL 1993, ch 213, § 243; SL 1995, ch 167, § 188; SL 2011, ch 165, § 351.

46A-4-55. Change of boundaries of irrigation district--Notice of filing of petition, contents--Time and place of hearing by board of directors--Cost of proceedings, advancement by petitioners. The secretary of the board of directors shall cause notice of the filing of a petition under § 46A-4-53 to be given and published in the same manner and for the same time that notices of special elections for the issuance of bonds are required to be published. The notice shall state the filing of such petition and the names of the petitioners, a description of the lands mentioned in the petition and the prayer of the petition; and it shall notify all persons interested, or that may be affected by such change of the boundaries of the district, to appear at the office of the board at a time named in the notice and show cause, in writing, if any they have, why the change in the boundaries of the district as proposed in the petition should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioners shall advance to the secretary sufficient money to pay the estimated cost of all such proceedings for inclusion.

Source: SDC 1939, § 61.0820; SDCL, § 46-12-54.

46A-4-56. Hearing on petition to change boundaries--Adjournment--Assent to change. The board of directors at the time and place mentioned in the notice, or at such other time to which the hearing of the petition may be adjourned, shall hear the petition and all objections to the petition presented in writing by any person. The failure of any person interested in the district or in the matter of the proposed change of its boundaries to show cause in writing is deemed an assent by the person to the change of the boundaries of the district as prayed for in the petition, or to such a change in the boundaries as will include a part of the lands. The filing of the petition with the board is deemed an assent by each petitioner to a change of the boundaries that may include the whole or any portion of the lands described in the petition.

Source: SDC 1939, § 61.0821; SDCL § 46-12-55; SL 2011, ch 165, § 352.

46A-4-57. Rejection of petition to change boundaries--Resolution of board--Contents. If the board of directors deems it not in the best interests of the district that a change of its boundaries be made to include in the district the lands mentioned in the petition, the board shall reject the petition. However, if the board deems it in the best interest of the district that the boundaries of the district be changed and if no person interested in the proposed change of its boundaries shows cause in writing why the proposed change should not be made, or if having shown cause, withdraws the objection, or if having shown cause does not withdraw the objection and the board of directors deems it in the best interests of the district that the district boundaries be so changed, the board shall by resolution order that the boundaries of the district be changed to include in the district the lands mentioned in the petition, or some part of such lands. The resolution shall describe the exterior boundaries of the lands to be included within the boundaries of the district. The order shall describe the entire boundaries of the district as they will be after the boundary change, and for that purpose the board may cause a survey to be made of such portions of the boundaries as the board deems necessary.

Source: SDC 1939, § 61.0823; SDCL § 46-12-56; SL 2011, ch 165, § 353.

46A-4-58. Land not included in irrigation district unless owner or lessee obligated to pay assessments or charges. No provision of this chapter authorizes or empowers the board of directors to include any land within the district unless the owner or lessee of the land pays or obligates the land to pay the same assessments or charges as all other lands have originally paid or have been obligated for, including the cost of studies, construction, operation, and maintenance charges and the cost of water deliveries.

Source: SDC 1939, § 61.0809; SDCL § 46-12-57; SL 1984, ch 294, § 38; SL 2011, ch 165, § 354.

46A-4-59. Payment by petitioners of share of original district assessments as condition for granting petition. The board of directors to whom a petition to include land within the district is presented may require, as a condition precedent to the granting of the petition, that the petitioners shall severally pay to the district such prospective sums to be determined by the board, as nearly as the same can be estimated, as the petitioners or their grantors would have been required to pay to the district, as assessments, had the lands been included in the district at the time the district was originally formed.

Source: SDC 1939, § 61.0822; SDCL § 46-12-58; SL 2011, ch 165, § 355.

46A-4-60. Board order for election on filing of protests--Publication of notice--Ballots--Boundary descriptions. Upon the adoption of the resolution specified in § 46A-4-57, if twenty-five percent of the electors of the district have made written protests against the proposed inclusion of lands within the district and have not withdrawn the protests, the board of directors shall order that an election be held within the district to determine whether the boundaries of the district shall be changed as mentioned in the resolution, and shall fix the time at which the election shall be held. The board shall cause notice of the election to be given, posted, and published, and the election shall be held and conducted. The returns of the election shall be made and canvassed, the result of the election ascertained and declared, and all things pertaining to the election conducted in the manner prescribed by chapter 46A-6 in case of a special election to determine whether bonds of an irrigation district shall be issued. The ballots cast at the election shall contain the words, "for change of boundary" or "against

change of boundary," or equivalent terms. The notice of election shall describe the boundaries in such manner and terms that the boundary can be readily traced.

Source: SDC 1939, § 61.0824; SDCL § 46-12-59; SL 1976, ch 277, § 1; SL 2011, ch 165, § 356.

46A-4-61. Order of board in conformity with election results on boundary change. If at the election a majority of all the votes cast are against the change of boundaries, the board of directors shall order that the petition be denied and may proceed no further in the matter. However, if a majority of the votes are in favor of the change, or if no election is held due to a lack of sufficient written protests as provided in § 46A-4-60, the board shall order the boundaries of the district to be changed in accordance with the resolutions adopted by the board. The order shall describe the entire boundaries of the district, and for that purpose the board may cause a survey of such portions of the district to be made as the board may deem necessary.

Source: SDC 1939, § 61.0825; SDCL § 46-12-60; SL 1976, ch 277, § 2; SL 2011, ch 165, § 357.

46A-4-62. Filing and recording of order changing boundaries--Effect of change. If the boundaries of a district are changed, a copy of the order of the board of directors ordering the change, certified by the president and secretary of the board, shall be filed for record in the office of the Board of Water and Natural Resources and also the register of deeds office of each county within which are situated any of the lands of the district. The district shall remain an irrigation district as fully, to every intent and purpose, as if the lands which are included in the district by the boundary change had been included in the district at the original organization of the district.

Source: SDC 1939, § 61.0826; SDCL § 46-12-61; SL 2011, ch 165, § 358.

46A-4-63. Petition for change of boundaries of irrigation district--Recording in minutes of board of directors, admissibility as evidence. Upon the filing of the copies of the order, as provided in § 46A-4-62, the secretary shall record in the minutes of the board of directors the petition; and the minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the petition.

Source: SDC 1939, § 61.0827; SDCL, § 46-12-62.

46A-4-64. Redivision of district following inclusion of land--Election precincts. In case of the inclusion of any land within any district by proceedings under this chapter, the board of directors shall, at least thirty days before the next succeeding general election, make an order redividing the district into three, five, or seven divisions, as nearly equal in size as may be practicable. The divisions shall be numbered, and one director shall thereafter be elected by each division. For the purposes of elections the board of directors shall establish a convenient number of election precincts in the district and define the precinct boundaries. The precincts may be changed from time to time as the board deems necessary.

Source: SDC 1939, § 61.0829; SDCL § 46-12-63; SL 2011, ch 165, § 359.

46A-4-65. Exclusion of contiguous tracts of land from district--Petition--Contents. The owner in fee of any tract of land, entrymen of unpatented lands, and the secretary of the interior for unentered public lands, which constitute a portion of an irrigation district, may file with the board of directors of the district a petition praying that such tracts and any other contiguous tracts be excluded and taken from the district. The petition shall describe the boundaries of the land which the petitioners desire to have excluded from the district and also the lands of each of the petitioners that are included within the boundaries. The description of the lands need not be more particular nor certain than is required when the lands are entered in the assessment book by the county director of equalization; and the petition shall be acknowledged in the same manner and form as required in case of a conveyance of land.

Source: SDC 1939, § 61.0830; SDCL § 46-12-64; SL 2011, ch 165, § 360.

46A-4-66. Notice of petition to exclude land--Publication--Contents--Time for hearing. The secretary of the board of directors shall publish a notice of the filing of the petition once each week for at least two successive weeks in some newspaper published in the county where the office of the board of directors is situated. If any portion of the territory to be excluded lies within another county, then the notice shall be published in a newspaper published within each of the counties. If no newspaper is published in such counties, notice shall be provided by posting the notice for the same time in at least three public places in the district. In the case of the posting of notices, one such notice shall be posted on the lands proposed to be excluded. The notice shall state the filing of the petition, the names of the petitioners, a description of the lands mentioned in the petition, and the prayer of the petition. The notice shall notify all persons interested in or that may be affected by the change of the boundaries of the district to appear at the office of the board, at a time named in the notice, and show cause in writing why the change in the boundaries of the district, as proposed in the petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be at the next regular meeting of the board after the expiration of the time for the publication of the notice.

Source: SDC 1939, § 61.0831; SDCL § 46-12-65; SL 1972, ch 239, § 3; SL 2011, ch 165, § 361.

46A-4-67. Hearing on petition to exclude land--Assent of interested persons. The board of directors, at the time and place mentioned in the notice or at the time to which the hearing of the petition may be adjourned, shall hear the petition and all objections to the petition, presented in writing by any person, showing cause why the petition should not be granted. The failure of any person interested in the district to show cause, in writing, why the tract or tracts of land mentioned in the petition should not be excluded from the district is deemed an assent by the person to the exclusion of the tract of land, or any part of the tract. The filing of the petition with the board is deemed an assent by each petitioner to the exclusion of the lands mentioned in the petition, or any part of the lands.

Source: SDC 1939, § 61.0832; SDCL § 46-12-66; SL 2011, ch 165, § 362.

46A-4-68. Resolution for exclusion of land when bonds or federal contract outstanding--Bondholders' or federal assent required--Assent waived by terms of bond issue. If there are outstanding bonds of the district or if the district has entered into a contract with the United States as provided in chapters 46A-5 and 46A-6, the board of directors may adopt a resolution to the effect that the board deems it to be for the best interests of the district that the lands mentioned in the petition, or some portion of the lands, should be excluded from the district. The resolution shall describe the lands so that the boundaries of the lands can be readily traced. The holders of any such outstanding bonds may give their consent in writing to the effect that they severally consent that the board may make an order by which the lands mentioned in the resolution may be excluded from the district. If any contract has been made with the United States, the secretary of the interior may assent to the change. The assent may be acknowledged by the holders of the bonds in the same manner and form as required in case of a conveyance of land, except the assent of the secretary of the interior need not be acknowledged. The assent shall be filed with the board and shall be recorded in the minutes of the board. The minutes, or a certified copy of the minutes, are admissible in evidence with the same effect as the assent; but if the assent of the bondholders, and in case of any contract with the United States the assent of the secretary of the interior, is not filed, the board shall deny and dismiss the petition. However, if the resolution authorizing the issuance of the outstanding bonds explicitly provides that no bondholder assent is required for the exclusion of lands from the district or if the resolution provides that the bondholder assent is required only under certain specified conditions, then the terms of the resolution shall prevail and no bondholder assent need be obtained as provided in this section.

Source: SDC 1939, § 61.0834; SDCL § 46-12-67; SL 1976, ch 277, § 3; SL 2011, ch 165, § 363.

46A-4-69. Grant or denial of petition to exclude land from district--Best interests of district--Conditions for exclusion. If the board of directors deems it not in the best interests of the district that the lands mentioned in the petition, or some portion of the lands, should be excluded from the district, the board shall order that the petition

be denied. If the board deems it in the best interests of the district, the board may order that the lands mentioned in the petition, or some portion of the lands, be excluded from the district under the following conditions:

- (1) Less than twenty-five percent of the electors of the district show cause in writing why the lands or some portion of the lands should not be excluded from the district or, having shown cause, withdraw their objection;
- (2) There are no outstanding bonds of the district, or, if there are outstanding bonds of the district, no bondholder assent to exclusion is required as provided by § 46A-4-68 and by the resolution authorizing the issuance of the outstanding bonds; and
- (3) There is no contract between the district and the United States.

Source: SDC 1939, § 61.0833; SDCL § 46-12-68; SL 1976, ch 277, § 4; SL 2011, ch 165, § 364.

46A-4-70. Election ordered on exclusion after objections filed--Publication of notice--Contents--Conduct of election. If the assent of the holders of the bonds, when required, and in case of any contract with the United States the assent of the secretary of the interior be filed and entered of record and if there be written objections presented by twenty-five percent of the electors of the district which have not been withdrawn, then the board of directors may order an election to be held in the district to determine whether an order shall be made excluding such lands from the district as mentioned in the resolution. The notice of such election shall describe the boundaries of all the lands which it is proposed to exclude, and such notice shall be published once each week for at least two successive weeks prior to such election in a newspaper published within the county where the office of the board of directors is situated. If any portion of such territory to be excluded lies within another county or counties, then such notice shall be so published in a newspaper published in each of such counties. Such notice shall require the electors to cast ballots which shall contain the words "for exclusion" and "against exclusion," or words equivalent thereto. Such election shall be conducted in accordance with the general election laws of the state; provided no particular form of ballot shall be required.

Source: SDC 1939, § 61.0835; SDCL, § 46-12-69; SL 1972, ch 239, § 4; SL 1976, ch 277, § 5.

46A-4-71. Majority vote against exclusion, denial and dismissal of petition--Majority vote in favor of exclusion, order of board of directors excluding land from irrigation district, contents. If at such election a majority of all the votes cast shall be against the exclusion of the lands from the district, the board of directors shall deny and dismiss such petition and proceed no further in the matter; but if a majority of such votes be in favor of the exclusion of the lands from the district, the board shall thereupon order that the lands mentioned in the resolution be excluded from the district. The order shall describe the boundaries of the district, should the exclusion of the lands from the district change the boundaries of the district, and for that purpose the board may cause a survey to be made of such portions of the boundaries as the board may deem necessary.

Source: SDC 1939, § 61.0836; SDCL, § 46-12-70.

46A-4-72. Order excluding land from irrigation district--Entry in minutes of board of directors--Filing and recording--Effect of order. Upon the entry in the minutes of the board of directors of any of the orders hereinafter in this chapter mentioned, a copy thereof, certified by the president and secretary of the board, shall be filed for record in the office of the Board of Water and Natural Resources and also in the office of the register of deeds of each county within which are situated any of the lands of the district; and thereupon the district shall be and remain an irrigation district as fully, to every intent and purpose, as it would be had no change been made in the boundaries of the district or had the lands excluded therefrom never constituted a portion of the district.

Source: SDC 1939, § 61.0837; SDCL, § 46-12-71.

46A-4-73. Exclusion of land from irrigation district--Refunding of assessments. In case of the exclusion of any lands under the provisions of this chapter, there shall be refunded, to any and all persons who have paid any assessment or assessments to such district for any lands so excluded, any sum or sums so paid. Such payments shall be made in the same manner as other claims against such district, and from such fund or funds as the board

of directors may designate; but where such parties have realized benefits from the organization and operation of the district, the value of such benefits shall be deducted from the assessments paid in by such person and the balance, if any, refunded.

Source: SDC 1939, § 61.0840; SDCL, § 46-12-72.

46A-4-74. Exclusion of land from irrigation district--Effect of change on office of director. If the lands excluded from any district shall embrace the greater portion of any division or divisions of such district, then the office of director for such division shall become and be vacant at the expiration of ten days from the final order of the board of directors excluding the lands, and such vacancy shall be filled by appointment as provided by this chapter.

Source: SDC 1939, § 61.0838; SDCL, § 46-12-73.

46A-4-75. Exclusion of land from irrigation district--Redivision of district by board of directors--Election precincts, establishment, change from time to time. At least thirty days before the next general election of such district, the board of directors thereof shall make an order dividing such district into three, five, or seven divisions as nearly equal in size as practicable, which shall be numbered, and one director shall be elected by each division. For the purpose of election in such district, the board of directors must establish a convenient number of election precincts, and define the boundaries thereof, which precincts may be changed from time to time, as the board of directors may deem necessary.

Source: SDC 1939, § 61.0839; SDCL, § 46-12-74.

46A-4-76. Resolution to exclude unproductive lands from district--Reasons--Service on owners and residents--Publication of notice. If the board of directors of an irrigation district finds that lands within the district are alkaline, slick, unsusceptible of economic leveling, water-logged, caliche, hard pan, or otherwise unproductive or incapable of carrying their proportionate district liabilities and obligations without recurring delinquencies, for which irrigation water is available, and that the major portion of such lands has been unfarmed and delinquent in payment of district taxes for the last two years or more, it may exclude such lands from the district. The board shall adopt a resolution stating its findings and declaring its intention to exclude such lands for one or more reasons set forth above, and shall require the record owner or any persons actually resident upon such land to show cause why the lands should not be excluded from the district. A copy of the resolution shall be served upon the record owners and actual residents, if any, upon the lands, personally if residents of the county in which the office of the board is located, or if not, by registered or certified mail addressed to such persons at their last known post office address, and by publication of the resolution at least once a week for three successive weeks in a newspaper of general circulation within the county in which the district office is located.

Source: SL 1976, ch 277, § 22; SDCL Supp, § 46-12-74.1; SL 1987, ch 29, § 34.

46A-4-77. Hearing on exclusion of unproductive lands--Time and place--Objections--Failure to object deemed consent--Rescission of resolution or adoption of second exclusion resolution. The resolution of exclusion authorized by § 46A-4-76 shall fix a time for hearing the resolution at the office of the board of directors. The board of directors at the time and place designated in the resolution or at such time or times to which the hearing is adjourned, shall consider the resolution and hear any pertinent objections to exclusion of the lands. Such objections shall be filed in writing at least two days prior to the hearing. Failure of any person interested to show cause why the land should not be excluded by filing objections thereto shall be deemed consent to exclusion of the land from the district. Upon conclusion of the hearing, the board may sustain the objections to exclusion of lands and rescind its previous resolution, or may adopt a second resolution excluding the lands or a portion thereof from the district.

Source: SL 1976, ch 277, § 23; SDCL Supp, § 46-12-74.2.

46A-4-78. Motion to reconsider exclusion of unproductive lands--Time--Appeal to circuit court--Contents--Trial--Filing of final resolution. Any person aggrieved by the final action of the board of directors acting pursuant to the provisions of § 46A-4-77 on a resolution of exclusion may file a written motion for reconsideration within ten days after adoption of the final resolution. Such person may appeal to the circuit court for the county in which the lands are located within twenty days after consideration by the district board of the motion for reconsideration. The appeal shall consist of notice and a recital of the proceedings taken, the facts and matters involved, and the reasons why the appellant is aggrieved by the action of the board. The appeal shall be tried before the circuit court for the county. The circuit court shall have jurisdiction to hear, decide, adjudicate, and make any and all necessary orders and judgments in the premises as in civil actions. If a motion for reconsideration or an appeal is not taken within the time allowed, the final resolution shall be filed for record in the clerk of courts and in the office of the board of county commissioners and the county treasurer of each county in which the excluded lands are located.

Source: SL 1976, ch 277, § 24; SDCL Supp, § 46-12-74.3.

46A-4-79. Rearrangement or reapportionment of district divisions upon exclusion of lands--Effects of exclusion--Procedural defects--Resolutions and bylaws. Upon exclusion of any lands, the board of directors may make such rearrangement or reapportionment of divisions within the district as the board deems advisable. No exclusion of lands may impair or affect the district organization or its property or rights therein, or any other rights or privileges, nor may it affect, impair, or discharge any contract obligation, lien, or charge for or upon which it was or might become liable or chargeable had the exclusion of land not been made. Lands excluded by an order of the board are liable for district contracts, debts, or obligations thereafter created. No omission or informality in the proceedings for exclusion of lands may invalidate such proceedings if the substantial rights of the parties affected were recognized and the proceedings were fairly conducted. The board of directors may make any resolutions and bylaws necessary in the proceedings.

Source: SL 1976, ch 277, § 25; SDCL Supp, § 46-12-74.4; SL 1993, ch 256, § 73.

46A-4-80. Subirrigated land--Relief from district assessments--Recording of suspension order. If any tract of land, or any part of a tract of land, to which the water right attached at any time becomes subirrigated, to the extent that water is no longer of any benefit on the land for irrigation purposes, the owner or entryman of the land may apply to the irrigation district board to relieve the subirrigated land from the district assessment as provided in chapter 46A-7. In the application, the landowner or entryman releases all claim to the water right as may belong to or has been applied to or upon the land, until the land may be drained and water for irrigation is again beneficial. The landowner or entryman may apply for a permit to transfer the water right to any other lands to which the water may be beneficially applied and to have the new or additional tract included within the boundaries of the district as provided by law and the exclusion of such lands and the inclusion of the new tract as provided in this section. The board may thereupon make the appropriate order of suspension of assessments, of the exclusion and inclusion of the lands and the transfer of the water right. A certified copy of the order shall be recorded in the office of the register of deeds in the county in which the land is situated. After the order has been recorded, all the obligations against the land from which the water right has been taken, arising by reason of the water right, shall be canceled and the obligation shall follow and attach with the water right to the land so included, if any.

Source: SDC 1939, § 61.0809; SDCL § 46-12-75; SL 2011, ch 165, § 365.

46A-4-81. Dissolution of district--Petition by majority of assessment payers--Calling of election by board--Notice of election. If a majority of the assessment payers, representing a majority of the number of acres of irrigable land within any irrigation district, petition the board of directors to call a special election for the purpose of submitting to the qualified electors of the irrigation district a proposition to vote on the discontinuance of the irrigation district and a settlement of its bonded and other indebtedness, the board of directors shall call an election, setting forth the object of the election. The board shall publish a notice of the

election in some newspaper in each of the counties in which the district is located, and in which a newspaper is published, for a period of thirty days before the election, setting forth the time and place for holding the election in each of the voting precincts in the district. The board shall also post a written or printed notice of the election in some conspicuous place in each of the voting precincts.

Source: SDC 1939, § 61.0848; SDCL § 46-12-76; SL 2011, ch 165, § 366.

46A-4-82. Dissolution of district contracting with United States--Assent of secretary of interior--Recording. If a contract has been made with the United States, no action may be taken by the board of directors for the dissolution of any irrigation district, as provided in this chapter, unless the assent of the secretary of the interior to the dissolution in writing has been filed with the secretary of the board of directors and a certified copy of the assent filed with the register of deeds of each county where the district lands are situated.

Source: SDC 1939, § 61.0848; SDCL § 46-12-77; SL 2011, ch 165, § 367.

46A-4-83. Election ballots on dissolution of district--Form and contents--Conduct of election. The directors shall provide ballots to be used at an election called pursuant to § 46A-4-81, on which shall be written or printed the words: "For dissolution, Yes," and "For dissolution, No." The ballots shall be placed in the hands of the proper election officers in the several voting precincts of the district before the opening of the polls on the day of the election. The election shall be conducted in all respects in the same manner as provided for the election of officers of the district.

Source: SDC 1939, § 61.0848; SDCL § 46-12-78; SL 2011, ch 165, § 368.

46A-4-84. Certification of election returns and ballots--Canvass of returns--Declaration of result--Recording. The return of the election, together with the ballots cast at the election, shall be certified by the election boards of the district to the board of directors within three days after the election. The board shall, on or before the third day after the election, canvass the returns and declare the result of the election. The result shall be at once recorded in the records of the district board.

Source: SDC 1939, § 61.0848; SDCL § 46-12-79; SL 2011, ch 165, § 369.

46A-4-85. Vote against dissolution precludes another election during year. If a majority of the votes are "For dissolution, No," there may not be another election upon the question of a dissolution of the district during the year in which the election was held.

Source: SDC 1939, § 61.0848; SDCL § 46-12-80; SL 2011, ch 165, § 370.

46A-4-86. Majority vote for dissolution of irrigation district--Notice by board of directors to creditors of district--Settlement of claims. If a majority of the votes shall be "For dissolution, Yes," then the board of directors shall immediately notify all persons having claims against the district of the result of such election, and may proceed to adjust, settle, and compromise any and all such claims, in whatever form the indebtedness of such district may be.

Source: SDC 1939, § 61.0848; SDCL, § 46-12-81.

46A-4-87. Raising of money to pay debts--Valuation of property by appraisers--Appointment--Report. For the purpose of raising money to pay any indebtedness of the district, the board of directors may sell and dispose of the canal, franchises, and other property belonging to the district at not less than a valuation to be fixed by a board of three appraisers. One member of the board of appraisers shall be appointed by the board of directors of the district and one shall be appointed by the board of county commissioners of the county in which the district was originally organized. The two appraisers shall elect a third. The board of appraisers shall be sworn by any

officer authorized by law to administer oaths and who has an official seal, to appraise the canal, franchises, and other property of the district at its cash value. As soon as practicable, the appraisers shall make an appraisal and shall report in writing their appraisal of all the property owned by the district to the board of directors.

Source: SDC 1939, § 61.0848; SDCL § 46-12-82; SL 2011, ch 165, § 371.

46A-4-88. Sale of property by board of directors--Advertisement--Notice of sale--Consideration of bids of purchasers by board of directors. The board of directors shall advertise the property for sale at least four weeks in such manner as in the judgment of the board will be to the best interests of the district; and shall state in such advertisement a description of the property, and the time and place when bids in writing for the same shall be opened and considered. At the time designated in such notice, or as soon thereafter as such board can meet, it shall open and consider all bids received for the purchase of the property.

Source: SDC 1939, § 61.0848; SDCL, § 46-12-83.

46A-4-89. Rejection of bids for purchase of property--Private negotiations for sale--Deferred payments--Lien--Foreclosure. The board of directors may reject any bids that are not, in the judgment of the board, a fair and just consideration for the property. After bids are thus rejected by the board, the board may by private negotiations with any person sell and convey by deed, executed by the board, all of the property for part cash and part in deferred payments, bearing the same interest as the bonded indebtedness of the district. If the district has no bonded indebtedness, the interest upon the deferred payments shall be as agreed upon by the board and the purchaser, not exceeding the rate allowed by law. The deferred payments are a lien upon all the property thus sold by the board and have the same force and effect as a mortgage against the property and may, when due, be foreclosed in the manner provided by law for the foreclosure of mortgages.

Source: SDC 1939, § 61.0848; SDCL § 46-12-84; SL 2011, ch 165, § 372.

46A-4-90. Additional security for deferred payments--Collection. In addition to the lien, the board of directors may require the purchaser of the property to furnish the district with additional security upon all deferred payments. All notes, bonds, mortgages, and other securities shall be made out to and in the name of the irrigation district, and shall be, together with the money received from the sale, deposited with the county treasurer of the county in which the district was originally organized. The notes, bonds, mortgages, and other securities may be paid out only upon warrants duly authorized by the board of directors of the district, signed by the president and secretary of the board. All actions at law or in equity brought for the purpose of collecting such indebtedness, shall be brought in the name of the district by counsel employed by the district board. If the board is disorganized, such employment shall be by the board of county commissioners.

Source: SDC 1939, § 61.0848; SDCL § 46-12-85; SL 2011, ch 165, § 373.

46A-4-91. Bonds and obligations of district--Redemption after sale of property on dissolution of district. If bonds and other obligations of irrigation districts are issued, the bonds and obligations are subject to redemption by the board of directors of any irrigation district, as soon as the property and franchise of the district are sold after the district has elected to dissolve as a district, as provided in this chapter.

Source: SDC 1939, § 61.0848; SDCL § 46-12-86; SL 2011, ch 165, § 374.

46A-4-92. Payment of outstanding obligations with proceeds of property sales--Prices paid. After a sale of the property and franchises of the district, the board of directors shall, with the amount realized from the sale, together with other funds of the district, make settlement, payment, and redemption, if possible, of all outstanding bonded and other indebtedness of the district. However, in no case may the district pay more than the par value of the outstanding bonds with interest up to the time of payment plus any redemption premium agreed upon by the district at the time the outstanding bonds are issued.

Source: SDC 1939, § 61.0848; SDCL § 46-12-87; SL 1976, ch 277, § 6; SL 2011, ch 165, § 375.

46A-4-93. Proceeds of sale of property on dissolution of irrigation district insufficient to pay debts-- Assessments against lands in the district. In case the amount realized from the sale of such district property, together with other money of the district, shall be insufficient for the payment of all the indebtedness of such district, assessments shall continue to be made against the lands included in the district, in the manner provided by law for assessments to pay bonds and other indebtedness of irrigation districts, until a sufficient amount is raised to pay in full all obligations of such district.

Source: SDC 1939, § 61.0848; SDCL, § 46-12-88.

46A-4-94. Disposal of property--Payment of obligations--Report of board--Filing and recording--Contents--Time for action on unpaid claim. After all the property of the district is disposed of and all of the obligations of such district are paid, the directors of the district shall file in the office of the county auditor of each county in which the district is located, and in the office of the Board of Water and Natural Resources, a report attested by the secretary and under the seal of the board of directors, stating that the district has disposed of its property and franchises and is disorganized and dissolved. The report shall be recorded in the miscellaneous record of the counties. If any person who has any claim against the district that is not settled or disposed of at the time of the filing of the report fails or neglects to bring suit upon the claim within five years from the time of the filing of the report, the claim is forever barred against the district as well as against all persons and property in the district.

Source: SDC 1939, § 61.0848; SDCL § 46-12-89; SL 2011, ch 165, § 376.

46A-4-95. Validation of previously created irrigation districts. All irrigation districts, created under the provisions of this chapter, and any addition to or deletion from any such district, heretofore established or purporting to be established or adjusted pursuant to the provisions of this chapter and chapters 46A-5 to 46A-7, inclusive, and having a de facto existence of at least one year, are hereby declared to be valid and legally created political subdivisions of the state. The regularity and validity of the creation of the irrigation districts or any boundary adjustments of the districts are not open to question in any court in this state. All acts and proceedings of any such irrigation district or of its board of directors, or both, leading up to the authorization and execution of an existing contract between any such irrigation district and the United States of America, and all acts and proceedings of any such irrigation district or of its board of directors, or both, leading up to the issuance and deliverance of bonds of any such irrigation district are hereby legalized, ratified, confirmed, and declared valid to all intents and purposes. All such existing contracts and outstanding bonds are hereby legalized and declared to be valid and legal obligations of and against the irrigation district executing or causing the execution of the contracts or bonds.

Source: SL 1977, ch 366, § 8; SDCL Supp, § 46-12-90; SL 2011, ch 165, § 377.
