

CHAPTER 46A-5

IRRIGATION DISTRICT PROJECTS AND OPERATIONS

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46A-5-1. Use of water and property for irrigation of lands--Public use--Regulation and control by state. The use of all water required for irrigation of lands of any district formed under the provisions of chapter 46A-4, together with canals and ditches already constructed, the rights-of-ways for canals and ditches, sites for reservoirs and pumping plants, and all other property required in fully carrying out the pertinent provisions of this title, is hereby declared to be a public use, subject to the regulation and control of the state in the manner prescribed by law.

Source: SDC 1939, § 61.0810; SL 1953, ch 482; SDCL, § 46-13-1.

46A-5-2. Resolution of board of directors--General plan of proposed operation, contents. As soon as practicable after the organization of any such irrigation district, the board of directors shall by a resolution entered on its record, formulate a general plan of its proposed operation, in which it shall state what constructed works or other property it proposes to purchase and the cost of purchasing the same; and further what construction work it proposes to do and how it proposes to raise the funds for carrying out such plan.

Source: SDC 1939, § 61.0901; SDCL, § 46-13-2.

46A-5-3. Determination of construction costs by board of directors--Examinations and surveys--Surveys, maps, plans, and estimates, certification by irrigation engineer. To ascertain the cost of any construction work, the board of directors shall cause surveys, examinations, and plans to be made that demonstrate the practicability of the plan, and furnish the proper basis for an estimate of the cost of carrying out the construction work. All surveys, examinations, maps, plans, and estimates shall be made under the direction of and certified by a competent irrigation engineer.

Source: SDC 1939, § 61.0901; SDCL, § 46-13-3; SL 1995, ch 253, § 1.

46A-5-4. Determination of funds required--Authorization, issuance, and sale of bonds--Election--Amount of bonds. The board of directors shall determine the amount of money necessary to be raised and, if a bond issue is contemplated, the bonds shall be authorized, issued, and sold as provided in chapter 6-8B, if a majority of all electors voting at the bond election authorize the bond issue. Except that no bonds may be issued for more than the actual estimated cost of formulating the general plan of proposed operation, including surveys, examinations, and plans that demonstrate the practicality of the plan, and the actual estimated cost of the purchases and construction work described in the general plan of proposed operation, as finalized. Estimated expenses relating to the issuance and sale of the bonds including bond printing expenses, bond registration fees, legal fees, fiscal agency fees, publication costs and election expenses, and capitalized interest during the estimated construction period and for one year thereafter may also be paid out of the proceeds of the bond issue.

Source: SDC 1939, § 61.0901; SDCL, § 46-13-4; SL 1976, ch 277, § 7; SL 1977, ch 366, § 2; SL 1984, ch 43, § 120; SL 1995, ch 253, § 2.

46A-5-4.1. Eligibility to vote in bond election. Any other provision of law notwithstanding, only those electors whose land may be assessed to finance bonds are eligible to vote in an election held pursuant to the provisions of § 46A-5-4.

Source: SL 1984, ch 295, § 2.

46A-5-5. Contract with United States for construction, operation, and maintenance of works--Bonds not deposited in connection therewith, issuance unnecessary--Issuance of bonds for funds in addition to amount of federal contract. If any contract is made with the United States as provided in § 46A-5-18 and bonds are not to be deposited with the United States in connection with such contract, bonds need not be issued or, if required to raise funds in addition to the amount of such contract, shall be issued only in the amount needed in addition thereto.

Source: SDC 1939, § 61.0810; SL 1953, ch 482; SDCL, § 46-13-5.

46A-5-6. Location of line of canal and branches--Purchase or condemnation of property. The board of directors, its agents, and employees may enter upon any land within the district to make surveys and may locate the line of any canal and the necessary branches for the location. The board of directors may acquire, either by purchase or condemnation, all lands and waters and other property necessary for the construction, use, maintenance, repair, and improvement of any canal, canals, power plants, pumping stations, and lands for reservoirs for storage of water and all necessary appurtenances. The board of directors may acquire by purchase

or condemnation, for the use of the district, any irrigation works, power plant, pumping station, ditches, canals, or reservoirs already constructed. In case of purchase, the bonds of the district may be used at their par value in payment, as provided in this title.

Source: SDC 1939, § 61.0810; SL 1953, ch 482; SDCL § 46-13-6; SL 1976, ch 277, § 8; SL 2011, ch 165, § 378.

46A-5-7. Construction of works for collection and distribution of water--Furnishing of water for irrigation. The board of directors may also construct the necessary dams, reservoirs, pumping station, and works for the collection and distribution of water for the district and do any and every lawful act necessary to be done that sufficient water may be furnished to each tract of land in the district for irrigation purposes.

Source: SDC 1939, § 61.0810; SL 1953, ch 482; SDCL, § 46-13-7; SL 1976, ch 277, § 9.

46A-5-8. Right-of-way for laterals--Duties of board of directors--Eminent domain. The board of directors shall make all necessary arrangements for right-of-way for laterals from the main canal to each tract of land subject to assessment, and if necessary the board shall exercise its right of eminent domain to procure right-of-way for laterals. This section does not deprive any person entitled thereto from exercising the right of eminent domain.

Source: SDC 1939, § 61.0809; SDCL, § 46-13-8; SL 1993, ch 256, § 74.

46A-5-9. Right-of-way for works for collection of water over state lands and waters. The right-of-way is hereby given, dedicated, and set apart to locate, construct, and maintain such works over and through any of the lands which are or may be the property of the state; and there also is given, dedicated, and set apart for the use and purposes aforesaid all water and water rights owned by the state within the district.

Source: SDC 1939, § 61.0922; SDCL, § 46-13-9.

46A-5-10. Construction of works across streams, watercourses, highways, and railways. The board of directors may construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume that the route of the canal may intersect or cross, in such manner as to afford security to life and property. However, the board shall restore the stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume to its former state as near as may be, or in a manner that will not unnecessarily impair its usefulness. Any company whose railroad is intersected or crossed by such works may unite with the board in forming the intersections and crossings, and grant the privileges specified in this section. If the railroad company and the board, or the owners and controllers of the property, thing, or franchise to be crossed, cannot agree upon the amount to be paid for the crossing, or the points or the manner of the crossing, the issues shall be ascertained and determined in all respects as provided in condemnation proceedings.

Source: SDC 1939, § 61.0922; SDCL § 46-13-10; SL 2011, ch 165, § 379.

46A-5-11. Property acquired for project--Title vested in district--Management by board of directors. The legal title to all property acquired under the provisions of chapters 46A-4 to 46A-7, inclusive, shall immediately and by operation of law vest in such irrigation district in its corporate name, and shall be held by such district in trust for, and is hereby dedicated and set apart to, the uses and purposes set forth in said chapters. The board of directors is hereby authorized to hold, use, acquire, manage, occupy, and possess such property as herein provided.

Source: SDC 1939, § 61.0811; SDCL, § 46-13-11.

46A-5-12. Acquisition of property--Actions and proceedings by and against district. The board of directors may take conveyances or other assurances for all property acquired by it under the provisions of chapters 46A-4 to 46A-7, inclusive, in the name of the irrigation district, for the uses and purposes provided in this chapter. The board may institute and maintain any actions and proceedings at law or in equity necessary or proper in order to carry out fully the provisions of chapters 46A-4 to 46A-7, inclusive, and to enforce, maintain, protect, or preserve any rights, privileges, and immunities created by those chapters or acquired in pursuance of such rights, privileges, and immunities. In all actions or proceedings the board may sue, appear, and defend, in person or by attorney, and in the name of the irrigation district.

Source: SDC 1939, § 61.0813; SDCL § 46-13-12; SL 2011, ch 165, § 380.

46A-5-13. Adoption of plan of works--Notice of plan and call for bids--Publication--Contents. After adopting a plan of canals, storage reservoirs, and works, the board of directors shall publish notice of the plan, not less than twenty days after it is adopted, in one newspaper published in each of the counties in which the district is situated, if a newspaper is published in the counties, and in such other newspapers as the board deems advisable, calling for bids for the construction of the work or any portion of the work. If less than the whole work is advertised, the portion so advertised shall be particularly described in the notice. The notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals for the work, and that the contract will be let to the lowest responsible bidder. The notice shall state the time and place for opening the proposals, which at the time and place shall be opened in public. As soon as convenient after the bids are opened, the board shall let such work, either in part or as a whole, to the lowest responsible bidder. Alternatively, the board may reject any bid and readvertise for proposals, or may proceed to construct the work under its own superintendence.

Source: SDC 1939, § 61.0919; SDCL § 46-13-13; SL 2011, ch 165, § 381.

46A-5-14. Contractor's bond--Sureties--Approval by board of directors--Terms. The person or persons to whom a contract may be awarded shall enter into a bond with good and sufficient sureties, to be approved by the board of directors, payable to such district for its use, in an amount equal to the contract price for the faithful performance of the contract.

Source: SDC 1939, § 61.0919; SDCL, § 46-13-14; SL 1976, ch 277, § 10.

46A-5-15. Work done under engineer--Approval by board of directors. The work shall be done under the direction and to the satisfaction of an engineer and be approved by the board of directors.

Source: SDC 1939, § 61.0919; SDCL, § 46-13-15; SL 1995, ch 253, § 3.

46A-5-16. Contracts for material--Lowest responsible bidder--Security for bid, amount, forfeiture. Contracts for the purchase of material shall be awarded to the lowest responsible bidder. Bidders may be required to put up a certified check in the sum of five percent of the bid, to be forfeited to the district in the event that the bidder does not execute the contract if awarded to him.

Source: SDC 1939, § 61.0919; SDCL, § 46-13-16.

46A-5-17. Bids unnecessary for contract with United States. The provisions of §§ 46A-5-13 to 46A-5-16, inclusive, do not apply in case of any contract between the district and the United States.

Source: SDC 1939, § 61.0919; SDCL § 46-13-17; SL 2011, ch 165, § 382.

46A-5-18. Contracts with United States concerning federal reclamation acts and water supply. The board of directors may enter into any obligation or contract with the United States for the construction, operation, and

maintenance of the necessary works for the delivery and distribution of water under the provisions of the federal reclamation acts and all acts amendatory thereof, or supplementary thereto, and the rules and regulations established under such acts, as amended to January 1, 2011. The board may contract with the United States for a water supply under any act of Congress providing for or permitting such contract.

Source: SDC 1939, § 61.0810; SL 1953, ch 482; SDCL § 46-13-18; SL 2011, ch 165, § 383.

46A-5-19. Deposit of district bonds as security for federal contract. If any contract is made with the United States as provided in this chapter, bonds of the district may be deposited with the United States at ninety percent of their par value, to secure the amount to be paid by the district to the United States under any such contract. The bonds may be held by the United States, and if deemed desirable, or if the appraised value of the land is double the bonded indebtedness, the bonds may be sold by the United States. The net proceeds received from the sale of the bonds shall be applied to the liquidation of the contract indebtedness of the district to the United States. The interest and principal on the bonds shall be provided for by assessment and levy as in the case of other bonds of the district and regularly paid to the United States, to be applied as provided in the contract.

Source: SDC 1939, § 61.0810; SL 1953, ch 482; SDCL § 46-13-19; SL 2011, ch 165, § 384.

46A-5-20. District bonds not deposited as security for federal contract. If bonds of the district are not deposited with the United States pursuant to § 46A-5-19, the board of directors shall include as part of any levy or assessment provided for in this title an amount sufficient to meet each year all payments accruing under the terms of any contract made pursuant to § 46A-5-18.

Source: SDC 1939, § 61.0810; SL 1953, ch 482; SDCL § 46-13-20; SL 2011, ch 165, § 385.

46A-5-21. District appointment as fiscal agent of United States--Collection of money for federal reclamation projects. The board of directors may accept on behalf of the district appointment of the district as fiscal agent of the United States or authorization of the district by the United States to make collections of the money for and on behalf of the United States in connection with any federal reclamation project, organized under this title as an irrigation district, whereupon the district may act and assume the duties and liabilities incident to such action. The board may do anything required by the federal statutes in connection with such duties and liabilities, and all things required by the rules and regulations established by any department of the federal government in regard to such duties and liabilities.

Source: SDC 1939, § 61.0810; SDCL § 46-13-20; SL 1953, ch 482; SL 2011, ch 165, § 386.

46A-5-22. Obsolete

46A-5-23. Flow of water through ditches and canals at full capacity. The board of directors shall keep the water flowing through the ditches and canals under its control to the full capacity of the ditches and canals in times of high water and when the water can be beneficially applied to the lands thereunder and does not interfere with the rights of other appropriators.

Source: SDC 1939, § 61.0927; SDCL § 46-13-23; SL 2011, ch 165, § 387.

46A-5-24. Measuring devices, placement--System for interchange of water--Duties of board of directors. Upon motion of the board of directors or upon the filing of a petition in the office of the board, signed by a majority of the electors in the district, requesting that regulations be adopted by the board permitting and providing for any of the following specific orders or changes in the method of operating its canal, the board shall immediately provide for the adoption and enforcement of the regulations. The regulations shall require:

(1) That a measuring device be placed in or near the headgate or any main diverting gate of the main canal, in order that a continuous record shall be kept by such district of the amount of water received in the canal

for the use of the lands in such district;

(2) That measuring devices be placed in or near the headgate of all main laterals and distributing laterals within the district from and by which water is diverted to tracts or units of twenty acres or more, for the purpose of determining at all times the amount of water going to or being received upon any such tract of land, and requiring the superintendent of the canal to keep a separate and correct record of the amount of water delivered through each of such headgates at all times, and file the record in the office of the board of directors for public inspection; and

(3) That a system be provided for the interchange of water from one tract of land to another at the option of the owners or lessees of any lands within such district at any time, and that regulations made by the board of directors for delivering water in alternate sections of a canal or ditch do not interfere with this right.

Source: SDC 1939, § 61.0927; SDCL, § 46-13-24; SL 1993, ch 256, § 75.

46A-5-25. Apportionment of water by board. If the water supply is not sufficient to supply continuously the lands susceptible of irrigation from the water supply, the board of directors shall apportion, in a just and equitable proportion, a certain amount of the water upon certain or alternate days to different localities, as the board deems best for the interests of all concerned and with due regard to the legal and equitable rights of all.

Source: SDC 1939, § 61.0926; SDCL § 46-13-25; SL 2011, ch 165, § 388.

46A-5-26. Liability for negligence in delivering or failure to deliver water--Notice to district chair--Time for service of notice and action. Every irrigation district within this state is liable in damages for negligence in delivering or failure to deliver water to the users from its canal to the same extent as private persons and corporations if the person suffering damage, within thirty days after such negligence or failure, serves a notice in writing on the chair of the board of directors of the district, setting forth the acts or omissions on the part of the district which it is claimed constitute such negligence or failure, and that the person expects to hold the district liable for whatever damages may result. Such action may be brought not later than one year from the time the cause of action accrues.

Source: SDC 1939, § 61.0853; SDCL § 46-13-26; SL 2011, ch 165, § 389.

46A-5-27. Diversion of water from channel unauthorized without payment of just compensation. Nothing contained in chapters 46A-4 to 46A-7, inclusive, authorizes any person to divert the waters of any river, creek, stream, canal, or ditch from its channel, so that the vested right of any person having any interest in the river, creek, stream, canal, or ditch, or the waters of the river, creek, stream, canal, or ditch, is invaded or interfered with, unless previous compensation has been determined and paid under the laws of this state authorizing the taking of private property for public use.

Source: SDC 1939, § 61.0928; SDCL § 46-13-27; SL 2011, ch 165, § 390.

46A-5-28. Appropriation from district general fund for advertising. The board of directors of any irrigation district may appropriate money from its general fund for the purpose of advertising the district's possibilities and advantages to the world as a home and as a location for agriculture, factories, and other legitimate enterprises. The appropriation may not exceed the sum of two and one-half cents for each irrigable acre within the irrigation district.

Source: SDC 1939, § 61.0854; SDCL § 46-13-28; SL 2011, ch 165, § 391.

46A-5-29. General fund of district--Appropriation by board of directors for support of county fair, maximum amount. The board of directors of any irrigation district may, in its discretion, appropriate from its general fund not to exceed one hundred dollars in any one year for the support of one county fair located within the county of said district or within the county where the major portion of such district is located.

Source: SDC 1939, § 61.0855; SDCL, § 46-13-29.

46A-5-30. Repealed by SL 1995, ch 253, § 4

46A-5-31. Contract to supply water to users for nonirrigation purposes--Authority of district to enter. An irrigation district may enter into a contract to supply water to users for purposes other than irrigation if the contract does not compromise the ability of the electors to obtain the waters to which they are entitled. A contract executed pursuant to this section constitutes the entire obligation of any such user to the irrigation district.

Source: SL 1984, ch 294, § 36; SL 1995, ch 253, § 5.
