

CHAPTER 46A-9

WATER USER DISTRICTS

- [46A-9-1](#) Purpose of chapter.
- [46A-9-2](#) Definition of terms.
- [46A-9-3](#) Organization--Actions by and against--Creation and incorporation.
- [46A-9-4](#) Petition for organization of district--Filing with and approval by board--Contents.
- [46A-9-5](#) Lands included in district.
- [46A-9-6](#) Organization within territorial boundaries of another district.
- [46A-9-7](#) Directors--Election at large or from election divisions--Boundaries of divisions.
- [46A-9-8](#) Grouping of directors elected at large--Term of office.
- [46A-9-9](#) Petition for organization of district--Number of signatures required--Name, post office address, and location of land of petitioner.
- [46A-9-10](#) Instruments constituting petition for organization of district--Affidavit of circulator as to signatures on each sheet--Form.
- [46A-9-11](#) Maps, plans and estimates accompanying petition for organization of district--Location of lands within proposed district.
- [46A-9-12](#) Examination of petition by Department of Water and Natural Resources to determine compliance with law--Noncompliance with law, dismissal of petition.
- [46A-9-13](#) Publication of petition for organization of district.
- [46A-9-14](#) Protest against organization of district--Right to file with Board of Water and Natural Resources--Determination of validity by board.
- [46A-9-15](#) Investigation of proposed district and works by Board of Water and Natural Resources--Costs.
- [46A-9-16](#) Declaration of feasibility of proposed project and conformance to public convenience--Dismissal of petition or certificate of feasibility--Filing of certificate--District as public corporation.
- [46A-9-17](#) Validation of prior districts and boundaries--Validation of prior proceedings, bonds, and contracts.
- [46A-9-18](#) Board of directors--Qualification upon filing certificate of organization--Vacancy created by failure to qualify--First meeting.
- [46A-9-19](#) Additional territory, inclusion in district.
- [46A-9-20](#) Extension of district--Petition to include additional territory--Contents--Filing.
- [46A-9-21](#) Petition for expansion of district--Map showing location of lands to be included to accompany--Plans and estimates.
- [46A-9-22](#) Publication of notice for extension of district--Filing of protest.
- [46A-9-23](#) Action by Board of Water and Natural Resources on petition for extension of district--Certificate of approval--Filing--Effect.
- [46A-9-23.1](#) Exclusion of lands from district--Grounds--Procedure.
- [46A-9-23.2](#) Notices of hearing on exclusion--Protests.
- [46A-9-24](#) Members of board of directors succeeding original board--Nomination and election--Term of office.
- [46A-9-25](#) Hour and place of election.
- [46A-9-26](#) Election of directors--Voting rights.
- [46A-9-27](#) Notice of election time, place, and purpose--Mailing or publication.
- [46A-9-28](#) Registration of voters--Conduct of election--Costs.
- [46A-9-29](#) Candidate to fill vacancy or succeed an outgoing director--Vote necessary for election.
- [46A-9-30](#) Director to be landowner or entryman.
- [46A-9-31](#) Removal of members of board of directors from office--Grounds--Procedure.
-
- [46A-9-32](#) Vacancies on board of directors--Declaration of existence--Filling--Member elected to fill, term of office.
- [46A-9-33](#) Reimbursement of expenses and compensation of board members.
- [46A-9-34](#) Officers--Election by board of directors--Appointment of executive committee and other

employees.

- [46A-9-35](#) Bond of treasurer.
- [46A-9-36](#) Corporate powers of district vested in board of directors.
- [46A-9-37](#) Bylaws and procedures--Adoption by board of directors--Minutes of meetings--Records of account, kept at principal place of business, open to public inspection.
- [46A-9-38](#) Indemnification of directors, officers, employees, or agents of districts.
- [46A-9-39](#) Powers of district.
- [46A-9-40](#) Powers of corporation for public purposes--Acquisition and disposition of property.
- [46A-9-41](#) Acquisition, management, use, and operation of works and property--Disposition of works.
- [46A-9-42](#) Transfer of obligations of nonprofit rural water supplier or wastewater system operator to water user district, sanitary district, or municipality--Majority vote of district.
- [46A-9-43](#) Contracts with governmental agencies authorized for certain purposes.
- [46A-9-44](#) Extraterritorial powers of district.
- [46A-9-45](#) Appropriation of waters of state by district--Interference with existing water rights forbidden.
- [46A-9-46](#) Eminent domain--Appraisal of private property or interest.
- [46A-9-46.1](#) Municipal approval of location of wastewater plant or system--Exception for existing plant or system.
- [46A-9-47](#) District has no power to tax or levy assessments--Others have no liability for district indebtedness or obligations.
- [46A-9-48](#) Costs of operation of district--Contract for payment of rent or charge for water storage or water supply.
- [46A-9-49](#) Grants or loans--Gifts.
- [46A-9-50](#) Cooperation with United States in acquisition and disposition of property.
- [46A-9-51](#) Eminent domain laws applicable to irrigation districts apply.
- [46A-9-52](#) Contracts governed by public agency procurement law.
- [46A-9-53](#) Filing of plans and specifications--Advertisement for bids.
- [46A-9-54](#) Contracts for proposed construction work--Employment of citizens of state--Bond of contractor.
- [46A-9-55](#) Certain proposed works exempt from competitive bidding requirements.
- [46A-9-56](#) Borrowing power of district--Sources from which obligations payable--Authorization, issuance, and sale of bonds.
- [46A-9-57](#) District obligations--Pledge of revenue for payment--Collateral security for loan.
- [46A-9-58](#) Refunding of district obligations.
- [46A-9-59](#) Revenues of district--Payment into special fund--Collection and disposition of special fund, terms, and conditions.
- [46A-9-60](#) Agreement between directors and holders of district obligations as to charges for water, sewage disposal, or other services.
- [46A-9-61](#) Prices, rates, and charges--Contracts.
- [46A-9-62](#) Default in payment of money specified in agreement--Termination of contract--Right to recovery not affected by discontinuation of services.
- [46A-9-63](#) Funds of district--Creating by board of directors--Identification--Separate accounts.
- [46A-9-64](#) Construction fund--Deposit of bond proceeds--Credit of interest received upon deposits--Disbursements--Balance transferred to debt service fund.

-
- [46A-9-65](#) Water or wastewater fund--Credit of revenue of works and operations--Payment of operation and maintenance costs.
 - [46A-9-66](#) Debt service fund--Transfer of balance from water fund--Moneys pledged for payment of evidences of indebtedness.
 - [46A-9-67](#) Deposit of funds--Payment of claims.
 - [46A-9-68](#) Fiscal year--Audit of financial affairs by board of directors, filing of written report.
 - [46A-9-69](#) Disposition of water supply works, drainage works, or wastewater systems.
 - [46A-9-70](#) Sale of unneeded works--Submission of question to Board of Water and Natural Resources--Special election--Notice--Majority vote authorizes sale.
 - [46A-9-71](#) Mortgage or hypothecation of property to secure payment of loans from governmental agencies.
 - [46A-9-72](#) Mortgage or trust deed to secure payment of borrowed money--Foreclosure upon default and

appointment of receiver.

- [46A-9-73](#) Dissolution of district--Special election--Notice--Conditions for dissolution.
- [46A-9-74](#) Dissolution complete upon resolution of board canvassing vote--Filing.
- [46A-9-75](#) Cancellation of applications for appropriation of water upon dissolution.
- [46A-9-76](#) Municipalities excepted from chapter--Contracts with district.
- [46A-9-77](#) Irrigation districts--Powers and functions unaffected by chapter.
- [46A-9-78](#) Retirement system--Participation.
- [46A-9-79](#) Appointment of water master.
- [46A-9-80](#) Duties of water master.
- [46A-9-81](#) Removal of water master.
- [46A-9-82](#) Grievance appeal.
- [46A-9-83](#) Water Management Board not affected.
- [46A-9-84](#) Group insurance for members of board of directors.

46A-9-1. Purpose of chapter. Conservation of the state's water resources is hereby declared to be a state function, and the public interest, welfare, convenience, and necessity require the creation of water user districts and the construction of systems of works, as provided in this chapter, for the conservation, storage, distribution, and utilization of water and the collection, treatment, and disposal of wastewater. The construction of systems of works by such districts, as provided in this chapter, is hereby declared to be in all respects for the welfare and benefit of the people of South Dakota. It is the intention of the Legislature of South Dakota that this chapter shall be liberally construed to effectuate these purposes.

Source: SL 1939, ch 291, § 1; SDC Supp 1960, § 61.1301; SDCL, § 46-16-1; SL 1974, ch 286, § 1; SL 2006, ch 226, § 1.

46A-9-2. Definition of terms. Terms used in this chapter mean:

- (1) "Board," the board of directors of a district organized under this chapter;
- (2) "City" or "town," a municipal corporation as classified in §§ 9-2-1 and 9-2-2. The term, city, also means a city organized under special territorial charter;
- (3) "Landowner," any resident of South Dakota who is an owner of land in any county containing any proposed or existing water user district as evidenced by records in the office of the register of deeds or director of equalization. However, if land is sold under a contract for deed, which is of record in the office of the register of deeds or director of equalization, both the vendor and vendee shall be treated as landowners;
- (4) "Project," any one of the works defined in this section, or any combination of such works which are physically connected or jointly managed and operated as a single unit;
- (5) "Water Management Board," the state board created in § 1-40-15;
- (6) "Water user district" or "district," any district organized under this chapter, either as originally organized or as the district is reorganized, altered, or extended;
- (7) "Works" and "system," all lands, property, rights, rights-of-way, easements, and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the board in connection with the works or system. The terms, works and system, include all means of conserving, controlling, and distributing water, including reservoirs, dams, feeder canals, diversion canals, distributing canals, lateral ditches, structures, pumping units, mains, pipelines, and waterworks systems. The terms include all such works for the conservation, development, storage above or under the ground, spreading, distribution, utilization, and drainage of water, including works for the purpose of irrigation, drainage, flood control, stock watering, and supplying water for public, domestic, industrial, and other uses. The terms include any plant or system for the collection, treatment, or disposal of wastewater, including sanitary sewers and sewage and sewage treatment plants and systems.

Source: SL 1939, ch 291, § 2; SDC Supp 1960, § 61.1302; SDCL, § 46-16-2; SL 1974, ch 286, § 2; SL 1975, ch 277, § 1; SL 1976, ch 279; SL 1990, ch 363, § 6; SL 2006, ch 226, § 2.

46A-9-3. Organization--Actions by and against--Creation and incorporation. A water user district may be organized as provided in this chapter, and may sue and be sued in its corporate name. The procedure for creating and incorporating a district under the provisions of this chapter shall be as provided by §§ 46A-9-4 to 46A-9-18, inclusive.

Source: SL 1939, ch 291, §§ 3, 4; SL 1943, ch 310; SDC Supp 1960, §§ 61.1303, 61.1304 (1); SDCL, § 46-16-3.

46A-9-4. Petition for organization of district--Filing with and approval by board--Contents. A water user district may be organized under the provisions of this chapter by filing in the Department of Environment and Natural Resources a petition in compliance with the requirements set forth in this section, and the approval of the petition by the Board of Water and Natural Resources as provided in this chapter. The petition shall be addressed to the Board of Water and Natural Resources and shall state in substance that it is the intent and purpose of the petitioners to create a district under the provisions of this chapter, subject to approval by the board. The petition shall contain:

- (1) The name of the proposed district;
- (2) The object and purpose of the system proposed to be constructed or acquired, together with a general description of the nature, location, and method of operation of the proposed works;
- (3) A description of the lands constituting the proposed district and of the boundaries of the proposed district, and the names of any municipalities included partly or wholly within the boundaries of the proposed district;
- (4) The location of the principal place of business of the proposed district;
- (5) A statement that the proposed district does not have the power to levy taxes or assessments;
- (6) The number of members of the board of directors of the proposed district, which may not be less than five nor more than thirteen, a statement as to whether the directors shall be elected at large or shall be apportioned to election divisions and elected by the voters of the election divisions, the names and addresses of the members who shall serve until their successors are elected and qualified as provided in this chapter, and if election divisions are provided for, the respective divisions which the directors are to represent. The persons named in the petition as directors shall be owners of land or entrymen within the district, and, if election divisions are provided for, they shall be owners of land or entrymen within the respective divisions they are to represent.

Source: SL 1939, ch 291, § 4; SL 1943, ch 310; SDC Supp 1960, § 61.1304 (1); SDCL § 46-16-4; SL 1974, ch 286, § 3; SL 1992, ch 60, § 2; SL 2011, ch 165, § 465.

46A-9-5. Lands included in district. The lands proposed to be included within a water user district need not consist of contiguous parcels. A district may consist of lands wholly within or wholly outside the limits of municipalities or of lands partly within and partly outside such limits; and a district may include all or part of the area within one or more such municipalities.

Source: SL 1939, ch 291, § 3; SDC Supp 1960, § 61.1303; SDCL, § 46-16-5; SL 1992, ch 60, § 2.

46A-9-6. Organization within territorial boundaries of another district. Nothing in this chapter prevents the organization of a water user district under this chapter within, or partly within, the territorial boundaries of another district organized under this chapter, or of an irrigation district organized under the provisions of chapter 46A-4, if the works or systems, the operations of the works or systems, the exercise of powers and the assumptions of duties and responsibilities under this chapter, of one district, do not nullify, conflict with, or materially affect those of another such district.

Source: SL 1939, ch 291, § 3; SDC Supp 1960, § 61.1303; SDCL § 46-16-6; SL 2011, ch 165, § 466.

46A-9-7. Directors--Election at large or from election divisions--Boundaries of divisions. Directors may be elected either at large, or from election divisions, without regard to whether municipality areas are included

within the water user district. If the petition states that the directors shall be elected from election divisions, the petition shall describe the boundaries of the divisions. The boundaries may be drawn either with or without regard to the corporate limits of any municipality included partly or wholly within the district boundaries.

Source: SL 1939, ch 291, § 4; SL 1943, ch 310; SDC Supp 1960, § 61.1304 (1); SDCL § 46-16-7; SL 1992, ch 60, § 2; SL 2011, ch 165, § 467.

46A-9-8. Grouping of directors elected at large--Term of office. In the petition, if directors are to be elected at large, the directors named shall be divided as nearly as possible into three equal groups, to be designated Group 1, Group 2, and Group 3, respectively. In either case, the members of Group 1 shall hold office until their successors, elected at the first regular water user district election thereafter, shall have qualified; the members of Group 2 shall hold office until their successors, elected at the second regular district election thereafter, shall have qualified; and the members of Group 3 shall hold office until their successors, elected at the third regular district election thereafter, shall have qualified. Thereafter all directors elected shall serve for a term of three years and until their successors are elected and qualified. After the name of each director shall be stated to which of said three groups he belongs.

Source: SL 1939, ch 291, § 4; SL 1943, ch 310; SDC Supp 1960, § 61.1304 (1); SDCL, § 46-16-8.

46A-9-9. Petition for organization of district--Number of signatures required--Name, post office address, and location of land of petitioner. The petition shall be signed by twenty-five percent of the landowners or entrymen within the area constituting the proposed water user district, or by their duly authorized representatives. However, if the proposed district includes any portion of the area within a municipality, the petition shall be signed by twenty-five percent of the landowners or entrymen in the portion of the proposed district area within each such municipality, or by their duly authorized representatives, and shall also be signed by twenty-five percent of the landowners or entrymen in the area lying outside the limits of the municipalities or by their duly authorized representatives. On each petition, set opposite the signature of each petitioner, shall be stated the petitioner's name and post office address and the location of land of which the petitioner is the owner or entryman.

Source: SL 1939, ch 291, § 4; SL 1943, ch 310; SDC Supp 1960, § 61.1304 (1); SDCL § 46-16-9; SL 1992, ch 60, § 2; SL 2011, ch 165, § 468.

46A-9-10. Instruments constituting petition for organization of district--Affidavit of circulator as to signatures on each sheet--Form. The petition may contain any number of separate instruments, and to each sheet for petitioners' signatures shall be attached a full and correct copy of the petition. Every sheet of every such petition containing signatures shall have upon it and below the signatures an affidavit by the circulator in substantially the following form:

State of South Dakota,
County of _____ ss.

_____, being first duly sworn, deposes and says, that he is the circulator of the foregoing petition containing _____ signatures; that each person whose name appears on said petition sheet personally signed said petition in the presence of affiant; that he believes that each of said signers is an owner or entryman of the land described opposite his signature, to be included within the proposed water user district, and residing at the address written opposite his name, and that affiant stated to every petitioner before he affixed his signature the legal effect and nature of said petition.

Circulator

Subscribed and sworn to before me this _____ day of _____, 19____.

Source: SL 1939, ch 291, § 4; SL 1943, ch 310; SDC Supp 1960, § 61.1304 (1); SDCL, § 46-16-10.

46A-9-11. Maps, plans and estimates accompanying petition for organization of district--Location of lands within proposed district. The petition shall be filed with the Department of Environment and Natural Resources together with a list of the petitioners' names, mailing addresses, and lands owned or entered. The petition shall be accompanied by a map or maps showing the location of lands within the proposed district and the proposed system of works, and by other maps, plans, and estimates as may be necessary to describe fully the proposed system.

Source: SL 1939, ch 291, § 4; SL 1943, ch 310; SDC Supp 1960, § 61.1304 (1); SDCL, § 46-16-11; SL 1997, ch 255, § 1.

46A-9-12. Examination of petition by Department of Water and Natural Resources to determine compliance with law--Noncompliance with law, dismissal of petition. Upon receipt of the petition, the department shall determine whether the petition complies with the requirements set forth in §§ 46A-9-4 to 46A-9-11, inclusive, and dismiss the petition if the requirements have not been complied with, but without prejudice to the right of the petitioners to present a new petition covering the same matter, or the same petition with additional signatures if additional signatures are necessary.

Source: SL 1939, ch 291, § 4; SL 1943, ch 310; SDC Supp 1960, § 61.1304 (1); SDCL, § 46-16-12; SL 1997, ch 255, § 2.

46A-9-13. Publication of petition for organization of district. If the department determines the petition complies with requirements of this chapter, a notice shall be published in each county in which lands within the proposed water user district lie, in a legal newspaper of general circulation in the county, once each week for at least two successive weeks. The last date of publication shall be at least thirty days prior to the Board of Water and Natural Resources' meeting at which the petition is first considered. The notice shall be published at the petitioners' expense. The notice shall contain the information required in § 46A-9-4, shall state when the petition was filed, shall state a public place in each county affected where the petition may be examined, and shall state the date, time, and place at which the petition will be considered by the Board of Water and Natural Resources. Any owner or entryman of land within the area to be included, who did not sign the petition may file a written protest with the department as provided in § 46A-9-14.

Source: SL 1939, ch 291, § 4; SL 1943, ch 310; SDC Supp 1960, § 61.1304 (1); SDCL, § 46-16-13; SL 1972, ch 239, § 5; SL 1997, ch 255, § 3.

46A-9-14. Protest against organization of district--Right to file with Board of Water and Natural Resources--Determination of validity by board. Any owner or entryman of land within the proposed water user district who did not sign the petition may file with the Board of Water and Natural Resources a written protest against the qualifications of any signer of the petition, and it shall be the duty of the board to consider and determine the validity of such protests.

Source: SL 1939, ch 291, § 4; SL 1943, ch 310; SDC Supp 1960, § 61.1304 (1); SDCL, § 46-16-14.

46A-9-15. Investigation of proposed district and works by Board of Water and Natural Resources--Costs. If the Board of Water and Natural Resources determines that the petitioners have complied with the requirements of this chapter, the board shall make an immediate investigation of the proposed water user district and of its

proposed works, systems, or plans and of the engineering and economic feasibility of the project. The board may make an estimate of the cost of the investigation and may require the petitioners to defray part or all of the estimated cost before proceeding with the investigation.

Source: SL 1939, ch 291, § 4; SL 1943, ch 310; SDC Supp 1960, § 61.1304 (1); SDCL § 46-16-15; SL 2011, ch 165, § 469.

46A-9-16. Declaration of feasibility of proposed project and conformance to public convenience--Dismissal of petition or certificate of feasibility--Filing of certificate--District as public corporation. The Board of Water and Natural Resources, within ninety days from the receipt of the petition, or within ninety days from the time funds become available to defray the cost of the investigation, shall declare that the proposed project is or is not feasible and conforming to public convenience and welfare. If the project is deemed not feasible, the board shall dismiss the petition. However, if the board deems the project feasible and conforming to public convenience and welfare, the board shall immediately execute a certificate, in duplicate, setting forth a true copy of the petition and declaring that the petition is approved. The board shall file the certificate in the Office of the Secretary of State and a copy of the certificate, certified by the secretary of state, in the office of the county auditor of each county in which any of the lands in the water user district are located. Thereupon, the district, under its designated name, is a body politic and corporate under the provisions of this chapter and is a public corporation of the State of South Dakota.

Source: SL 1939, ch 291, § 4; SL 1943, ch 310; SDC Supp 1960, § 61.1304 (1); SDCL § 46-16-16; SL 2011, ch 165, § 470.

46A-9-17. Validation of prior districts and boundaries--Validation of prior proceedings, bonds, and contracts. All water user districts, created under the provisions of this chapter, and additions to and deletions from the districts, established or purporting to be established or adjusted before July 1, 1978, pursuant to the provisions of this chapter 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 such water user districts in existence for one year or any boundary adjustments of the districts is not open to question in any court in the state. All acts and proceedings of any water user district or of its board of directors, or both, leading up to the authorization and execution of an existing contract between any water user district and the United States of America, and all acts and proceedings of any water user district or of its board of directors, or both, leading up to the issuance and deliverance of bonds of any water user district are hereby legalized, ratified, confirmed, and declared valid to all intents and purposes. All existing contracts and outstanding bonds are hereby legalized and declared to be valid and legal obligations of and against the water user district executing or causing the execution of the contracts or bonds. This section does not apply to any suit or proceeding legally initiated before July 1, 1978.

Source: SL 1978, ch 330, §§ 1, 3; SDCL Supp, § 46-16-16.1; SL 2011, ch 165, § 471.

46A-9-18. Board of directors--Qualification upon filing certificate of organization--Vacancy created by failure to qualify--First meeting. Immediately upon the filing of said certificate in the Office of the Secretary of State and a certified copy thereof in the office of each such county auditor, the members of the board of directors named in the petition shall qualify as provided for in this chapter and immediately assume the duties of their office. Failure or refusal to qualify within a period of fifteen days thereafter shall be deemed to create a vacancy which shall be filled as in this chapter provided. The first meeting of the board of directors shall be called by the director first named in the petition who qualifies.

Source: SL 1939, ch 291, § 4; SL 1943, ch 310; SDC Supp 1960, § 61.1304 (1); SDCL, § 46-16-17.

46A-9-19. Additional territory, inclusion in district. The procedure for extending a water user district by including additional territory shall be as provided by §§ 46A-9-20 to 46A-9-23, inclusive.

Source: SL 1943, ch 310; SDC Supp 1960, § 61.1304 (2); SDCL, § 46-16-18.

46A-9-20. Extension of district--Petition to include additional territory--Contents--Filing. A water user district may be extended by including additional territory by filing in the Department of Environment and Natural Resources a petition in writing, verified by the circulator of the petition, addressed to the department, signed by at least twenty-five percent of the landowners or entrymen in any area to be included, and bearing the approval by resolution, of a majority of the board of directors of the water user district, upon compliance with the requirements set forth in this chapter. The petition shall contain a description of the lands to be included.

Source: SL 1943, ch 310; SDC Supp 1960, § 61.1304 (2); SDCL § 46-16-19; SL 2011, ch 165, § 472.

46A-9-21. Petition for expansion of district--Map showing location of lands to be included to accompany--Plans and estimates. The petition shall be filed with the Department of Environment and Natural Resources, together with a list of the petitioners' names, mailing addresses, and lands owned or entered. The petition shall be accompanied by a map or maps showing the location of the lands to be included, the proposed system of works and by other maps, plans, and estimates as may be necessary to fully describe the proposed expansion.

Source: SL 1943, ch 310; SDC Supp 1960, § 61.1304 (2); SDCL, § 46-16-20; SL 1997, ch 255, § 4.

46A-9-22. Publication of notice for extension of district--Filing of protest. A notice shall be published in each county in which the lands to be included lie, in a legal newspaper of general circulation in the county, once each week for at least two successive weeks. The last date of publication shall be at least thirty days prior to the Board of Water and Natural Resources' meeting at which the petition is first considered. The notice shall be published at the petitioners' expense. The notice shall contain the information required in § 46A-9-20, shall state when the petition was filed, shall state a public place in each county affected where the petition may be examined, and shall state the date, time, and place at which the petition will be considered by the Board of Water and Natural Resources. Any owner or entryman of land within the area to be included, who did not sign the petition may file a written protest with the department as provided in § 46A-9-14.

Source: SL 1943, ch 310; SDC Supp 1960, § 61.1304 (2); SDCL, § 46-16-21; SL 1972, ch 239, § 6; SL 1997, ch 255, § 5.

46A-9-23. Action by Board of Water and Natural Resources on petition for extension of district--Certificate of approval--Filing--Effect. Upon receipt of the petition the Board of Water and Natural Resources shall act upon the petition in the same manner as required upon an original petition to create a water user district, as set forth in §§ 46A-9-12 to 46A-9-16, inclusive, and § 46A-9-18.

Upon the approval of the petition and project by the Board of Water and Natural Resources, and the issuance and filing of its certificate of approval in the Office of the Secretary of State and filing a copy of the certificate, certified by the secretary of state, in the office of the county auditor of each county in which any lands in which such water user district is located, the included areas constitute a part of the water user district.

Source: SL 1943, ch 310; SDC Supp 1960, § 61.1304 (2); SDCL § 46-16-22; SL 2011, ch 165, § 473.

46A-9-23.1. Exclusion of lands from district--Grounds--Procedure. If the board of directors of a water user district finds that there are lands within the district not utilizing the services of the district and that it is not feasible or necessary to retain those lands within the district, the board shall adopt a resolution stating its findings and declaring its intention to exclude the lands. The board shall, within ten days following the adoption of the resolution, file it with the Board of Water and Natural Resources. Upon receipt of the resolution, the Board of Water and Natural Resources shall determine whether the resolution complies with the requirements to exclude the lands, and if so, shall establish a hearing date on the issue no later than ninety days from the date of the filing of the resolution. Following the hearing, the Board of Water and Natural Resources may approve or disapprove the action proposed by the resolution. Upon approval and filing by the district board of a certificate

of approval in the Office of the Secretary of State, together with a copy of the resolution, and after filing by the district board of a copy certified by the secretary of state in the office of the county auditor of each county in which any lands to be excluded are located, the lands shall be excluded from the water user district.

Source: SL 1984, ch 296, § 2; SL 2006, ch 226, § 3.

46A-9-23.2. Notices of hearing on exclusion--Protests. Following the setting of a hearing date by the Board of Water and Natural Resources under the provisions of § 46A-9-23.1, the board of directors of a water user district shall publish a copy of the resolution and a notice of the time and place when the resolution shall be considered by the board in each county in which lands to be excluded lie. The resolution and notice shall be published in a newspaper of general circulation in the county once each week for at least two successive weeks before the date of the hearing. If there is no newspaper of general circulation published in the county, copies of the resolution shall be posted in three of the most public places in the county at least two weeks before the time of the hearing. Any landowner, entryman, or resident upon the lands to be excluded under the resolution may file with the Board of Water and Natural Resources a written protest against the exclusion of all or a portion of the lands and may appear at the hearing to register his protest.

Source: SL 1984, ch 296, § 3.

46A-9-24. Members of board of directors succeeding original board--Nomination and election--Term of office. After the qualification of the original board, members to succeed those in the three groups provided for in § 46A-9-8, respectively, and to fill unexpired terms, shall be nominated and elected and shall take office, subject to the provisions of this chapter. Prior to May first of each year, on dates established by the board, an election shall be held to elect directors to succeed those whose terms are about to expire. Newly elected directors shall assume office at the first board meeting following their election and shall continue for a period of three years thereafter and until a successor is duly elected and qualified. Election of directors shall be conducted as provided by §§ 46A-9-25 to 46A-9-29, inclusive.

Source: SL 1939, ch 291, § 5; SDC Supp 1960, § 61.1305 (1), (2); SDCL, § 46-16-23; SL 1997, ch 255, § 6.

46A-9-25. Hour and place of election. The board of directors of the water user district shall fix the hour and place, within the boundaries of the district, of each election and shall preside at the election. If the district is divided into election divisions, the board of directors in its discretion may fix a place of election within each election division, in which case the directors who represent that division shall preside at the election.

Source: SL 1939, ch 291, § 5; SDC Supp 1960, § 61.1305 (2); SDCL § 46-16-24; SL 2011, ch 165, § 474.

46A-9-26. Election of directors--Voting rights. Every owner of land and entryman within the district, and every person or corporation which is a party to a contract with the district for the purchase of water, for the collection, treatment, or disposal of wastewater, or other services to be furnished by the district, may cast one vote at each election for each director to be elected for whom the voter is entitled to vote. However, the vote which a voter is entitled to cast by reason of being a party to any such contract with the district is in addition to the vote to which the voter may be entitled by reason of being a landowner or entryman within the district. If election divisions are provided for, each person or corporation entitled to vote by reason of being a party to a contract, as provided in this section, shall select the division in which the person or corporation will vote. The selection shall be made under procedures established by resolution by the board of directors.

Source: SL 1939, ch 291, § 5; SDC Supp 1960, § 61.1305 (2); SDCL, § 46-16-25; SL 1993, ch 256, § 82; SL 2006, ch 226, § 4.

46A-9-27. Notice of election time, place, and purpose--Mailing or publication. The board of directors, at least twenty days before the date of election, shall mail to each person or corporation entitled to vote at the

election, at the person's or corporation's last known place of residence or business, a notice stating the time, place, and purpose of the election. Alternatively, the board may publish in each county in which lands within the district lie, in some newspaper of general circulation printed and published in the county, once each week for at least two successive weeks before the time of election, a notice that the election will be held and giving the purpose, time, and place.

Source: SL 1939, ch 291, § 5; SDC Supp 1960, § 61.1305 (2); SDCL § 46-16-26; SL 1975, ch 277, § 2; SL 2011, ch 165, § 475.

46A-9-28. Registration of voters--Conduct of election--Costs. At the time and place of the election, the presiding directors shall provide for registration of those present and entitled to vote, shall determine the number of votes to which each is entitled and shall prescribe the manner of casting ballots and canvassing votes. If election divisions are provided for, but the election is held at one place within the district, the board of directors shall arrange for separate registration and conduction of the election for each division separately. All costs incident to the election of directors shall be borne by the district.

Source: SL 1939, ch 291, § 5; SDC Supp 1960, § 61.1305 (1), (2); SDCL, § 46-16-27; SL 1984, ch 296, § 1.

46A-9-29. Candidate to fill vacancy or succeed an outgoing director--Vote necessary for election. The candidate for director required to fill an existing vacancy or to succeed an outgoing director who receives the highest number of votes cast for such office shall be declared elected.

Source: SL 1939, ch 291, § 5; SDC Supp 1960, § 61.1305 (2); SDCL, § 46-16-28.

46A-9-30. Director to be landowner or entryman. No person is qualified to hold office as a member of the board of directors of any water user district unless the person is a landowner or entryman of the district.

Source: SL 1939, ch 291, § 6; SDC Supp 1960, § 61.1306; SDCL § 46-16-29; SL 2011, ch 165, § 476.

46A-9-31. Removal of members of board of directors from office--Grounds--Procedure. Members of the board of directors may be removed from office for the same reasons and in the same manner as provided in §§ 3-17-6 to 3-17-11, inclusive, for the removal of county and other local officers.

Source: SL 1939, ch 291, § 5; SDC Supp 1960, § 61.1305 (1); SDCL, § 46-16-31.

46A-9-32. Vacancies on board of directors--Declaration of existence--Filling--Member elected to fill, term of office. Vacancies on the board of directors by reason of death, disability, failure to hold land in the water user district, or in the election division if election divisions are provided for, or otherwise shall be declared to exist and shall be filled by the board of directors, and the members thus elected to fill vacancies shall serve until members to fill out the remainder of such terms respectively may be elected at the next succeeding district election.

Source: SL 1939, ch 291, § 5; SDC Supp 1960, § 61.1305 (1); SDCL, § 46-16-32.

46A-9-33. Reimbursement of expenses and compensation of board members. Each water user district board of directors shall establish amounts to reimburse board members for expenses for lodging, meals, and mileage and to provide compensation for each day of actual service for traveling to, attending, and returning from meetings, hearings, or investigations of the water use district board. Such reimbursement and compensation shall be paid on vouchers duly verified and approved accordingly to procedures determined by the board.

Source: SL 1939, ch 291, § 6; SDC Supp 1960, § 61.1306; SDCL § 46-16-33; SL 1981, ch 318; SL 1987, ch 335; SL 2001, ch 243, § 1; SL 2011, ch 202, § 1.

46A-9-34. Officers--Election by board of directors--Appointment of executive committee and other employees. The board of directors shall elect the officers of the water user district who shall be a president, a vice-president, a secretary, and a treasurer, and the board shall appoint such executive committee and other officers, agents, and employees as shall be deemed necessary in transacting the business of the district. The president, vice-president, and treasurer shall be elected from the membership of the board of directors.

Source: SL 1939, ch 291, § 6; SDC Supp 1960, § 61.1306; SDCL, § 46-16-34.

46A-9-35. Bond of treasurer. The treasurer shall furnish and maintain a corporate surety bond in such amounts and with such sureties as the directors may specify and conditioned on faithful performance of the treasurer's duties. The bond, as thus approved, shall be filed with the secretary of state, and the premium upon the bond shall be paid by the district.

Source: SL 1939, ch 291, § 6; SDC Supp 1960, § 61.1306; SDCL § 46-16-35; SL 2011, ch 201, § 1.

46A-9-36. Corporate powers of district vested in board of directors. The corporate powers of the water user district shall be vested in and exercised by the board of directors of the district.

Source: SL 1939, ch 291, § 6; SDC Supp 1960, § 61.1306; SDCL, § 46-16-36.

46A-9-37. Bylaws and procedures--Adoption by board of directors--Minutes of meetings--Records of account, kept at principal place of business, open to public inspection. The board of directors may by resolution adopt bylaws and procedures, not inconsistent with the provisions of this chapter, for the conduct of the business and affairs of the water user district. The board of directors shall cause to be kept accurate minutes of its meetings and accurate records and books of account, conforming to approved methods of bookkeeping, clearly setting out and reflecting the entire operation, management, and business of the district. The books and records shall be kept at the principal place of business of the district and at reasonable business hours always open to public inspection.

Source: SL 1939, ch 291, § 6; SDC Supp 1960, § 61.1306; SDCL, § 46-16-37; SL 1993, ch 256, § 83.

46A-9-38. Indemnification of directors, officers, employees, or agents of districts. A water user district may indemnify any person who was or is a party or is threatened to be made a party to any pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that the person is or was a director, officer, employee, or agent of the water user district or is or was serving at the request of the water user district as a director, officer, employee, or agent or another corporation, limited liability company, partner-joint venture, trust, or other enterprise, against expenses including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit, or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the water user district and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. However, this section does not apply to any action by or in the right of the water user district.

Source: SL 1979, ch 300; SDCL Supp, § 46-16-37.1; SL 1994, ch 351, § 114.

46A-9-39. Powers of district. A water user district organized under the provisions of this chapter has the powers provided by §§ 46A-9-40, 46A-9-41, and §§ 46A-9-43 to 46A-9-45, inclusive, and may own, have, or exercise the rights, privileges, and franchises provided by those sections.

Source: SL 1939, ch 291, § 7; SDC Supp 1960, § 61.1307; SDCL § 46-16-38; SL 2011, ch 165, § 477.

46A-9-40. Powers of corporation for public purposes--Acquisition and disposition of property. The water user district has all the usual powers of a corporation for public purposes. The district may acquire by purchase, gift, condemnation, or other lawful means and may hold any real or personal property reasonably necessary for the conduct of its business, or may lease such property for its proper purposes. The district may sell, lease, or otherwise dispose of such property if not needed by the district.

Source: SL 1939, ch 291, § 7; SDC Supp 1960, § 61.1307 (1); SDCL § 46-16-39; SL 2011, ch 165, § 478.

46A-9-41. Acquisition, management, use, and operation of works and property--Disposition of works. The water user district may own, construct, reconstruct, improve, purchase, condemn, lease, receive by gift, or otherwise acquire, hold, extend, manage, use, or operate any works and any kind of property, personal or real, necessary, useful, or incident to such acquisition, extension, management, use, and operation. The district may sell, mortgage, alienate, or otherwise dispose of the works or any part of the works only under the terms and subject to the conditions provided in §§ 46A-9-69 to 46A-9-72, inclusive.

Source: SL 1939, ch 291, § 7; SDC Supp 1960, § 61.1307 (2); SDCL § 46-16-40; SL 2011, ch 165, § 479.

46A-9-42. Transfer of obligations of nonprofit rural water supplier or wastewater system operator to water user district, sanitary district, or municipality--Majority vote of district. Any nonprofit corporation, cooperative, or association engaged in the treatment, distribution, or sale of water or the collection, treatment, or disposal of wastewater to a rural area may, by majority vote of the membership voting in an election on the question, transfer all of its assets, liabilities, contracts, and other obligations to a water user district as defined in § 46A-9-2, sanitary district authorized to operate a water system under § 34A-5-41, or a municipality. No such action may be taken unless approved by majority vote of the water user district or sanitary district membership voting in an election on the action.

Source: SL 1974, ch 285; SL 1977, ch 368; SL 1982, ch 312, § 2; SDCL Supp, § 46-16-40.1; SL 2006, ch 226, § 5.

46A-9-43. Contracts with governmental agencies authorized for certain purposes. In connection with the powers provided by §§ 46A-9-40 and 46A-9-41, the water user district may enter into any contract, lease, agreement, or arrangement with any state, county, municipality, district, governmental or public corporation or association, or with any person, firm, or corporation, public or private, or with the government of the United States, or with any officer, department, bureau, or agency of the government of the United States, or with any corporation organized under federal law. The contract, lease, agreement, or arrangement may be for any of the following purposes:

- (1) Exercising or using any one or more of the powers authorized in §§ 46A-9-40 and 46A-9-41;
- (2) Selling, leasing, or otherwise furnishing or establishing water rights, water supply, conveyance and distribution of water, water service, or water storage;
- (3) Irrigation or flood control;
- (4) Domestic, industrial, municipal, or stock-watering purposes;
- (5) Drainage of lands;
- (6) Provision of services or systems for the collection, treatment, or disposal of wastewater;
- (7) Provision of billing, collection, hookup, or termination services for entities that provide services for the collection, treatment, or distribution of water or wastewater;
- (8) Financing or payment of the cost and expenses incident to the construction, acquisition, or operation of such works, or incident to any obligation or liability entered into or incurred by the district.

Source: SL 1939, ch 291, § 7; SDC Supp 1960, § 61.1307 (2); SDCL, § 46-16-41; SL 1992, ch 60, § 2; SL 2006, ch 226, § 6.

46A-9-44. Extraterritorial powers of district. The district may exercise any of the powers enumerated in §§ 46A-9-41 and 46A-9-43 either within or beyond or partly within and partly beyond the boundaries of the

district and of the State of South Dakota, unless prohibited by the law of the area or state concerned or of the United States of America.

Source: SL 1939, ch 291, § 7; SDC Supp 1960, § 61.1307 (3); SDCL § 46-16-42; SL 2011, ch 165, § 480.

46A-9-45. Appropriation of waters of state by district--Interference with existing water rights forbidden. Such water user district shall have the right to appropriate the waters of the state in the same manner as other appropriators under the laws of this state; provided, that such district shall not, in the exercise of the powers conferred by this chapter, interfere with, injure, or otherwise damage or affect existing water rights, other than through the purchase of such rights or through condemnation proceedings as provided in this chapter; and provided, further, that no irrigation district, corporation, association, or individual holding a water right for lands located either within or outside the boundaries of a water user district shall be in any way affected by the operations of such district other than by reason of a contract voluntarily entered into by such organization or individual with such district, or by reason of the exercise by such district of the power of eminent domain as provided in this chapter.

Source: SL 1939, ch 291, § 7; SDC Supp 1960, § 61.1307 (4); SDCL, § 46-16-43.

46A-9-46. Eminent domain--Appraisalment of private property or interest. In addition to any other rights and powers conferred upon any water user district organized under the provisions of this chapter, the district may exercise the power of eminent domain for the purposes and after the manner provided for in chapter 21-35, after declaring by resolution the necessity for and purpose of the taking of property and the extent of the taking. If any such district condemns private property or interests in the private property, the appraisalment shall include the amount of damage that will accrue to the owner of the condemned property through severance of the condemned property from other property of the owner, previously operated with the condemned property, as a unit.

Source: SL 1939, ch 291, § 8; SDC Supp 1960, § 61.1308; SDCL § 46-16-44; SL 2011, ch 165, § 481.

46A-9-46.1. Municipal approval of location of wastewater plant or system--Exception for existing plant or system. No portion of any plant or system that is operated by a water user district for the collection, treatment, or disposal of wastewater, including sanitary sewers and sewage and sewage treatment plants and systems, may be located within a zone that extends ten miles outward from the corporate limits of any municipality without the approval of the municipality. However, if the ten-mile zones of more than one municipality overlap, the jurisdiction of each municipality over any such plant or system terminates at a boundary line equidistant from the respective corporate limits of the municipalities; and the water user district shall obtain the approval of each municipality that would have jurisdiction over any portion of the plant or system to be operated by the water user district. The restrictions provided in this section do not apply to any portion of any such plant or system if the portion was in existence on July 1, 2006 or if the portion predates any expansion by a municipality that would otherwise cause the plant or system to be in violation of this section.

Source: SL 2006, ch 226, § 7.

46A-9-47. District has no power to tax or levy assessments--Others have no liability for district indebtedness or obligations. The district has no power of taxation, or of levying assessments for special benefits. No governmental authority may levy or collect taxes or assessments for the purpose of paying, in whole or in part, any indebtedness or obligation of or incurred by the district as such or upon which the district may be or become in any manner liable. No privately owned property within or outside the district, nor the owner of the property, and no municipality, county, irrigation district, or other political subdivision or public or private corporation or association or its property, is directly or indirectly liable for any such district indebtedness or obligation beyond the liability to perform any express contract, if any, between the owner or public or private organization and the district.

Source: SL 1939, ch 291, § 9; SDC Supp 1960, § 61.1309; SDCL § 46-16-45; SL 1992, ch 60, § 2; SL 2011, ch 165, § 482.

46A-9-48. Costs of operation of district--Contract for payment of rent or charge for water storage or water supply. No person, irrigation district, municipality, county, or other governmental subdivision, irrigation company, or other public or private corporation or association is liable for the payment of any rent or charge for water storage; water supply; for the collection, treatment, or disposal of wastewater; or for any of the costs of operation of a water user district, unless a contract for such services has been entered into between the person or public or private organization and the water user district furnishing the services.

Source: SL 1939, ch 291, § 9; SDC Supp 1960, § 61.1309; SDCL, § 46-16-46; SL 1992, ch 60, § 2; SL 2006, ch 226, § 8.

46A-9-49. Grants or loans--Gifts. Any water user district organized under this chapter may exercise any power conferred by this chapter for the purpose of obtaining grants or loans or both from any federal agency pursuant to or by virtue of any acts of Congress independently or in conjunction with any other power or powers conferred by this chapter, or heretofore or hereafter conferred by any other law. The district may accept from private owners or other sources, gifts, deeds, or instruments of trust or title relating to land, water rights, and any other form of property.

Source: SL 1939, ch 291, § 11; SDC Supp 1960, § 61.1311; SDCL § 46-16-47; SL 2011, ch 165, § 483.

46A-9-50. Cooperation with United States in acquisition and disposition of property. The water user district may purchase and acquire lands, water rights, rights-of-way, and real and personal properties of every nature in cooperation with the United States under such conditions as the board deems advisable. The district may convey such rights and property under conditions, terms, and restrictions approved by the board of directors and the federal government or any of its agencies. The district may pay the purchase price and any construction costs or other necessary expenses and costs in connection with any works contemplated by this chapter either from its own funds or cooperatively with the federal government.

Source: SL 1939, ch 291, § 12; SDC Supp 1960, § 61.1312; SDCL § 46-16-48; SL 2011, ch 165, § 484.

46A-9-51. Eminent domain laws applicable to irrigation districts apply. All provisions of law now applicable to irrigation districts, privately owned irrigation corporations, or ditch companies, regarding the exercise of the power of eminent domain, the use and occupation of state and other public lands and highways, the appropriation, or other acquisition, enjoyment, or use of water, water rights, or water diversion or storage rights, for any of the purposes contemplated in this chapter, the manner or method of construction and physical operation of irrigation works, storage dams, drainage ditches, as herein contemplated, shall be applicable as nearly as may be, and so far as not in conflict with the provisions of this chapter, to water user districts organized under this chapter in their exercise of the rights, powers, and franchises and in the performance of the duties conferred or imposed upon them under the provisions of this chapter.

Source: SL 1939, ch 291, § 8; SDC Supp 1960, § 61.1308; SDCL, § 46-16-49.

46A-9-52. Contracts governed by public agency procurement law. Any water user district contract for the construction, alteration, extension, or improvement of any works, or any part or section thereof, or any building, for the use of the district, or for the purchase of any materials, machinery, or apparatus therefor is governed by chapters 5-18A and 5-18B.

Source: SL 1939, ch 291, § 13; SDC Supp 1960, § 61.1313; SDCL § 46-16-50; SL 1972, ch 32, § 5; SL 1991, ch 373; SL 2011, ch 2, § 148.

46A-9-53. Filing of plans and specifications--Advertisement for bids. Before publication of any advertisement pursuant to chapter 5-18A, plans and specifications for the proposed construction work or materials shall be prepared and filed at the principal office or place of business of the water user district. The advertisement shall be published as required by § 5-18A-14 and, in the discretion of the board of directors of the district, may be published in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of the receiving of bids. The advertisement shall designate the nature of construction work proposed to be done or materials proposed to be purchased.

Source: SL 1939, ch 291, § 13; SDC Supp 1960, § 61.1313; SDCL § 46-16-51; SL 1972, ch 34, § 6; SL 2006, ch 226, § 9; SL 2011, ch 2, § 149.

46A-9-54. Contracts for proposed construction work--Employment of citizens of state--Bond of contractor. Such contract shall provide that wherever possible, workmen who are citizens of South Dakota shall be employed by the contractor. All provisions of chapter 5-21 with reference to contractors' bonds required under such statutes, shall be applicable and effective as to any contract let pursuant to the provisions of this chapter.

Source: SL 1939, ch 291, § 13; SDC Supp 1960, § 61.1313; SDCL, § 46-16-52; SL 1979, ch 18, § 5.

46A-9-55. Certain proposed works exempt from competitive bidding requirements. If all or a portion of the cost of the proposed works is to be met by grant of labor or a grant-in-aid from a federal or state agency, does not require the use of any state or federal funds in the proposed works, or under other contract with a federal or state agency, and the rules of such agency provide that work may not be done by contract, the board of directors may proceed with the necessary construction or other work without first complying with any of the provisions of §§ 46A-9-52 to 46A-9-54, inclusive.

Source: SL 1939, ch 291, § 13; SDC Supp 1960, § 61.1313; SDCL § 46-16-53; SL 1993, ch 256, § 84; SL 2012, ch 219, § 1.

46A-9-56. Borrowing power of district--Sources from which obligations payable--Authorization, issuance, and sale of bonds. Any district organized pursuant to this chapter may borrow money and incur indebtedness for any corporate use or purpose authorized in this chapter, provided the indebtedness, liability, or obligation of the district for the payment of money in any manner, and whether arising from contract, implied contract, or otherwise, is payable solely:

- (1) From revenues, income, receipts, and profits derived by the district from its operation and management of systems and irrigation works as in this chapter provided; or
- (2) From the issuance or sale by the district of its warrants, notes, revenue bonds, debentures, or other evidences of indebtedness, (hereinafter referred to in this section as "district obligations") payable solely from such revenues, income, receipts, and profits. All bonds shall be authorized, issued, and sold as provided in chapter 6-8B. However, no bond election is required.

Source: SL 1939, ch 291, § 10; SDC Supp 1960, § 61.1310; SDCL, § 46-16-54; SL 1978, ch 330, § 2; SL 1984, ch 43, § 124; SL 1985, ch 361.

46A-9-57. District obligations--Pledge of revenue for payment--Collateral security for loan. Any such water user district may pledge and put up as collateral security for a loan any district obligations. Any district issuing district obligations under the provisions of this chapter may pledge all or any part of the revenues which the district may derive from the sale, conveyance, or distribution of water for irrigation, domestic, municipal, industrial, or stock-watering purposes; from the storage of water; or from the collection, treatment, or disposal of wastewater, as security for the payment of the principal and interest on the loan. Any such pledge of revenues shall be made by the directors of the district by resolution or by agreement with the purchasers or holders of the district obligations. Any such resolution or agreement may specify the particular revenues that are pledged and the terms and conditions to be performed by the district and the rights of the holders of the district obligations,

and may provide for priorities of liens in any such revenues as between the holders of district obligations issued at different times or under different resolutions or agreements.

Source: SL 1939, ch 291, § 10; SDC Supp 1960, § 61.1310; SDCL, § 46-16-55; SL 2006, ch 226, § 10.

46A-9-58. Refunding of district obligations. Such resolution or agreement may further provide for the refunding of any such water user district obligation through the issuance of other district obligations, entitled to rights and priorities similar in all respects to those held by the district obligations that are refunded and for the issuance of such refunding district obligations, either in exchange for district obligations then outstanding, or the sale thereof and the application of the proceeds of such sale to the retirement of the district obligations then outstanding.

Source: SL 1939, ch 291, § 10; SDC Supp 1960, § 61.1310; SDCL, § 46-16-56.

46A-9-59. Revenues of district--Payment into special fund--Collection and disposition of special fund, terms, and conditions. Any such resolution or agreement may provide that all or any part of the revenues of the water user district shall be paid into a special fund and may set forth all the terms and conditions on which such special fund is to be collected, held, and disposed of, whether partly or wholly for the benefit of the holders of such district obligations. Provision may be made that such special fund shall be held by depositories designated or described in such resolution or agreement.

Source: SL 1939, ch 291, § 10; SDC Supp 1960, § 61.1310; SDCL, § 46-16-57.

46A-9-60. Agreement between directors and holders of district obligations as to charges for water, sewage disposal, or other services. The directors of any water user district organized under the provisions of this chapter may enter into agreements with the holders of any such district obligations as to the maximum or minimum amounts that the district may charge and collect for water sold by the district or for the collection, treatment, or disposal of wastewater or other services provided by the district.

Source: SL 1939, ch 291, § 10; SDC Supp 1960, § 61.1310; SDCL, § 46-16-58; SL 2006, ch 226, § 11.

46A-9-61. Prices, rates, and charges--Contracts. The board of directors, subject to the provisions of this chapter, may fix and establish the prices, rates, and charges at which any resources and facilities made available under the provisions of this chapter shall be sold and disposed of. The board may enter into any contracts and agreements, and do anything that in its judgment is necessary, convenient, or expedient for the accomplishment of any of the purposes and objects of this chapter, under such general regulations and upon such terms, limitations, and conditions as it shall prescribe. The board shall enter into contracts and fix and establish prices, rates, and charges to provide at all times funds sufficient to pay all costs of operation and maintenance of any of the works authorized by this chapter, together with necessary repairs to such works, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds, warrants, notes, debentures, and other evidences of indebtedness as they severally become due and payable. However, nothing contained in this chapter authorizes any change, alteration, or revision of any such rates, prices, or charges as established by any contract entered into under authority of this chapter except as provided by the contract.

Source: SL 1939, ch 291, § 16; SDC Supp 1960, § 61.1316 (3); SDCL § 46-16-59; SL 2011, ch 165, § 485.

46A-9-62. Default in payment of money specified in agreement--Termination of contract--Right to recovery not affected by discontinuation of services. Every contract made by the board of directors for the sale, conveyance, and distribution of water, use of water, water storage, or for the collection, treatment, or disposal of wastewater, or other service, or for the sale of any property or facilities, shall provide that in the event of any failure or default in the payment of any moneys specified in the contract to be paid to the board, the board may, upon such notice as prescribed in the contract, terminate the contract and all obligations under the contract. The

act of the board in ceasing on any such default to furnish or deliver water, use of water, or water storage, or other services under the contract does not deprive the board of, or limit any remedy provided by the contract or by law for the recovery of any moneys due or which may become due under the contract.

Source: SL 1939, ch 291, § 16; SDC Supp 1960, § 61.1316 (3); SDCL, § 46-16-60; SL 2006, ch 226, § 12.

46A-9-63. Funds of district--Creation by board of directors--Identification--Separate accounts. The board of directors shall create separate funds, one fund to be known as the construction fund, another fund to be known as the water fund, another fund to be known as the debt service fund, and, if the district provides services for the collection, treatment, or disposal of wastewater, a fund to be known as the wastewater fund. Each such fund shall be identified by the same series letter or letters as the bonds, warrants, notes, debentures, or other evidences of indebtedness of the series. A separate account shall be kept for each construction fund, each water fund, each wastewater fund, and each debt service fund for each project.

Source: SL 1939, ch 291, § 16; SDC Supp 1960, § 61.1316 (1); SDCL, § 46-16-61; SL 2006, ch 226, § 13.

46A-9-64. Construction fund--Deposit of bond proceeds--Credit of interest received upon deposits--Disbursements--Balance transferred to debt service fund. The proceeds of the sale of the bonds and other evidences of indebtedness of each series issued under the provisions of this chapter shall be placed to the credit of the appropriate construction fund, which fund shall at all times be kept segregated and set apart from all other funds. There shall also be credited to the appropriate construction fund the interest received upon the deposits of moneys in such fund and moneys received by way of gift or grant from the United States or from any other source for the construction of the works. The moneys in each construction fund shall be paid out or disbursed in such manner as may be determined by the board of directors, subject to the provisions of this chapter, to pay the cost of the works as defined in § 46A-9-2. Any surplus which may remain in any construction fund after providing for the payment of the cost of the works shall be added to and become a part of the appropriate debt service fund provided for in § 46A-9-66.

Source: SL 1939, ch 291, § 16; SDC Supp 1960, § 61.1316 (2); SDCL, § 46-16-62.

46A-9-65. Water or wastewater fund--Credit of revenue of works and operations--Payment of operation and maintenance costs. All income or profit and revenue of the works and all moneys received from the sale, conveyance, distribution, or disposal of water, use of water, or water storage; from the collection, treatment, or disposal of wastewater; and from the operation, lease sale, or other disposition of the works, property, and facilities acquired under the provisions of this chapter, shall be paid to the credit of the appropriate water or wastewater fund. All costs of operation, maintenance, and repairs of the works, and all administrative and clerical expenses of the water user district, shall be paid from the appropriate water or wastewater fund.

Source: SL 1939, ch 291, § 16; SDC Supp 1960, § 61.1316 (3); SDCL, § 46-16-63; SL 2006, ch 226, § 14.

46A-9-66. Debt service fund--Transfer of balance from water fund--Moneys pledged for payment of evidences of indebtedness. The board of directors shall provide in the proceedings authorizing the issuance of each series of bonds, warrants, notes, debentures, or other evidences of indebtedness or in the trust indenture securing the same, for paying into the appropriate debt service fund at stated intervals all moneys then remaining in the water fund, after paying all costs of operation, maintenance, and repairs of the works and all administrative and clerical expenses of the water user district. All moneys in each debt service fund shall be pledged for the payment of and used for the purpose of paying the interest, principal, and the necessary fiscal agency charges upon the bonds, warrants, notes, debentures, or other evidences of indebtedness as the same shall fall due.

Source: SL 1939, ch 291, § 16; SDC Supp 1960, § 61.1316 (4); SDCL, § 46-16-64.

46A-9-67. Deposit of funds--Payment of claims. All moneys collected pursuant to this chapter shall be deposited with the water user district treasurer in any depository designated and approved by the board of directors of the water user district at a regular meeting and from which all valid claims against the district shall be paid or by order duly drawn by the district treasurer pursuant to procedures adopted by the board of directors.

Source: SL 1939, ch 291, § 14; SDC Supp 1960, § 61.1314; SDCL § 46-16-65; SL 2011, ch 203, § 1.

46A-9-68. Fiscal year--Audit of financial affairs by board of directors, filing of written report. The fiscal year of the water user district shall coincide with the calendar year. The board of directors, at the close of each year's business, shall cause an audit of the books, records, and financial affairs of the district to be made by an experienced public accountant, copies of a written report of which audit, certified to by said auditors, shall be placed and kept on file at the principal place of business of the district and shall be filed with the secretary of state.

Source: SL 1939, ch 291, § 6; SDC Supp 1960, § 61.1306; SDCL, § 46-16-66.

46A-9-69. Disposition of water supply works, drainage works, or wastewater systems. No irrigation or other water supply works, drainage works, or systems or facilities for the collection, treatment, or disposal of wastewater owned by the district may be sold, alienated, or mortgaged by the district, except under the circumstances described by §§ 46A-9-70 to 46A-9-72, inclusive.

Source: SL 1939, ch 291, § 15; SDC Supp 1960, § 61.1315; SDCL, § 46-16-67; SL 2006, ch 226, § 15.

46A-9-70. Sale of unneeded works--Submission of question to Board of Water and Natural Resources--Special election--Notice--Majority vote authorizes sale. If, in the judgment of the board of directors, it is in the best interest of the water user district to sell any portion of the district works not needed for the performance of any outstanding contract, and not mortgaged or hypothecated as provided for in § 46A-9-71, the board of directors shall pass a resolution to that effect and shall submit the question to the Board of Water and Natural Resources for approval. If the Board of Water and Natural Resources approves, the board of directors shall call a special election at which the question of selling the portion of the works shall be submitted to the voters of the district qualified to vote for district directors. The board of directors shall mail to each qualified voter, at the voter's last known place of residence or place of business, a notice stating the time, place, and purpose of the election, and so far as practicable shall conduct the election in all other respects as provided in §§ 46A-9-25 to 46A-9-28, inclusive. If a majority of all qualified voters of the district vote "yes" at the election, the board of directors may sell the portion of the works.

Source: SL 1939, ch 291, § 15; SDC Supp 1960, § 61.1315 (1); SDCL § 46-16-68; SL 2011, ch 165, § 486.

46A-9-71. Mortgage or hypothecation of property to secure payment of loans from governmental agencies. If, in order to borrow money from the federal government or from any of its agencies, or from the State of South Dakota, it becomes necessary that the water user district mortgage or otherwise hypothecate any of its property or assets to secure the payment of a loan made to it by or from such a source, the district may mortgage or hypothecate the property and assets for such purposes. Nothing in this section prevents the district from assigning, pledging, or otherwise hypothecating its revenues, incomes, receipts, or profits to secure the payment of indebtedness to the federal government or any federal agency, or the State of South Dakota. However, the State of South Dakota may never pledge its credit or funds, or any part of its credit or funds, for the payment or settlement of any indebtedness or obligation whatsoever of any district created under the provisions of this chapter. Nothing in this chapter authorizes any agency of the State of South Dakota to make loans to any such district, unless the agency is otherwise authorized by law to make such loans.

Source: SL 1939, ch 291, § 15; SDC Supp 1960, § 61.1315 (2); SDCL § 46-16-69; SL 2011, ch 165, § 487.

46A-9-72. Mortgage or trust deed to secure payment of borrowed money--Foreclosure upon default and appointment of receiver. If any water user district created under this chapter shall execute and deliver a mortgage or trust deed to secure the payment of any moneys borrowed by it for the purposes herein authorized, it may be provided in such mortgage or trust deed that the same may be foreclosed upon default and that a receiver may be appointed by any court of competent jurisdiction with such authority as may be provided for in such mortgage or trust deed.

Source: SL 1939, ch 291, § 15; SDC Supp 1960, § 61.1315 (2); SDCL, § 46-16-70.

46A-9-73. Dissolution of district--Special election--Notice--Conditions for dissolution. Any water user district organized under this chapter may be dissolved by authorization of a majority vote of the voters, qualified to vote for district directors, at a special election called by the board of directors for that purpose. Notice of the election shall be mailed to each qualified voter at least twenty days before the date of the election. The procedure for the election shall conform as nearly as may be to the procedure provided in §§ 46A-9-25 to 46A-9-28, inclusive, for the election of directors. However, the district may not at the time of dissolution own property or rights or have outstanding any contract or contracts or obligations of any kind.

Source: SL 1939, ch 291, § 19; SDC Supp 1960, § 61.1318; SDCL § 46-16-71; SL 2011, ch 165, § 488.

46A-9-74. Dissolution complete upon resolution of board canvassing vote--Filing. Dissolution of the water user district shall be completed upon resolution of the board of directors canvassing the vote and declaring that a majority of the qualified voters voting on the question have voted in favor of dissolution. A verified copy of the resolution shall be filed in the office of the Department of Environment and Natural Resources and in the office of the county auditor of each county in which any portion of the district lies.

Source: SL 1939, ch 291, § 19; SDC Supp 1960, § 61.1318; SDCL § 46-16-72; SL 2011, ch 165, § 489.

46A-9-75. Cancellation of applications for appropriation of water upon dissolution. In case of such dissolution, the Department of Environment and Natural Resources shall cancel all applications for appropriation of water, and all rights of the water user district therein and thereunder shall thereupon cease and determine.

Source: SL 1939, ch 291, § 19; SDC Supp 1960, § 61.1318; SDCL § 46-16-73; SL 2011, ch 165, § 490.

46A-9-76. Municipalities excepted from chapter--Contracts with district. Nothing in this chapter deprives any municipality within the State of South Dakota, located either wholly or partially within or outside any water user district, of the exercise of any rights with which it may be invested by law to construct, acquire, operate, maintain, or dispose of waterworks, or systems or facilities for the collection, treatment, or disposal of wastewater, or to perform any other of its lawful functions. However, any municipality may enter into any contract with any such district for the storage, purchase, or distribution of water or for the collection, treatment or disposal of wastewater, for municipal, domestic, or industrial purposes.

Source: SL 1939, ch 291, § 20; SDC Supp 1960, § 61.1319; SDCL, § 46-16-74; SL 1992, ch 60, § 2; SL 2006, ch 226, § 16.

46A-9-77. Irrigation districts--Powers and functions unaffected by chapter. Nothing in this chapter repeals, limits, or in any way affects the provisions of chapters 46A-4 to 46A-7, inclusive, relating to the organization and operation of irrigation districts. Nothing in this chapter limits in any way the powers and functions of irrigation districts organized under chapters 46A-4 to 46A-7, inclusive, and nothing in this chapter repeals, limits, or affects the provisions of any other laws of the State of South Dakota other than as specifically provided in this chapter.

Source: SL 1939, ch 291, § 17; SDC Supp 1960, § 61.1317; SDCL § 46-16-75; SL 2011, ch 165, § 491.

46A-9-78. Retirement system--Participation. A water user district organized under this chapter which is not a participating unit of the South Dakota Retirement System on January 1, 1983, may elect to participate in the retirement system sponsored by the South Dakota Association of Rural Water Systems.

Source: SL 1983, ch 320; SDCL Supp, § 46-16-76.

46A-9-79. Appointment of water master. The board of directors of any water user district may annually appoint a water master for the district subject to approval by the Water Management Board. Once approved, the board of directors may contract with the water master with regard to the terms and conditions of his employment. The district is bound by the provisions of the contract and shall pay the water master directly.

Source: SL 1990, ch 363, § 1.

46A-9-80. Duties of water master. The water master shall:

- (1) Enforce procedures for distribution of water by court decree;
- (2) Enforce priorities and rights pertaining to the use of water as established by statute or case law;
- (3) Administer the distribution of water obtained through any contract pursuant to § 46A-9-43;
- (4) Provide for the regulation and security of headgates and measuring devices as necessary to enforce the proper distribution of water; and
- (5) Perform such other duties as the board of directors may specify.

Source: SL 1990, ch 363, § 2.

46A-9-81. Removal of water master. The board of directors may remove the water master for cause. The Water Management Board may withdraw approval of a water master and request the board of directors to remove any water master for cause.

Source: SL 1990, ch 363, § 3.

46A-9-82. Grievance appeal. Any person aggrieved by any act or omission of any water master may appeal to the board of directors of the water user district, to the Water Management Board or to the circuit court in the county wherein the dispute arose.

Source: SL 1990, ch 363, § 4.

46A-9-83. Water Management Board not affected. The provisions of this chapter do not abrogate or limit the rights, powers, duties, and functions of the State Water Management Board, but are supplementary thereto.

Source: SL 1990, ch 363, § 5.

46A-9-84. Group insurance for members of board of directors. A water user district may enroll in any authorized group health insurance plan, group dental insurance plan, or both, for the members of the board of directors of the district. The plan may provide for group health and dental insurance against the financial cost of hospital, surgical, and medical treatment and care, and such other coverage benefits, including a group life insurance plan and a group disability income insurance plan, as may be deemed appropriate and desirable by the district.

Source: SL 2009, ch 228, § 1.
