

## **CHAPTER 61-07 POWERS OF IRRIGATION DISTRICTS**

**61-07-01. Powers and duties of irrigation district.** Each irrigation district:

1. Shall be a body corporate.
2. Shall possess all the powers and duties usual to corporations organized for public purposes and those conferred by the provisions of this title or which may be conferred by law.
3. May sue and be sued in its corporate name and may institute and maintain any and all actions and proceedings, including suits at law or in equity, necessary or proper, in order to carry out fully the provisions of this chapter, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this title, or acquired in pursuance thereof.
4. May contract and be contracted with.
5. May hold, lease, own, and possess such real and personal property as shall come into its possession by contract, conveyance, purchase, gift, or otherwise.
6. Subject to chapter 32-15, may exercise the right of eminent domain for the purpose of acquiring right of way for ditches, flumes, canals, pipelines, and other conveyance systems, sites for dams and reservoirs, wells and well fields, related drainage systems, and for any other purpose or works necessary to establish and construct a complete system of irrigation works.

In all courts, actions, suits, or proceedings, the board of directors may sue, appear and defend, in person or by attorneys, in the name of such irrigation district.

**61-07-02. Legal title to property acquired in corporate name.** The legal title to all property acquired by an irrigation district shall vest in such district in its corporate name.

**61-07-03. Powers and duties of board of directors.** The board of directors of an irrigation district shall:

1. Manage and conduct the business affairs of the district.
2. Make and execute all necessary contracts.
3. Employ such officers, agents, and employees as may be necessary to conduct efficiently the business of the district and to fix their compensation.
4. Adopt a seal for the district. The seal shall be kept in the custody of the secretary.
5. Establish bylaws and rules for distribution to and for the information of electors of the district and water users, and fix charges or rentals to be paid by water users. The bylaws and rules shall be printed, typewritten, or mimeographed in convenient form.
6. Enter upon any land within the district to make surveys and to locate the main lines and the necessary branches for any canals, pipelines, or other conveyance systems, and maintain and keep in good repair the irrigation works within the district. Its agents and employees shall have the same right.
7. Acquire by purchase, condemnation in accordance with chapter 32-15, or otherwise:

- a. Rights of way for ditches, canals, pipelines, and other conveyance systems and sites for dams and reservoirs, wells and well fields, and other works for the appropriation of ground and surface water, and for pumping plants.
  - b. All lands, easements, and any and all property necessary for the construction, use, maintenance, repair, and improvement of dams, reservoirs, wells and well fields, and other works for the appropriation of ground and surface water, and canals, pipelines, and other conveyance systems.
  - c. Electric powerlines for the conveyance of electric power to operate pumping plants and all necessary appurtenances thereto.
  - d. Water rights, but the board shall be required to offer an alternative water supply of equal quantity and comparable quality, either through the district works or otherwise, to the holder of any water rights which have been condemned.
8. Subject to the limitations contained in this chapter and chapter 32-15, acquire by purchase, condemnation, or otherwise, any existing irrigation works for the use of the district.
  9. Submit, whenever the board shall deem it advisable, to the electors of the district, at any regular or special election, any question, proposition, or proposal relative to the affairs of the district.
  10. Accept, on behalf of the district, appointment of the district as fiscal agent of the United States, or of any department or agency thereof, or authorization by the United States, or of any department or agency thereof, to make collections of money for and on behalf of the United States in connection with any federal reclamation or irrigation project. The board shall have full power to do any and all things required by the rules established by any such department or agency of the federal government relative to such project.
  11. Subject to the limitations provided in this title, determine a plan or method for raising funds to finance the cost of constructing irrigation works within the district or to provide funds for the purchase of such irrigation works. The plan may provide for the issuance of bonds, or the issuance of district improvement warrants, or the payment of such construction costs, or purchase price, by creating a fund obtained from water rentals or charges to water users, or for a combination of such methods for raising funds.
  12. Exercise all rights, powers, and authority, express or implied, that may be necessary to do and perform and carry out all of the express purposes of this chapter and of all purposes reasonably implied as incidental thereto.
  13. Enter into contracts and leases with the water commission of North Dakota or with the United States of America, its instrumentalities, departments, or agencies, for the purpose of financing the construction of any irrigation works authorized by law, and in such contracts and leases may authorize such commission or the United States, its instrumentalities, departments, or agencies, as the case may be, to supervise and approve the construction, maintenance, and operation of such irrigation works, or any part or portion thereof, until such times as any money expended, advanced, or loaned by the commission or by the United States, its instrumentalities, departments, or agencies, and agreed to be repaid thereto by said board, shall have been repaid fully. The board may accept cooperation from such commission or from the United States, its instrumentalities, departments, and agencies, in the construction, maintenance, and operation, and in financing the construction of any work authorized by the board. The board shall have full power to do any and all things necessary to avail itself of such aid, assistance, and cooperation under

existing or future state laws or federal legislation enacted by the Congress of the United States.

14. Acquire real property, buildings, improvements, and equipment used or useful in connection with storing, warehousing, distributing, or selling agricultural products, which may be located within or outside the district.

**61-07-04. Construction across streams, highways, railroads, and ditches - Right of way.** The board may construct irrigation works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, flume, pipeline, or other transportation system or utility, which the route of any canal may intersect or cross in such manner as to afford security for life and property, but the board shall restore the same, when so crossed or intersected, to its former state as near as may be, or in a manner sufficient to avoid unnecessary impairment of its usefulness. Every company whose railroad or utility shall be intersected or crossed by such works shall unite with the board in forming such intersections and crossings, and shall grant the privilege aforesaid. If the board cannot agree with such railroad company, or with the owners and controllers of the property, thing, or franchise to be crossed, upon the amount to be paid on account of such crossing or the point at which or the manner in which the crossing shall be made, the same shall be ascertained and determined in all respects as is provided for the taking of land. The right of way is 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. There are given, dedicated, and set apart, for the uses and purposes provided in this chapter, all water and water rights owned by this state within the district.

**61-07-05. Purchase of land after foreclosure of tax lien.** When the board shall deem it necessary to protect the interests of the district, or of the electors thereof, or to protect the interests of bondholders or other creditors of the district, it, if funds are available for that purpose, may purchase land within the district after foreclosure by the county for unpaid and delinquent taxes and may own and sell any lands thus acquired.

**61-07-06. Contracts entered into by district - Contracts for materials - Reservations in contracts.** All contracts entered into for any work provided for in this chapter shall be entered into in the name of the district and shall be executed on the part of the district by the chairman of the board of directors and countersigned or attested by the secretary. When the contract is signed by the contractor, it shall be filed in the office of the secretary of the district. Contracts for materials or for construction of any nature shall require the work to be done or the materials to be furnished in accordance with, and pursuant to, plans and specifications on file with the secretary. There shall be reserved in each such contract for construction the right of the board of directors, in case of the improper construction of such work, to suspend work thereon at any time, and to relet the contract therefor, or to order a reconstruction of said work or any part thereof improperly done. Each such contract shall state the time on or before which such work must be completed and shall state how such contract will be paid.

**61-07-07. Board to formulate general plan of operation - Contents.** As soon as practicable after the organization of an irrigation district, the board of directors, by a resolution entered on its records, shall formulate a general plan of its proposed operation which must state:

1. What constructed works or other property are proposed to be purchased, the purchase price, what construction work is proposed to be done, and the estimated cost of the construction.
2. Whether funds to pay the purchase price or cost of construction will be raised by issuing bonds or by creating a fund through the collection of rentals, charges from water users, or by creating a fund by levying assessments against the lands benefited, or whether it is contemplated to raise funds by the use of all or a combination of those methods of raising funds.

**61-07-08. Surveys, examinations, and plans made to determine cost of construction in district - State engineer to prepare report.** For the purpose of ascertaining

the cost of any irrigation construction work in a district, the board shall cause such surveys, examinations, and plans to be made as may demonstrate the practicability of the plan and furnish the proper basis for an estimate of the cost of carrying out the plan. All surveys, examinations, maps, plans, and estimates must be made under the direction of a registered professional engineer, who may be the state engineer, and must be certified by the registered professional engineer. The board shall submit a copy to the state engineer who shall prepare a summary report and file the report with the board. The report must contain such matters as in the judgment of the state engineer are desirable. Upon receiving the report, the board of directors shall determine the amount of money required to be raised.

**61-07-09. Advertising for bids.** After adopting a plan of irrigation works, the board shall secure bids as provided in chapter 48-01.2. Contracts for the purchase of materials must be awarded to the lowest and best bidder. The person to whom a contract may be awarded shall furnish a bond with good and sufficient sureties, to be approved by the board, payable to such district for its use, in an amount at least equal to the contract price, conditioned for the faithful and complete performance of the contract. The work must be done under the direction and to the satisfaction of the engineer and must be approved by the board. This section does not apply in case of any contract between the district and the United States, or any department, bureau, or agency thereof, or with the state water commission.

**61-07-10. Expense of purchasing and acquiring property and constructing irrigation works - Insufficiency of bonds.** The cost and expense of purchasing and acquiring property and of purchasing or constructing the irrigation works and improvements mentioned in this chapter shall be paid out of funds raised for such purpose. In case bonds, or the proceeds from the sale of any series of bonds, are insufficient for the purpose for which they were issued, additional bonds may be issued after submission of the question, at a general or special election, to the electors of the district. Additional improvement warrants may be issued to supplement warrants already authorized and issued. Such bonds and improvement warrants must be paid in the order of their priority.

**61-07-11. District entering into agreements with others for payment of cost of establishing or constructing works.** Any irrigation district, subject to the approval of the electors at a general or special election, may enter into an agreement or contract with the United States or with any department, bureau, or agency thereof, or with the state water commission, or with any person, firm, corporation, or limited liability company, for the establishment, construction, and completion of the necessary irrigation works, and in such contract or agreement may provide for the payment of the cost of establishing and constructing such works by the levy and collection of assessments against the lands benefited and by annual payments from funds raised by the collection of tolls and water charges paid by persons who have received and used water for the irrigation of their lands.

**61-07-12. Expenses - How paid.** For the purpose of defraying the expense of organizing the district and the maintenance, operation, management, repair, and improvement of irrigation works, including salaries of officers and employees, the board either may collect water rentals or may levy assessments therefor, or may collect such charges and also levy assessments.

**61-07-13. Agreement by board to conform to laws of various departments or agencies to secure financial aid.** For the purpose of obtaining financial aid from the United States, or from any department, bureau, or agency thereof, or from the state water commission, the board of a district may agree to conform to the laws of the United States and to the regulations of any department, bureau, or agency thereof, or may agree to conform to the regulations of the state water commission and to the supervision of such federal agency, bureau, or department or to the supervision of the state water commission, as the case may be.

**61-07-14. Irrigation districts may accept acts of Congress - Contracting with United States - Provisions of section not a limitation.** Any irrigation district organized under the laws of this state may accept the provisions of any act of the Congress of the United States applicable to such district and may obligate itself to comply with such laws, rules, and regulations as may be

promulgated by any department of the United States in pursuance of such acts. An irrigation district contracting with the United States under the provisions of this chapter shall be governed in all matters by the laws of this state relating to irrigation or drainage districts, as the case may be, except in such things as may be provided otherwise, for such district. The provisions of this section shall not limit the rights which any irrigation district has under existing laws to purchase a water supply or otherwise to contract and shall be cumulative thereto.

**61-07-15. District may obtain financial aid from United States.** Any irrigation district organized under the laws of this state for irrigation purposes may enter into a contract with the United States whereby the bonds of the district are guaranteed by the United States, or financial credit is extended by the United States to the district for the sale, purchase, or use of any irrigation works and related drainage systems, and any other property owned or to be acquired for the use of such district.

**61-07-16. Irrigation district shall provide for proper drainage of lands - Payment.** Any irrigation district organized under the provisions of this title shall provide for the proper drainage of any and all lands embraced within its limits which are, or have been, subirrigated by reason of the lawful use of water from its canal by the owner or lessee of the lands subirrigated, or from any cause which is not the fault, or which does not have the consent, of such owner or lessee. For such purpose, such district shall have all the authority granted in this title to:

1. Levy special assessments or otherwise provide funds necessary properly to drain such lands;
2. Enter upon lands for the purpose of making surveys;
3. Subject to chapter 32-15, exercise the right of eminent domain;
4. Contract for the construction of necessary drains; and
5. Extend such drains outside of the limits of such district for the purpose of conducting the drainage water to other lands upon which the same may be used lawfully or to return the same to some natural watercourse.

The powers granted by this section shall include the power to enter into a contract with the United States to carry out and effectuate all proper drainage of the district, or any part thereof, and any such contract shall be treated to all intents and purposes as if made under section 61-07-14.

**61-07-17. Apportionment of water when supply insufficient.** In case the water supply shall not be sufficient to supply continuously the lands susceptible of irrigation therefrom, the board shall apportion in a just and equitable proportion, a certain amount of such water upon certain or alternate days to different localities as in its judgment may be best for the interests of all parties concerned, and with due regard to the legal and equitable rights of all.

**61-07-18. Duty of board to provide water supply.** When the water supply of an irrigation district can be applied beneficially to the lands in the district, the board shall keep the waters flowing through the irrigation works under its control to the full capacity of the irrigation works in times of sufficient water supply but without interfering with the rights of senior appropriators.

**61-07-19. Petition for specific orders or changes in canals or other conveyance systems - Methods.** Upon the filing of a petition in the office of the board of any irrigation district, signed by electors who own a majority of the total number of acres [hectares] subject to assessment for construction or other costs, requesting that rules be adopted by the board permitting and providing for any of the following specific orders or changes in the method of operating its canal, pipeline, or other conveyance system, such board immediately shall provide for the adoption and enforcement of the same:

1. That a measuring device of a type approved by the state engineer be placed in or near the headgate of any main diverting gate of the main canal, or in any pipeline, or other main conveyance system in order that a continuous record shall be kept by such district of the amount of water received into the canal or pipeline for the use of the lands in such district.
2. That a measuring device of a type approved by the state engineer be placed in the headgates or valves of all main laterals and distributing laterals within the district from and by which water is diverted to tracts or units of twenty acres [8.09 hectares], or more, for the purpose of determining at all times the amount of water going to or being received upon any and all such tracts of land, and that it be made the duty of the district to keep a separate and correct record of the amount of water delivered through each of such headgates and valves at all times, and to file the same in the office of the board for public inspection.

**61-07-20. Provisions of title not to take away vested rights.** None of the provisions of this title relating to irrigation works shall be deemed to authorize the district or any person to divert the waters of any river, creek, stream, canal, or ditch from its channel, whereby the vested rights of any person having any interest in such river, creek, stream, canal, or ditch, or the waters thereof, are invaded or interfered with unless previous compensation is ascertained and paid therefor, under the laws of this state authorizing the taking of private property for public use. However, if the district exercises the authority of eminent domain against any vested water rights of any person, the district shall be required to offer an alternative water supply of equal quantity and comparable quality, either through the district works or otherwise, to such person.

**61-07-21. Incurring liability in excess of provisions of chapter prohibited - Exception.** Except as otherwise provided in section 61-07-16, the board or other officers of the district may not incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this title, and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void.

**61-07-22. Commencement of special proceedings to confirm contracts, special assessment, or other action.** The board of any irrigation district organized under the provisions of this title, before issuing any bonds or improvement warrants of such district, shall, and in its discretion, before making any contract or levying any assessment or taking any special action, may, commence a special proceeding in and by which the proceedings of such board and of such district, the making of any contract or the levying of any assessment or the taking of any special action, shall be judicially examined, approved, and confirmed, or disapproved and disaffirmed.

**61-07-23. Petition by board for court to examine and approve contracts or assessments - Contents of petition.** The board of an irrigation district, if deemed advisable, may file, or cause to be filed, in the district court of any county in which the lands of the district are situated, a petition praying that the proceedings had for the issuance of bonds or improvement warrants, or that the proceedings had preliminary to the making of any contract or for levying assessments or taking any special action, be examined, approved, and confirmed by the court. Such petition shall state the facts concerning the proceedings had for the issuance of bonds or improvement warrants, the making of any contract, levying any assessment, or any special action, of the board, as the case may be, and shall state generally that the irrigation district was organized and that the directors were elected and qualified, but the petition need not set forth the proceedings resulting in the organization of the district or the election of the directors.

**61-07-24. Hearing of petition - Notice of filing and hearing.** The court shall fix the time for the hearing of the petition provided for in section 61-07-23 and shall order the clerk of court to give and publish a notice of the filing of the petition, stating the time when and the place where the court will hear the petition, and stating further that any person interested in the organization of the district, or in the proceedings for the issuance of bonds or improvement warrants, or in the assessments levied, or in the special action taken by the board, as the case

may be, on or before the day fixed for hearing of the petition, may answer the petition. The petition may be referred to and described in the notice as the petition of \_\_\_\_\_ (name of petitioner) requesting that the proceedings set forth therein be examined, approved, and confirmed by the court. The notice shall be given by publishing the same in the official newspaper of the county in which the petition is filed, once each week for two consecutive weeks. The hearing shall be held, in the discretion of the court, not less than fifteen days nor more than sixty days after the last publication of the notice.

**61-07-25. Answer to petition - Defense by person interested.** Any person interested in the district or in the issue or sale of the bonds may answer the petition. The provisions of title 28 and the North Dakota Rules of Civil Procedure relating to the answer to a complaint shall be applicable to an answer to a petition. The person answering the petition shall be the defendant in the special proceeding and the board shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer, for the purpose of such special proceeding, shall be taken as true. Each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by title 28 and the North Dakota Rules of Civil Procedure which are not inconsistent with the provisions of this chapter, are applicable to the special proceeding provided for in this chapter.

**61-07-26. Powers of court upon trial - Amendment of petition.** At the time and place set for the hearing provided for in section 61-07-24, the court shall find and determine whether the notice of the filing of such petition has been posted and published. When the court has determined that it has jurisdiction to hear the petition, it shall proceed with the hearing and shall conduct the same as in the case of a trial of an equity action without a jury. The court shall examine into and determine the legality and validity of proceedings for the organization of the district from and including the petition for the organization thereof, and all matters affecting the legality or validity of proceedings for the issuance of bonds or improvement warrants, or the making of contracts by the board of directors, and the levying of assessments. The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to such hearing. The court shall permit the petition to be amended so as to conform to the evidence and facts presented at such hearing.

**61-07-27. Conclusion of hearing - Findings - Decree - Costs of hearing - Filing copies of findings.** Upon the conclusion of the hearing provided for in section 61-07-24, the court shall determine the legality and validity of the proceedings had for the issuance of bonds or improvement warrants, the making of any contract, or the levying of any assessments, as the case may be, and shall determine the validity and legality of any other matter properly before the court. The court shall prepare its findings of fact and conclusions of law and shall order that the decree of the court be entered in conformity therewith. The costs of the proceeding, in the discretion of the court, may be allowed and apportioned between the parties thereto. The secretary of the board of directors of the district shall file with the state engineer a certified copy of the court's findings of fact, conclusions of law, order, and decree.

**61-07-28. Procuring water supply from district outside of state - Validity and legality.** When any irrigation district shall find it necessary to procure its supply of water for the irrigation of the lands within the district from outside the boundaries of this state, such district may enter into an agreement or contract with any state board, commission, or bureau, or with any person, association, company, corporation, limited liability company, or irrigation district, having the control and jurisdiction over the water of such other state, for water rights therein or for supplying the district with water sufficient for its irrigation needs. The making of such contract and the issuance of bonds or improvement warrants and the levying of assessments, or other method agreed upon for the payment of rights, franchises, or water charges to obtain the required supply of water shall be deemed valid, and of full force and effect, and shall have the same validity and legality as though the same rights and franchises existed wholly within this state.

**61-07-29. Board may enter into a contract for supply of water - Payment - Source.** The board of any irrigation district in this state may enter into a contract for a supply of water with the United States, or with any department or agency thereof, or with the state water commission,

or with any person, association, firm, corporation, or limited liability company, or with another irrigation district, for the irrigation of lands within the district. Under such contract the board may agree to pay for the water furnished or delivered to the district from collections obtained from tolls or charges paid by water users and from assessments levied against the lands irrigated. The source of supply of such water may be either within or without the boundaries of this state. Such water supply may be the entire supply for such district or may supplement an appropriation of water already made by said district.

**61-07-30. Contract for payment for supply of water - Assessments may be made against lands.** If a contract, made and entered into by any irrigation district pursuant to the provisions of section 61-07-29, provides for the payment of the entire purchase price of an annual supply of water, the board, if other revenues are not available for the payment of such purchase price, shall adopt a resolution that assessments be made against the lands within the district sufficient to produce the required amount. Such amount shall be apportioned, assessed, and levied at the time specified in this chapter for the apportionment and levy of assessments.

**61-07-31. Contract for supply of water extending over one year approved at election - Regulations governing election.** If a contract for the supplying of water provides for a payment to be made extending for a period of more than one year from the date of making such contract, the board of such irrigation district shall submit such contract to the legal voters of such district at any general election, or at a special election called for the approval or disapproval of the contract. If a special election is called for such purpose, the notice of election, the conduct of said election, and the canvass of the votes, so far as practicable, shall be the same as in a regular election of the district. The notice of such election need not give the entire contract, but shall be sufficient if it shall state in a general way the substance of the proposed contract. The ballot at such election shall be in substantially the following form:

- For approval of contract for water supply
- Against approval of contract for water supply

If a majority of the electors voting on said proposition vote for approval of such contract, the board shall enter into such contract and thereafter, at the time the other taxes of the district are levied, shall levy a tax on the taxable property of the district sufficient to pay the amount due on said contract and to become due on said contract before the next annual levy in said district.

**61-07-32. Liability for failure to deliver water.** Any irrigation district within this state shall be liable in damages for negligence in delivering or failing to deliver water to the users from its canal, but such liability cannot be enforced unless the party suffering such damage, within thirty days after such district shall fail to deliver water, shall serve a notice in writing on the chairman of the board of such district, setting forth particularly the acts committed or the omission of duties to be performed on the part of the district which are claimed to constitute such negligence or omission, and stating that the party expects to hold such district liable for whatever damages may result. Such action shall be brought within one year from the time the cause has accrued.

**61-07-33. Appeal to district court - Time - Undertaking required - Docketing.** An appeal may be taken to the district court from any order or decision of the board of an irrigation district, by any person who is aggrieved thereby. The appeal must be taken in accordance with the procedure provided in section 28-34-01. To effect an appeal, an undertaking must be executed by the appellant and sufficient surety conditioned that the appellant will prosecute such appeal without delay and will pay all costs adjudged against the appellant in the district court. The undertaking must be made in favor of the irrigation district as the obligee and may be enforced by the district. The appeal must be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is situated, and if the land is situated in more than one county, the appeal may be taken to the district court of any county in which any part of the land is situated. Any appeal thus taken must be docketed in the district court as any civil cause commenced in the district court is docketed and must be heard and determined without a jury. Appeals to the supreme court may be taken by the irrigation district or any other party to the cause from any judgment entered in the district court in any such

cause and from any order of said court if an appeal would lie from such an order if the same were entered by the court in any other civil action.